

RE: HAZARDOUS WAKE RESOLUTIONS

INTRODUCTION

The Hazardous Wake Citizen Resolutions passed with overwhelming support. The two Dane County Resolutions received 94% approval of over 1600 votes cast. The four Vilas County resolutions received 80% approval almost of 500 votes cast. This overwhelming support was because wakesurfing boats operating in a wakesurfing mode interfere with the public's enjoyment of navigable waters and cause the risk of severe environmental damage.

DESCRIPTION OF RESOLUTIONS

133822 Dane Co-- Do you support prohibiting wake boats from causing hazardous wakes on lakes less than 1,500 acres? (94% approval).

133922 Dane Co--Do you support requiring wake boats causing hazardous wakes on lakes larger than 1,500 acres to be more than 700 feet from shore or other water users?(94% approval).

640822 Vilas Co.--Would you support the WCC and legislature working to amend existing Statutes that prohibits operation of a boat that intentionally creates a hazardous wake within 700 ft of any dock, raft, pier, buoyed restricted area, shoreline and other watercraft?(78% approval)

640922 Vilas Co.-- Would you support the WCC and legislature creating a new Statute that prohibits operation of a boat that intentionally creates a hazardous wake on lakes of a specific physical characteristic defined by size, depth, length and width?(79% approval)

641122 Vilas Co--. Prohibit intentional magnification of wakes for wakesurfing on lakes less than 1500 acres statewide. In my description I proposed "Lakes would be evaluated case by case considering size, shape, depth, usage, stakeholder input, and environmental conditions including fish and wildlife habitats, lakebed and shoreline characteristics, etc. Until this can be done, wakesurfing should be prohibited on lakes less than 1500 acres?(80% approval)

641222 Vilas Co.-- Prohibit intentional magnification of wakes for wakesurfing in Presque Isle because State boat wake laws are obsolete. (80% approval)

PROTECTION OF CONSTITUTIONAL RIGHTS

These resolutions seek to protect the rights of citizens under Sec. 1, art. IX of the Wisconsin Constitution (better known as the Public Trust Doctrine. The Public Trust Doctrine is part of the Wisconsin Constitution approved by an act of Congress admitting Wisconsin into the Union in 1848. It incorporated verbatim the wording of the Northwest Ordinance with respect to navigable waters:

and the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost, or duty therefor.”

By 1946 the Public Trust Doctrine was recognized to mean that navigable waters were public for all lawful purposes. 1946 Wisconsin Law Review, 345,347.

“Thus in Wisconsin when it is said that a water is navigable, it is merely a different way of saying that it is public— public not only for navigation, but for hunting, fishing, recreation, and for any other lawful purpose.

This was affirmed in the landmark case *Muench v. Public Service Commission*, 261 Wis.492, 55 N.W. 2d 40 (1952) where the Court stated that “the rights of our citizens to enjoy the navigable waters of this state for recreational purposes, and that such rights should not be “limited or curtailed by narrow constructions.”261 Wis. 2d at 512.

In Wisconsin the public has the right to use navigable waters for fishing, canoeing, kayaking, paddleboarding and a myriad of other water sports. These rights

are unmistakably protected by the Wisconsin Constitution just as much as freedom of speech and other constitutionally protected rights.

WDNR has the right to adopt numerous regulations (i.e. wolf hunting, deer hunting, fishing etc.) However, these regulations do not rise to the level of the Public Trust doctrine which grants citizens a constitutional right to the enjoyment of navigable waters. Wakesurfers, in exercising their rights interfere with the constitutional rights of the vast majority of other users of navigable waters. These resolutions seek to balance those respective rights.

INTERFERENCE WITH PUBLIC RIGHTS

A wakesurfing boat typically has a 450 horsepower motor and is weighted in stern with up to 4,000 pounds ballast (often water in a bladder) and with mechanical devices that cause it to plow through the water at slow speeds with the stern down and the bow high(see attached). This creates enhanced wakes far different than a boat operating on plane or waves induced by wind. The purpose is to produce wakes so that people can surf on the wakes like they were on an ocean. According to a Canadian study (end note 1) it requires almost 1000 feet for these wakes to dissipate.

A University of Minnesota study by the St. Anthony Falls Laboratory compared wakes created by wakesurf boats and waterski boats. They determined that wakes created for wakesurfing are up to 12 times more powerful. Minnesota's current recommendation for shoreline protection is that ski boats should stay over 200 feet from shore and structures. The study showed that the distance would need to be increased to over 600 feet for wakesurfing to allow the larger wake enough distance to weaken to a similar level.(2)

These wakes interfere with the rights of the public to canoe, kayak, paddle board or engage in other water sports when these boats are operating within two football fields from a boat operating in wakesurfing modes.

Steve Herbeck has guided for Muskies in Wisconsin, Canada, and other locations for over 35 years. He has written:

wakes from these boats make it nearly impossible to fish. It doesn't matter what species of fish you pursue they affect your ability to properly control your boat but especially muskie fishermen as most stand up to cast.

He stated that he has guided on an 1165 acre lake in Vilas County (Presque Isle Lake) and that it would be impossible to fish that lake when a wakesurfing boat was operating in wakesurfing mode. (letter attached)

However, there are also severe environmental issues caused by these boats. There is an important study being conducted by the Terra Vigiliis Company in connection with Carroll University on North Lake in Waukesha County, Wisconsin. The study used a variety of sensors including underwater drones to measure the underwater impacts of these plumes. (3)

The study found that the wakes produced underwater plumes that went greater than 20 feet underwater. These plumes disturbed the lake bed and redeposited sediments from the lake bottom. In one part of the study they measured the phosphorous content in the water 200 feet from shore. After two runs of a wakesurfing boat the phosphorous level increased by 25% and was well above acceptable limits.

The underwater plumes extended beyond the thermocline. In the first phase of the study it was observed that there had been a die off of cisco.

There was also a study on a lake near Woodruff, Wisconsin. It showed severe destruction of desirable aquatic plants caused by wakesurfing boats.(4)

Shoreline erosion is also an issue. This can cause damage to nesting areas and damage to shoreline structures.

The water used as ballast must be discharged into the lake before the boat can be moved from one lake to another. The ballast water cannot be fully emptied creating the risk that invasives can be moved from one lake to another.

The Town of Presque Isle in early 2021 prepared a condition report evaluating the numerous risks caused by these boats.(5)

Some of the resolutions seek to prohibit boats operating in a wakesurfing mode to operate in lakes less than 1500 acres. This number was chosen because a renowned musky guide with over 35 years guiding experience and who has encountered such wakes has concluded that it would be impossible to fish on a well-known lake that is 1,165 acres. There are 75 lakes in Wisconsin that are over 1,500 acres.(6) This does not include Lake Superior and Lake Michigan.

Some resolutions require these boats to maintain distances from shoreline and other users. These boats cost \$50,000-\$100,000.(7) It is reasonable for users to have rangefinders used by golfers at a cost of \$100-\$200 to safely operate their boat.

These resolutions do not impact boats that operate on a plane such as water-ski boats and personal watercraft. It also does not impact wakesurfing boats when they are operating on plane.

CONCLUSION

The voters have spoken. The science is clear. The constitutional rights of users of Wisconsin navigable waters must be protected.

RESPECTFULLY SUBMITTED

DATED:

End Notes

1. "Project Evaluation of the Impact of Waves Created by Wake Boats...:", <http://gencourt.state.nh.us/statstudcomm/committees/1434/documents.html>, Mercier- Blais, Yves Prairie, executive summary(Ontario study, June 2014)
2. St. Anthony Falls Laboratory Report. SAFL Project Report No. 600. February, 2022.
3. North Lake Study.- This is an excellent presentation of a study of enhanced wake boats on a south eastern Wisconsin Lake. Phase I was completed in 2020. Phase II was completed in 2021. The results were reported at a zoom meeting in April, 2022 and included the major underwater findings. Phase I report can be found on a YouTube presentation. <https://www.youtube.com/watch?v=nlHa9XrAE0&list=PL6aVQYpBMBW9xv3hnGqysGbB5yW8FNrlz&index=6>
4. Johnson, "Wake Surfing and Fish Habitat Loss on Midlake" (Google) Study of fish habitat loss on a lake near Woodruff, Wisconsin.
5. Presque Isle Hazardous Wake Ordinance Condition Report. Google-- Presque Isle Wisconsin, Hazardous Wake Condition Report.
6. Wisconsin Department of Natural Resources PUB-FH-800 2009.
7. 10 cheap Affordable Wake Boats. <https://www.discoverboating.com/buying/most-affordable-wake-boats>