



WAKE BOATS, AGAIN!

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Wake boats (also known as ski boats, wakeboard boats, bladder boats or wave boats) continue to be one of the “hot topics” among lakefront property owners throughout Michigan. To date, I have authored three prior articles for this magazine on wake boats – (the Fall, 2013 article entitled “Of Mosquitoes and Killer Bees,” the article called “*The Killer Bees Appear to be Winning – An Update regarding Wake Boats/Bladder Boats*” in the Fall, 2017 issue of the magazine and the article entitled “*More on Wake Boats*” in the Fall, 2018 issue). Wake boats are clearly a “hot topic” in Michigan.

On May 4, 2019, at the annual convention for the Michigan Lakes Stewardship Associations (“MLSA”) at Crystal Mountain, there was a very interesting symposium on wake boats. In addition to presentations by a professor of Ecology and Evolutionary Biology, two boating industry representatives also spoke. The presenters were both candid and knowledgeable. The video clip of that presentation can be viewed by contacting Melissa DeSimone melissa.desimone@mlswa.org.

There appears to be no major dispute that wake boats can generate huge waves and the wakes from wake boats can be destructive to the shoreline, swimmers and other boaters if a wake boat is not properly used. The key appears to be the amount of distance between the wake boat (when the wave producing mechanisms are deployed) and the shoreline, other boats or kayaks and swimmers when the boat produces waves. Currently, Michigan law only requires a 100 foot isolation distance. MCL 324.80146 and 324.80149. Other states either have or are considering much greater distances such as 200 feet, 300 feet, 500 feet or even more. At the symposium, a boating industry study was cited that indicated most of the waves from a wake boat dissipate at between 200 and 300 feet from the boat (although the impacts are greatly

reduced by 200 feet) and almost completely dissipate at the 500 foot mark.

Given the computerized nature of most wake boats, the wake producing mechanism can be turned off and on by the boat captain. Presumably, it should be fairly easy to add a computer component to wake boats to tell the boat captain how far away from shore the wake boat is located at any specific moment given GPS technology.

Another increasing problem associated with wake boats is noise from radio or audio player speakers. Apparently, the “towers” on wake boats provide a good platform for high intensity loud audio speakers. And, given that sound often carries a great distance on water, music blasting from a wake boat can annoy both area people and animals and birds as well.

It has become apparent that the boating industry realizes that the huge waves and music noise from wake boats is becoming an increasing problem on many lakes throughout the nation and certainly does not want to see wake boats banned. Therefore, the industry is prudently putting more time and resources into education campaigns urging operators of wake boats to be more courteous, only engage the wake/wave producing mechanism far off shore and away from other boats, minimize audio speaker noise and not engage in repetitive swings near the shore. Accordingly, if a wake boat captain tries to dispute the desirability of boating courtesy, only engaging the wake/wave mechanism far away from shore, turning down the speaker noise and not engaging in repetitive trips in the same area over and over again, one need only point to the boating industry itself and industry publications to prove the complaining wake boat operator wrong.

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In the opinion of this author, the best solution (or at least partial solution) to the problems caused by wake boats is for the Michigan Legislature to increase the minimum distance from shore, swimmers and other boaters or kayaks within which a wake boat can utilize its wave-making ability. Currently, Michigan law sets that distance at only 100 feet. That distance should be increased to at least 200 to 300 feet, and arguably 500 feet for wake boats. Of course, that will eliminate the ability of wake boats to utilize their wave making capacity in some small lakes. However, that does not seem unreasonable. You would not think of driving a Ferrari on a gravel road or within a quiet residential neighborhood or launching or using a cigarette boat in a five acre pond. Likewise, there are certain small lakes or lake conditions whereby a wake boat should not be operated. Furthermore, wake boats could still be used in smaller lakes akin to a speed boat, but the wave making mechanism could not be engaged.

It is unclear under Michigan law whether a local city, village or township can impose a greater “no wake” area on lakes for boating purposes or whether that area is preempted by state law. Regardless, it would be best if any increase in the 100 foot “no wake” law for wake boats be implemented at the state level. With regard to loud audio speakers on boats, however, local municipalities likely have full authority to regulate such noise via decibel levels under the appropriate ordinance. Loud speakers could also be considered a “disturbing the peace” offense under certain circumstances.

The issue of liability for wake boat operators for the destruction of natural shorelines, seawalls, docks and other shore area structures also came up at the symposium. In general, a boat operator is responsible and potentially liable for the impacts of his or her specific boating activities (including waves). And, if there is definitive proof that the wake from a specific wake boat and its operator caused damage to a dock, a swimmer to drown or some other direct injury, the liability and damages would likely attach to that boat operator. However, damage to shorelines, seawalls, docks and other shore area structures caused by cumulative wake boat use would make successful litigation difficult, as the damages could be caused by multiple or many different wake boat operators. In that case, it is possible that the

injured party could file a mini-class action lawsuit against all wake boat operators on the lake involved, or a group of riparians could potentially bring a class action lawsuit against all wake board operators in the state or the boating industry in general, although it is unclear whether such litigation is feasible or could be successful. Hopefully, such lawsuits will not be necessary if wake boat operators use common sense and simply engage in courteous boating behavior. *R.*

