



3. The further offshore that a wake boat is operated (i.e. when its wave-making abilities are engaged), the more its waves will dissipate by the time they get to shore and the less damage that will be done. More distance = less harm.
4. Damage to the shoreline, docks, and potentially other boats can be minimized not only by operating wake boats further away from shore, but also by not operating the watercraft in the same area over and over again.

WAKE BOATS - THE EVIDENCE

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Elsewhere in this magazine, there is a discussion about the recent report on wake boats (also sometimes known as wave boats, bladder boats, etc.) done by the University of Minnesota's St. Anthony Falls Laboratory (SAFL) entitled *A Field Study of Maximum Wave Height, Total Wave Energy, and Maximum Wave Power Produced by Four Recreational Boats on a Freshwater Lake*, and partially funded by the Michigan Lakes & Streams Association, Inc. The prior articles that I have authored for *The Michigan Riparian* magazine regarding wake boats can also be found in the following issues:

- "Of Mosquitoes and Killer Bees" Fall, 2013 issue
- "The Killer Bees Appear to be Winning – An Update Regarding Wake Boats/Bladder Boats" Fall, 2017 issue
- "More on Wake Boats" Fall, 2018 issue
- "Wake Boats, Again" Summer, 2019 issue

Obviously, the recent wake boat report by University of Minnesota's SAFL will not be the "final word" regarding wake boats, their powerful waves, potential damage to shorelines, and other wake boat matters. Nevertheless, the report does appear to confirm once again several objective facts that do not seem to be seriously in dispute:

1. Wake boats are capable of creating waves that are much larger, dissipate more slowly, and under some circumstances, can cause significant damage to shorelines, docks, and potentially other boats.
2. The waves created by wake boats are significantly different and more intense than those generally produced by personal watercraft, conventional ski boats, and other watercraft.

One response frequently used by the owners and operators of wake boats when confronted with evidence indicating potential wave damage to shorelines, docks, and other boats is the claim that operating a wake boat is a "right" that should not be regulated or infringed. Like many of our readers, I too am concerned about the potential erosion of personal liberty and constitutional rights within our society in general. However, the old saying that "your right to swing your fist ends where my nose begins" likely applies to wake boat wave damage as well. To the extent that waves from wake boats are occurring within several hundred feet of the shore of a lake or river and damage is being done to the shore, a dock, or other boats (beyond that which is done by conventional speed boats or personal watercraft), that is not a "right" of the wake boat owner or operator.

If a wake boat is prohibited from operating its wave-making capacity on a particular small lake or within, for example, 500 feet of the shore, is the boat then rendered worthless? No. On virtually all of those boats, the

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wave-making feature can simply not be used and the boat can be operated as a conventional speed boat. Therefore, no “right” has been taken away.

So exactly what “narrow right” would be forgone or restricted if the Michigan Legislature were to introduce, say, a 700-foot-from-shore “no wave” zone for wake boats? Those boats could still operate within 700 feet of any shoreline at a no-wake speed and could also be operated as a conventional speed boat or ski boat at higher speeds greater than 100 feet from the shore (the standard “no wake” statute required distance from shore, docks, swimmers, and sailboats). The wake boat operator simply could not engage the intensive wave-making apparatus within 700 feet of shore. That really does not seem like much of a right being infringed or restricted. Is the right of a waterfront property owner to not have their seawall, dock, and moored boat damaged or destroyed any less of a right?

One analogy that I used in an earlier article for *The Michigan Riparian* magazine is applicable here. Suppose that a new technology evolves for semi-trucks that make them more aerodynamically and fuel efficient, as well as sleeker and aesthetically pleasing. However, an unfortunate side effect is that the air currents from such semi-trucks knock down mail boxes, speed limit signs, small trees, and even some utility poles along the side of the road when a semi-truck passes (as well as potentially damaging other vehicles parked alongside the highway). Does anyone really believe that such a semi-truck design would be allowed to continue? Would it be the “right” of truckers and trucking companies to destroy such items? Would there be a lack of lawsuits against the owners, operators, and manufacturers of such trucks? I believe we all know what the answers would be.

Another analogy could involve a new type of snowmobile or snow blower that works extremely well, is cheaper, and is in great demand by consumers, but unfortunately, it throws chunks of ice a long distance beyond the area where the snowmobile or snow blower is being operated. The thrown ice chunks break windows, damage the siding on houses, and have even caused injuries to people. Would anyone

reasonably try to argue that owning and operating such a new type of snowmobile or snow blower is their right and should be allowed unregulated? Of course not.

Does a seaplane pilot have a right to stop all boat traffic on a small busy lake for significant periods of time while the seaplane lands, taxis, or takes off?

Another consideration regarding the regulation of wake boats is that such boats (or at least their wave-making component) are not essential, but rather are a recreational, luxury, or enjoyment item. Negative externalities and impacts might be more likely to be accepted by society where they involve something essential or necessary, such as a medical device or safety feature. Society normally accepts less risk, negative impacts, and damages from a luxury or recreational item or vehicle.

Finally, it should be kept in mind that the Michigan appellate courts have deemed most natural lake and river waterways to be akin to public highways. See *Thompson v Enz*, 379 Mich 667 (1967) and *Collins v Gerhardt*, 237 Mich 38 (1926). That is, all of the waterfront property owners have riparian rights as to their shoreline and bottomlands areas, and also have the right to utilize the whole surface of the lake for swimming, boating, fishing, and other waterfront activities. See *Holton v Ward*, 303 Mich App 718 (2014); *Bott v Commission of Natural Resources*, 415 Mich 45 (1987); *Burt v Munger*, 314 Mich 659 (1946) and *Rice v Naimish*, 8 Mich App 698 (1967). No other riparian or member of the general public has the right to unreasonably interfere with or monopolize those riparian rights. (*Ibid.*) So when the owner or operator of a wake boat claims that it is their right to operate their boat with the wave-making apparatus engaged anywhere they want, that is simply wrong from both a riparian and a legal standpoint. By legal definition, use of a community property, waterway, or common water asset necessarily restricts the range of rights or uses within which members of the community or public can operate.

As more and more objective evidence accumulates that will likely show definitely that wake boat waves are causing

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significant damage to shorelines, some docks, and other properties, it is more likely that there will be extensive lawsuits against not only the individual owners and operators of wake boats that are actually doing the damage, but also against the manufacturers and sellers of wake boats in general. Hopefully, the boating and wake boat industry will agree to reasonable regulations and practices that will minimize such damage and head off a likely wave (pardon the pun) of tort litigation.

Most critics of wake boats do not believe that a wake boat ban is the answer. Instead, one reasonable alternative would be for the Michigan Legislature to enact legislation requiring that wake boats be operated at a no-wake speed within so many feet of a lake or river shoreline (for example, 500 feet). Such regulation could potentially be a “win-win” situation.

There appears to be few complaints about wake boats that are operated in large bodies of water significantly away from the shoreline. Just as cabin cruisers and large racing watercraft should not be utilized in smaller inland lakes, so too perhaps wake boats should only be operated in larger bodies of water. R

SEASONAL ACTION ITEMS



REGISTER

01

Register for the MLSA Conference as soon as possible to get our room block rate with Crystal Mountain. The agenda and registration information can be found at mymlsa.org.



VOLUNTEER

02

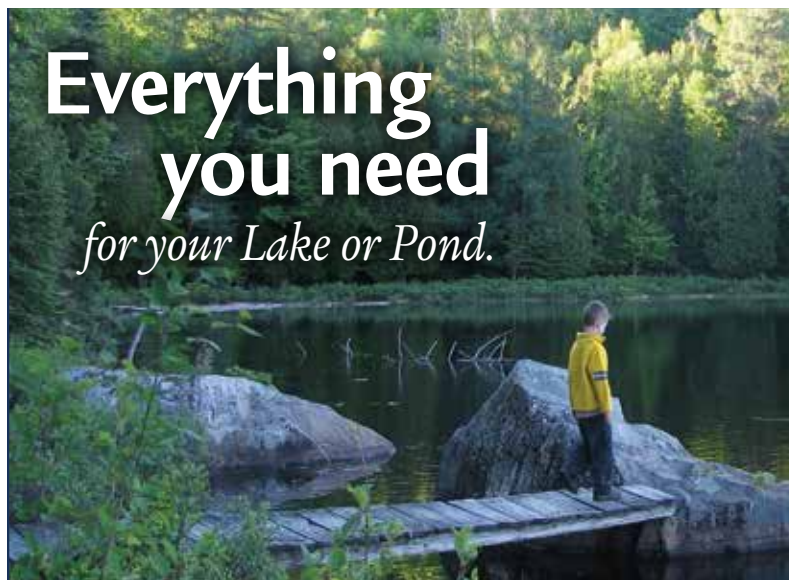
Cooperative Lakes Monitoring Program (CLMP) training will not be held at the MLSA Conference this year. Be sure to visit micorps.net to register for the virtual training on May 10th.



PROTECT

03

Are you thinking about doing some work on your shoreline this spring? Make sure you include some best management practices to protect your water body.



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