



January 25, 2021

Subject: Town of Presque Isle Proposed Waterway Ordinance

Dear Lorine Walters:

Dear Carl Watras:

On January 8, 2021, the Department received your proposed ordinance to regulate boaters on the waterways in the Town of Presque Isle. Thank you for being concerned about the safety and welfare of recreational users in Wisconsin and the protection of its natural resources. This letter serves as a review of your proposed ordinance as required under Sec. 30.77, Wis. Stats. In order to proceed, I needed to review the following:

- A unsigned copy of the proposed ordinance
- A condition report that included, at a minimum, the following items:
 - The local conditions necessitating the regulation or regulation change.
 - How the new or changed local regulation will solve the situation.
 - The probable or possible negative effects of the measures considered, and who will be adversely affected by the adopted ordinance.
 - An opinion statement concerning the impact the regulation will have on public health, public safety, or welfare, if this regulation is not adopted.
 - A statement summarizing the arguments of the interests opposed to the regulation or regulation change.
 - The Condition Report should make explicit why an ordinance is in the public interest. This is important because an ordinance that excludes a part of the general public may raise substantial and material questions of fact. *A court decision may be required to settle these questions.* By showing how and why an ordinance is in the public interest, the Condition Report may reduce the ordinance opposition or prevent court adjudication.

Overall the condition report was thorough however I want to bring your attention to the following:

- Under Sec 30.68(4)(a), Wis. Stats. *No person shall operate a motorboat so as to approach or pass another boat in such a manner as to create a hazardous wake or wash.*
- And under Sec 30.68(4)(b), Wis. Stats. *An operator of a motorboat is liable for any damage caused to the person or property of another by the wake or wash from such motorboat unless the negligence of such other person was the primary cause of the damage.*

By looking at these statutes, you can see existing Wisconsin state law covers hazardous wake. In general, we want to go back to state statutes and determine if an issue can be resolved with existing state law. Ideally, this would be a first step to resolve issues with boats causing a hazardous wake.

- I also want to make sure you are aware of Sec 30.635, Wis. Stats. *On lakes 50 acres or less having public access, motorboats may not be operated in excess of slow-no-wake speed, except when such lakes serve as thoroughfares between 2 or more navigable lakes. The department by rule may modify or waive the requirements of this section as to particular lakes, if it finds that public safety is not impaired by such modification or waiver.*

This is a state law that helps to mitigate problems on many smaller lakes. According to the condition report your town has numerous lakes that appear to fall within this description. Note that this is much more restrictive than hazardous wake because slow-no-wake speed is defined as the minimum speed to maintain steerage control.

During the course of reviewing the condition report, I also noted the following:

- There was no evidence that citations were issued for hazardous wake. Page 7 of the condition report mentions incidents that occurred causing damage or swamping but law enforcement contact or results of that contact were not mentioned.
- Page 8 mentions the concern for AIS introduction in wake boats but any fishing boat with a live well will have the same potential issues. Current state law requires all boats that take in water from a lake to drain said water before leaving the boat launch.
- Much of the evidence and scientific data provided in the report suggest that wake boats are the issue. You have noted that the ordinance does not restrict a certain boat, but several sections imply that wake boats are the target.

Finally, I have a concern with enforceability. A problem could arise in that any boat operating in a bow high condition or increasing speed could be found in violation. A local ordinance could only be enforced by the Town or law enforcement agency working for them. Conservation Wardens have authority to uphold existing state laws.

My recommendation would be to adopt and enforce the existing state laws for hazardous wake.

The following must occur before final approval:

- A public hearing must be held on the proposed ordinance and publicized at least 30 days in advance; Proof of publication must be provided (i.e. newspaper clipping) when this occurs.
- After the ordinance is signed, a copy must be sent to your Recreation Warden.
- Notice of the ordinance must be posted at all public access sites.

If you have any questions, concerns or need assistance, please call me at 715-491-0283.

Sincerely,

Jacob Holsclaw 1-25-2021

Jacob Holsclaw
Recreation Warden
Eau Claire DNR Office