

To the Legislative Committee on Administrative Rules

Subject: Wake Boats

My name is Steve Sease, and I am a resident of Montpelier. I have been a dedicated paddler for more than 55 years, with a great deal of experience in canoes and kayaks on all types of water.

I am an individual paddler. I do not own a lakeside camp but in 55 years I have paddled a number of the 31 lakes that would experience wake boats under the proposed rule. I even dabbled in open water swimming many years ago, when a mile or two swim seemed like fun,

I urge this committee to reject the proposed wake boat rule submitted by the Agency of Natural Resources. I believe that the issues and conflicts that will be caused by any rule allowing wake boats would be so problematic that wake boats should be banned.

There are a number of grounds on which the proposed rule fails. These reasons include: failure to meet legislative intent; failure to provide opportunity for public comment; arbitrary decision making; failure to address substantive issues; impossibility of enforcement; and the Agency's admitted lack of expertise in the crucial area of boating safety.

Boater safety

The proposed rule does not improve or protect small boat or swimmer safety in any meaningful way. The rule should be rejected on the grounds of failure to meet legislative intent; arbitrariness; lack of expertise; failure to consider and accept extensive public comment; and common sense.

Safety of users of surface waters, including boaters and swimmers, is a paramount legislative concern (10 VSA § 142) when considering rules for use of surface waters. Astoundingly, the agency admits that it does not have expertise on surface water safety. Responsiveness summary, page 2.

Even more astonishing, the proposed rule does not increase boater safety in any substantive way!

Current surface water statutes require boats to avoid creating a wake within 200 feet of other boats and swimmers. The present rule does not change that standard. The rule does, however, propose a 500 foot operating distance from shore in order to protect shorelines. This is a glaring inconsistency. It seems only reasonable to conclude that if a certain distance is required to protect shoreline integrity, the same distance, at least, should apply to a vulnerable swimmer or boater in the water.

Hundreds of people commented in person or in writing on safety. 81% of almost 800 responders requested more stringent regulation than the proposed 500 foot rule. The Agency ignored this public response, which included testimony from many expert paddlers.

In response to a question about safety, the Agency hides behind existing law, saying:

“Vermont statute 23 V.S.A. § 3311 states that: (c)(1): An individual shall not operate any vessel, seaplane, racing shell, or rowing scull, except a sailboard or a police or emergency vessel, within 200 feet of the shoreline; an individual in the water; a canoe, rowboat, or other vessel; an anchored or moored vessel containing any individual; or anchorages or docks, except at a speed of less than five miles per hour that does not create a wake.”

The Agency’s decision to avoid taking any steps to provide additional protection for boaters and swimmers in the water is arbitrary; contrary to legislative intent; and fails to give credence to public comment.

I consider myself an expert paddler. (Although by no means the best!). I am sure that if I were in my canoe with a wake boat producing 5’ waves 200 feet or slightly more from me, I would capsize. I do not believe that even 500 feet is a sufficient distance for swimmer and boater safety and 200’ is a recipe for disaster.

Under the proposed rule, 31 of some of Vermont’s larger and most iconic lakes will be deeply compromised by wake boat and wake surfing activity. For swimmers and small boaters, the proposed “safety zone“ of 500 feet from shore will have no effect, as a wake boat is only required to reduce its wake within 200 feet of a swimmer whether in or outside of “the safety zone.” In effect, the agency is saying you will swim or kayak at risk because a wake boat may legally operate 200 feet away from you, something virtually every experienced boater knows will result in a swim, and every experienced swimmer knows will result in a trip through the washing machine. This proposed rule, in addition to its other deficiencies, defies principles of public safety and common sense.

I urge the committee to reject the proposed rule as indicated above.

Normal use

The rule should fail on the grounds of failure to seek or provide public opportunity for comment and arbitrary decision-making.

The Agency’s original rule proposal included language that wakeboarding was not a normal use. After that original filing the Agency dropped that interpretation. Instead, the responsiveness summary now maintains that wake boating is a sub category of motorized use, a meaningless phrase. This description does not appear in the rule itself. Responsiveness summary, page 11.

Wake boating is most certainly not a normal use, as it did not exist in 1993. No one dreamed that a new type of boat would be designed with ballast tanks and a new hull configuration to sink deep in the water in order to create large waves. Nor was anyone wakeboarding, that is, riding a 5’ wave on a surfboard, without a tow rope or any connection to the boat.

The rule must fail because the agency made this extremely significant change without any opportunity for public review and comment, as is required. Without public input, the rule also fails for arbitrariness.

### Enforcement

The rule should be returned to ANR for more investigation into the enforceability of the proposed rule. Numerous commenters have pointed out the limitations of Vermont surface water law enforcement. In my own experience, in 55 years of paddling on Vermont lakes and ponds, I have seen wardens 4 or 5 times, and I've only been asked about my PFD twice.

### Climate

On another issue, the Agency's proposed rule appears to dismiss the impact of wake boats on climate. Wake boats consume enormous amounts of fuel. Many of them come equipped with 80 or 90 gallon fuel tanks, 350 h.p. or larger engines, and can expect to get 3 to 4 miles to the gallon. At a time when the state and the agency should be doing everything possible to reduce fuel consumption by internal combustion engines, the agency has gone the other way. Implying that "there won't be that many wake boats" side steps the issue. By legitimizing wake boat use, the rule will contribute to growth in wake boat numbers and more climate impact from an increase in emission of greenhouse gasses. The Agency's review is nonsubstantive and dismissive, and should be rejected.

### Economic Impact

There appears to be little or no address of the impact of the rule on private and public campgrounds and childrens' summer camps. Concerning boater and swimmer safety, what will the effect on childrens' summer camps be as campers attempt to learn swimming, canoeing, small boating and other aquatic activities? Will any parent want their child to attend a camp where giant waves could wash over a novice? How will these businesses be affected? The Agency is silent on this issue.

The effects on tourism are also largely unexplored. At the moment, small boat use on Vermont Lakes is enjoyed by thousands, and appears in numerous advertising brochures and promotional activities. How will tourists, planning peaceful kayaking or canoeing or sail boating on a lovely Vermont lake react, confronted with waves generated by wake boats? No one wants to paddle in survival mode on a Vermont lake. Will small boat lake use and tourism fall off as a result? Will Grand Lists suffer? Time will tell, because the Agency doesn't. The rule should fail due to the Agency's non substantive treatment of this issue.

### Noise

Wake boat manufacturers brag in their literature about the size and numbers of the speakers on their craft. Apparently wake surfing requires loud loud music as an accompaniment. Heavy metal? Rap? The Rolling Stones? Probably not Joan Baez.

The intrusion of big speakers blaring over the water is an unmistakable attribute of wake boaters, to the detriment of solitude, contemplation, enjoyment of nature, aesthetics, or the peacefulness of a lakeside camp.

The issue of noise from music or big engines does not seem to be acknowledged in the Agency's assessment of impacts of wake boating to natural resource values. The rule should fail for this omission.

Conclusion

Under the proposed rule, surface use of 31 of some of Vermont's larger and most iconic lakes will be deeply compromised by wake boat activity.

The most appropriate outcome for the regulation of wake boats is to ban them on all lakes where Vermont has jurisdiction.

Thank you for your attention to this issue.

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