

Vermont Use of Public Waters Rules

Proposed Change to § 3 for Managing Wake Boats and Their Activities on Vermont Lakes and Ponds

Please support ANR's rule to manage and regulate the operation of wake boats and their use in the activities of wakesurfing and wakeboarding on Vermont lakes and ponds.

Please also insist that ANR's rule go into effect this coming summer, 2024.

Responsible Wakes for Vermont Lakes has been working for three years to accomplish a stronger, more effective rule; however, we acknowledge that ANR's rule is an important first step in regulating wakesports. ANR's proposed rule includes the Home Lake Rule which is critically important to the prevention of the spread of invasive species. Our greatest priority is to put a rule in place this summer. We therefore ask you to support ANR's rule and to press for its immediate implementation.

Please make sure that ANR makes two significant changes before enacting the wakesport rule: 1) the definition of a wake boat must be clarified and expanded to include both current and future technologies and designs; and 2) ANR's reclassification of wakesports as a "normal use" must be removed from all explanations and justifications for the rule.

Wake boat definition:

ANR's current definition is as follows:

5.16 "Wakeboat" means a motorboat that has one or more ballast tanks, ballast bags or other devices used to enhance or increase the size of the motorboat's wake.

ANR's definition is too narrow and therefore opens a loophole for many design elements that can be used to artificially enhance boat wakes. Responsible Wakes developed a definition which recognizes the various technologies available now -- and likely to be invented in the future. ANR's version opens the possibility that other methods used to create artificially enhanced wakes (for example, hull design) might be employed so as to skirt the definition and avoid regulation.

Below we propose a simple modification to ANR's definition and add the phrase "or design features."

5.16 "Wakeboat" means a motorboat that has one or more ballast tanks, ballast bags, other devices or design features used to enhance or increase the size of the motorboat's wake.

Normal Use

Vermont's lakes and ponds are held in public trust. The intent of the Use of Public Waters (UPW) Rules is to allow everyone to use these shared resources in a reasonable manner. Normal and designated uses are protected. The rules must consider both current and future generations. And the natural resource values of public waters must be fully protected. These five basic principles are central to the UPW Rules. ANR declares these critical values right up front on the government website:

<https://dec.vermont.gov/watershed/lakes-ponds/vermont-use-public-waters-rules>

The term “normal use” lies at the heart of the UPW Rules. Its importance cannot be overstated. “Normal use” is clearly and explicitly defined to mean: “any lawful use of any specific body of public water that occurred on a regular, frequent, and consistent basis prior to January 1, 1993.” Wakeboats and wake sports do not meet this definition and were not occurring on a regular, frequent, and consistent basis prior to January 1, 1993.

In June 2023, when it first released its proposed wake sport rule, ANR stated unequivocally that wake sports could not be categorized as a “normal use” as defined by the UPW Rules. This conclusion seemed obvious since, as stated above, wake sports were never regular, frequent, or consistent prior to 1993. In January, with the release of its final rule, ANR declared wake sports to be a “normal use.” ANR simply stated that wake boats are “motorized vessels” and therefore fall under the category of “normal use.” With no explanation, ANR reversed its view and contradicted a fundamental definition in the UPW Rules.

ANR simply decided that wake sports involve a “motorized vessel” and, for that reason alone, can be declared a “normal use.” ANR provides no explanation.

ANR’s new interpretation that any use of any “motorized vessel” qualifies as a “normal use” reveals the many unknown and ridiculous possibilities that lie ahead if this interpretation were to stand. Declaring wake boats equivalent to other “motorized vessels” -- and therefore “normal” opens the door too wide, contradicts the rule’s existing definition, and must be remedied. Ample evidence demonstrates there is nothing “normal” about wake boats.

ANR’s evaluation of wake boats as a category of “normal use” is inconsistent with the rule’s definition and contrary to the core values central to the UPW Rules. First, Vermont’s lakes and ponds are held in public trust and the public interest must remain central to ANR’s decision-making process. The UPW Rules explicitly require public input into the rulemaking process. Responsible Wakes’ petition attracted an extraordinary outpouring of public sentiment, with the overwhelming majority of public comments demonstrating support for strong, effective regulation of wake sports. The public weighed in decisively insisting that wake sports must not be considered “normal” in any sense of the word. Protecting the public trust requires that wake sports not be considered a “normal use.”

Second, the intent of the UPW Rules is to allow everyone to use shared resources in a “reasonable” manner. Application of the term “reasonable” must prioritize public safety. ANR did not assess the impact of wake sports on public safety. Declaring wake sports to be a “normal use” without assessing public safety violates any notion of what might be intended by the term “reasonable.”

Third, the rules must consider both current and future generations. Good public policy requires thoughtful application of the Precautionary Principle which holds that innovation often creates unforeseen risk; scientific investigation cannot keep pace with technological change; therefore, policymakers have a social responsibility to protect the public from exposure to harm when scientific investigation has found a plausible risk. ANR relied on voluminous scientific evidence -- provided by Responsible Wakes -- to justify the need for wake boat regulation; however it did not apply the Precautionary Principle to its decision making. Public testimony from local citizens along with people from other states warned of wake boats becoming more popular, more powerful, and ever more capable of generating huge ocean-sized waves. ANR has a duty to heed these warnings and consider the Precautionary Principle. Declaring wake sports to be a “normal use” violates the rule’s core mission to protect our lakes for future generations.

Finally, the natural resource values of public waters must be fully protected. The term “normal use” must encompass environmental impact. Scientific evidence confirms that wake sports are anything but “normal” with regard to their impact on the natural environment. Wake sports cause significant harm to lake ecology by eroding shorelines, scouring shallow lake bottoms, degrading water quality, uprooting plants, disrupting wildlife, and spreading invasive species. In its petition, Responsible Wakes explicitly prioritized environmental protection. ANR relied on data from scientific research geared toward an understanding of environmental impact; yet, in deciding to categorize wake sports as a “normal use,” ANR minimized issues such as erosion and phosphorous loading. ANR did not consider the outsized impact that wake boats have on lake ecology.

In Conclusion, Responsible Wakes finds two instances with the rule put forth by ANR that require modification before LCAR approval: 1) the definition of a wake boat is currently too narrow to include present and future technologies; and 2) ANR’s reclassification of wake sports as a “normal use” threatens the integrity of the UPW Rules.

ANR must address these two deficiencies in the Rule and any supporting documentation for the Rule submitted to LCAR that is part of the official public record. Responsible Wakes recognizes the vital need for a wake sport rule to be put in place immediately; therefore, in the interest of pragmatism, Responsible Wakes supports prompt passage of ANR’s current rule, with the aforementioned corrections.

LCAR members, please support ANR’s rule to manage and regulate the operation of wake boats and their use in the activities of wakesurfing and wakeboarding on Vermont lakes and ponds.

Please instruct ANR to make the two changes requested by Responsible Wakes before enacting its wake sport rule.

Please insist that ANR’s rule go into effect this coming summer, 2024.

Thank you for your consideration.

Meg Handler
On behalf of Responsible Wakes for Vermont Lakes