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**REGULATIONS TO REDUCE CONFLICTS BETWEEN  
RECREATION WATER USES**

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of  
Natural  
Resources**

**Madison, Wis.**

**1970**

**By  
Jon A. Kusler**



This report was prepared by Dr. Jon A. Kusler for the Department of Natural Resources under the Cooperative Agreement for Research between the Natural Resources Board and the Board of Regents of the University of Wisconsin. It is published by the Department of Natural Resources as reference material to be used by governmental agencies and officials in resolving conflicts between recreational users of surface waters.

The recommendations on alternative methods contained in the report are based on Dr. Kusler's analysis of existing regulations and laws and therefore do not necessarily represent the position of the Department of Natural Resources.

The author is a legal representative in the Center for Resource Policy Studies and Programs, School of Natural Resources, University of Wisconsin.

## FOREWORD

This report examines the use of police power regulations enacted at state or local levels to minimize conflicts between water skiing, boating, fishing, swimming, mooring of boats, construction of docks, and similar lake and stream uses. It does not discuss regulation of ice-bound lakes and special uses such as seaplanes. It explores the problem of surface water conflicts (and, to some extent, shoreland uses that affect water uses), regulatory techniques for minimization of conflicts, and legal requirements for alternative regulatory approaches. It discusses legal and policy arguments concerning the appropriate governmental level (state or local) for adoption of specific surface water zoning regulations. Finally, it recommends and discusses specific alternative approaches for state, local, or conjunctive state-local regulation of waters to resolve conflicts in Wisconsin.

The report was undertaken at the University of Wisconsin, Center for Resource Policy Studies. Legal and nonlegal materials from Wisconsin and elsewhere were consulted including statutes, administrative regulations, and case law from all the states. The study also drew upon materials assembled by the author over a several year period as a portion of a Ph.D. dissertation (Zoning for Shoreland Resource Protection: Uses and Limitations) which was submitted to the University of Wisconsin in January 1970. In addition, all boating ordinances from Wisconsin

and some from other states were reviewed. Field interviews were conducted with state and local personnel in Wisconsin and elsewhere.

Funding, which is gratefully acknowledged, was provided by the Wisconsin Department of Natural Resources. Thanks go especially to the Department staff members including M. Cohee, W. Threinen, H. Hettrick and D. Beghin, who provided invaluable information and suggestions.

Special mention is due Mr. Jeffrey Kaufman, a law student at the University of Wisconsin Law School, who aided in the research and manuscript preparation. Thanks is also extended to many people in the University of Wisconsin, state agencies, and local units of government in Wisconsin and elsewhere who provided information and assistance.

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## CONCLUSIONS

1. Growing numbers of recreational uses are competing for a fixed supply of Wisconsin waters. Many lakes and streams are unsuited in their natural condition to a wide range of uses. Conflicts between users of the remaining intermediate size lakes and large streams which attract a range of competing uses are particularly likely to arise.
2. Multi-use conflicts in water areas are due to intensity of use, mixing of use, and incompatible manner of use. Conflicts arise between water uses such as swimming and boating and between water and shoreland uses. These involve physical competition, psychological incompatibility, and destruction of resource values. Conflicts result in threats to health and safety, deterioration of environmental quality, and inefficient use of the water resource.
3. A solution to water use conflicts must involve both regulatory and nonregulatory techniques. Several nonregulatory techniques may be used to increase available water supply or limit use. Improved access for some waters can reduce overall intensity of use. Construction of recreational impoundments, dredging of lakes, and improvement of navigation in rivers can increase total water space available and also decrease overall intensity of use. Nonregulatory management techniques such as public purchase of shoreland areas and use of nonregulatory markers or distribution of informational

materials can also be used to reduce conflicts.

4. Regulation of shoreland and waters uses will often be a necessary management technique. Regulations may be used to (a) restrict the general type of uses which may be made of an entire water body or class of waters; (b) restrict the time period of certain uses so that uses will be phased throughout the day; (c) restrict the nature of the use, methods of use, or times of use in particular areas of a water body (surface water "zoning"). Surface water zoning may be "cumulative" in the sense that water skiing or boating may be prohibited in certain areas but other uses are allowed in all areas. Or, the zoning may be noncumulative so that water skiing and only water skiing is allowed in some areas, swimming and only swimming is allowed in other areas, and so forth. Water zoning may be used to restrict the types and times of uses, in fixed areas, or the distance one user must maintain from another moving user. Shoreland zoning may, similarly, restrict the type, intensity and manner of shoreland use. Presently Wisconsin statutes establish state-wide boating regulations pertaining to certain matters of general concern. Cities, villages, and towns are authorized to adopt more detailed watercraft regulations.
5. Problems arise with the enforcement of water regulations. Special water patrol equipment and special seasonal enforcement personnel are needed. Speed restrictions are difficult to enforce since boat-

ers may follow any route on the water surface and stationary points of reference, which are helpful in judging speed, are often lacking. Difficulty may also be encountered in designating water zone boundaries with reasonable certainty. Inadequate methods of providing notice to the transient boater is an additional problem.

6. Legally sound regulations must be adopted in close conformity with adoption procedures and must not violate constitutionally protected rights. Statutes or ordinances must set standards for administrative action. Statutory delegations of legislative power to local units must be clear and definite. Regulations, themselves, must be unambiguous and certain. Regulations must serve valid police power objectives, must have a reasonable tendency to aid in the accomplishment of the objectives, must not discriminate between similarly situated individuals, and must not so severely restrict private property interests that a "taking" of private property occurs.
7. Judicial support can be found for regulations adopted to (a) protect health and safety; (b) prevent deterioration of environmental quality by noise, destruction of aesthetic values, and the destruction of aquatic life; and (c) encourage the appropriate use of the water resource. However, validity of regulatory objectives does not necessarily assure validity of specific regulations if the regulations are unreasonable or otherwise unconstitutional.
8. Generally, the wisdom of regulations is a question for the legis-

lative body and not the courts. But regulations must be firmly based in fact to avoid arguments that restrictions are not related to regulatory objectives or discriminatory.

9. Regulations which severely restrict public or private use of waters may be subject to a variety of attacks. Severe restriction of public use of waters may result in arguments that the restrictions conflict with federal navigation laws or interfere with commerce, violate provisions of the Wisconsin Constitution, or in some other manner unlawfully restrict public rights in navigable waters. Severe restrictions on private riparian use of waters or the right of shoreland property owners to make reasonable use of their lands may result in arguments of unconstitutional taking of private property. While it is difficult to predict what restrictions will or will not be upheld in a given instance, courts are likely to uphold restrictions which protect health and safety, prevent nuisances, prevent the clashing of private interests, or promote navigation.
10. Specific classification of entire water bodies or zones of water bodies for particular uses is presently a local function in Wisconsin. But an argument can be made that regulation of surface waters is a matter of state-wide concern which cannot be constitutionally delegated by the state to local units of government. Such an argument presents a particularly strong objection to any unsupervised delegation of surface water zoning powers to counties. A similar,



but less strong, objection may be made to attempts to delegate powers to municipalities. Likely, carefully prescribed delegation of powers to villages and cities would be upheld. Delegations to counties would also likely be upheld if the state retained supervisory powers.

11. Broad non-legal considerations must be considered in determining whether the power to adopt specific water use regulations should be at the state or local levels. Adoption of zoning and similar land use controls has traditionally been a local function, but rights of all the public to use navigable waters and broad state-wide recreation, economic, and social interests are involved with the use of navigable waters. State or local regulations should give recognition to both state and local interests. State-level regulation may help prevent needless lack of uniformity in regulations and protect the transient boater. Local regulation may provide a higher degree of local cooperation and enforcement which may be needed for a successful regulatory program to protect both local and state-wide interests. Based upon these considerations, it seems essential that both the state and local units be involved in the regulatory process.
12. Local surface water zoning programs in Wisconsin might be improved by additional state-level aid to local units of government including (1) collection of detailed resource data and preparation

of detailed water and shoreland use plans to assist local units in rationally allocating specific waters or portions of these waters to particular uses, (2) studies and preparation of materials concerning specific user space demands, the desirability of specific use combinations, and the effectiveness of various regulatory schemes, (3) a manual of recommended local practices concerning the planning, adoption, and enforcement of surface water regulations.

13. A printed compilation of local ordinances should be prepared at the state level and disseminated widely. However, the present diversity in local regulation appears to prevent detailed compilation.
14. State and local roles should be clarified through an amendment to Wis. Stat. Sec. 30.77 which is presently ambiguous.
15. The power to specifically regulate surface waters in unincorporated areas should be extended to the counties rather than the towns to reduce the present fragmentation of regulatory powers. However, state approval of county regulations may be necessary to prevent arguments that regulation of surface waters is a matter of state-wide concern which cannot constitutionally be delegated to counties.
16. The subject matter of local regulations not in strict conformity with state-wide regulations should be limited to matters uniquely related to local conditions such as speed limits, shore protection zones, special time restrictions, marking of swimming areas, and so forth.

17. Local units should be given options to adopt provisions from a range of common specific restrictions which would apply to whole bodies of water such as shore protective zones, special speed restrictions, special time restrictions, horsepower restrictions, and so forth. The Department of Natural Resources should be authorized to adopt, as an administrative rule, the range of suggested specific use restrictions which could be incorporated into local ordinances.
18. Local units could be required to use a marker system to clearly designate portions of a water body which are affected by zone restrictions. The Department of Natural Resources should be required to establish a system, more specialized than the one presently in effect, for designating special zone restrictions.
19. Local regulations should be subject to review and approval by the Department of Natural Resources. The Department should compile and publish local regulations. Unless an emergency exists, local regulations should become effective only upon such publication on a specified day each year.
20. Primary responsibility for adoption of specific surface water zoning regulations might be entrusted to the Department of Natural Resources which could be petitioned to adopt specific regulations by the local units. But the approach favored by the author would require approval by the Department of Natural Resources of local

regulations with additional Department power to require adoption of local regulations in areas with critical problems. The state agency could adopt such regulations in the event local units failed to adopt or enforce satisfactory regulations.





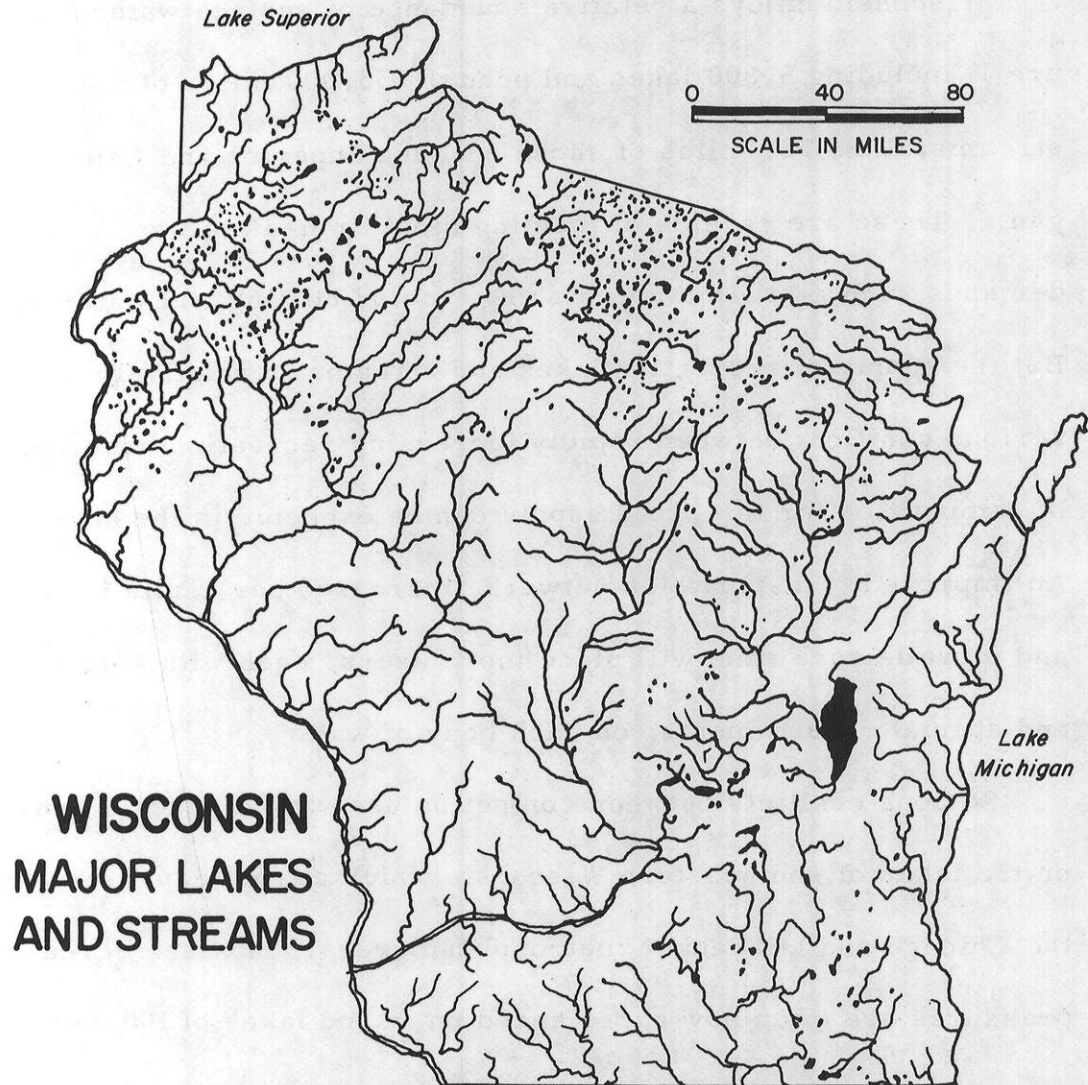
## CHAPTER I: THE PROBLEM

### A. A FIXED SUPPLY AND INCREASING DEMANDS

Wisconsin enjoys a relative abundance of surface waters (see Figure 1) including 8,800 lakes and ponds,<sup>1</sup> 33,000 miles of rivers and streams,<sup>2</sup> and 724 miles of shore on Lake Superior and Lake Michigan.<sup>3</sup> These are capable of meeting most immediate water sport demands such as swimming, fishing, motor boating and water skiing. But the supply of recreation lakes and streams is relatively fixed, and serious conflicts between rapidly increasing recreation uses which are in competition for this fixed supply can be expected in the near future. An improved transportation network, increased per capita income, and more leisure time will place more users, each with space demands and special requirements, on each body of water.<sup>4</sup>

Serious conflicts between competing uses are already a problem on the lakes of southeastern Wisconsin which attract day-users from the Chicago and Milwaukee metropolitan areas. Intense recreation pressures are often now experienced on inland lakes of 100-150 or more acres and on the larger rivers which are attractive for a wide range of recreational activities. This concentration of use results, in part, from the limited suitability of other waters: (1) Of the 4,138 named inland lakes which form the major recreation waters, approximately 2,221 are 50 acres or less in size.<sup>5</sup> If circular in shape,

Figure 1



Source: Zoning for Shoreland Resource Protection.  
J. Kusler, Ph. D. Dissertation, Wis. 1970.

these lakes are 1/3 of a mile or less in diameter and are, therefore, of limited use for sailing, power boating, water skiing, and similar space-demanding water sports.<sup>6</sup> More than 70 percent of the named lakes are less than 100 acres in size.<sup>7</sup> Many are surrounded by bogs or marshes which hinder access and prevent swimming in shoreland areas, or are subject to dense growths of rooted aquatics.<sup>8</sup> (2) Rivers and streams are often suited for canoeing and fishing, but are less attractive for swimming, power boating, and water skiing because of flooding, turbidity, dangerous currents, variable depths, and bars or snags. (3) Lake Michigan and Lake Superior shores are attractive only for limited types of water sport uses, such as boating and fishing, because of inadequate beach areas,<sup>9</sup> lack of boat facilities,<sup>10</sup> cold water temperatures, and unpredictable weather conditions which threaten small craft.

## B. MULTI-USE CONFLICTS IN WATER AREAS

Conflicts are caused by competition both between similar uses (due to intensity of use) and between different uses (due to mixing of uses). Additional conflicts arise between water and shoreland uses.

### 1. Competition Among Water Uses

One major group of conflicts among water uses is that which develops when the space demands of uses on a water body exceed the limited

space available. Although many "average" space requirements have been proposed for various water uses (see Appendix note A), little research has been done to suggest actual needs for particular uses under varying conditions. Several factors appear relevant in determining the minimum space requirements for a use. One of these is speed. C. W. Threinen, in an excellent article concerning space demands for water and shore, stated:

The spatial demand on water for recreational boating when done at low speeds causes a negligible amount of intra-activity and inter-activity interference. At fast speeds both intra and interactivity interference arises. Fishermen are driven out of areas in which fast boating takes place. Enactment of laws limiting speeds of water craft in fishing bays, as in Illinois, is ample testimony of the extent of interference. In Wisconsin greater densities of fishing activity occur in the northern part of the state because of lesser amounts of interference. Even slow boating--rowing and paddling--is interfered with and greatly diminished on a body of water dominated by fast boats. The wake waves of fast boats have been a cause of complaint by sail boaters, especially on relatively calm days. Sailboats are diverted and caused to lose the wind. Water skiing is density dependent and when pursued to excess, it limits the number of participants. In frequent aerial counts we find that the density of water skiing seldom builds up to more than about one boat per 20 acres of water. Evidently, as the number builds up an element of fear sets in. The downed water skier, a small object in the water, is not a very secure person as boats speed around him. As a consequence, we have concluded that this amount of area (20 acres) is the minimum spatial requirement of water skiing. Although interference with swimming is almost too obvious to mention, the fast boat traveling at 20 miles per hour has no place among a recreational activity where maximum speed is only two miles an hour.<sup>11</sup>

Certainly a second factor is the presence or absence of other uses.

Water skiers alone on a lake may require only 10 acres. But if they

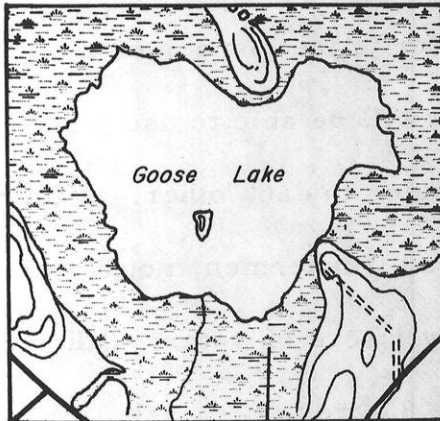


must maneuver around stationary craft and swimmers, each skier may require 60 acres. A third factor is the manner of use. If all skiers move in one direction, more will be able to use a given water area than if they operate at right angles to each other. A fourth factor is the personal preference of users. Fishermen, not disturbed by nearby fishermen, may require only 1 acre of water. Other fishermen, easily disturbed, may require 8 acres.

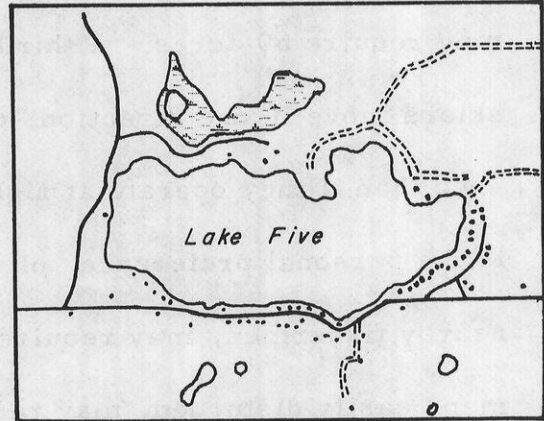
While user preferences, to some extent, determine space requirements, they also determine the special lake and stream characteristics needed for particular uses. A second major group of conflicts arise when some uses diminish the natural values and quality of environment which are necessary for other uses. These conflicts are related to space demands, but may be somewhat distinct. For example, conflicts arise between boating and swimming when boat toilets discharge pollutants into swimming waters or boat propellers stir unattractive sediment. Similarly, water skiing, even at some distance from a fisherman, may disturb the visual beauty and quiet enjoyment which may be a necessary part of the fishing experience. Water conflicts, therefore, involve not only physical competition between uses but destruction of resource values and psychological incompatibility.<sup>1 2</sup>

Figure 2

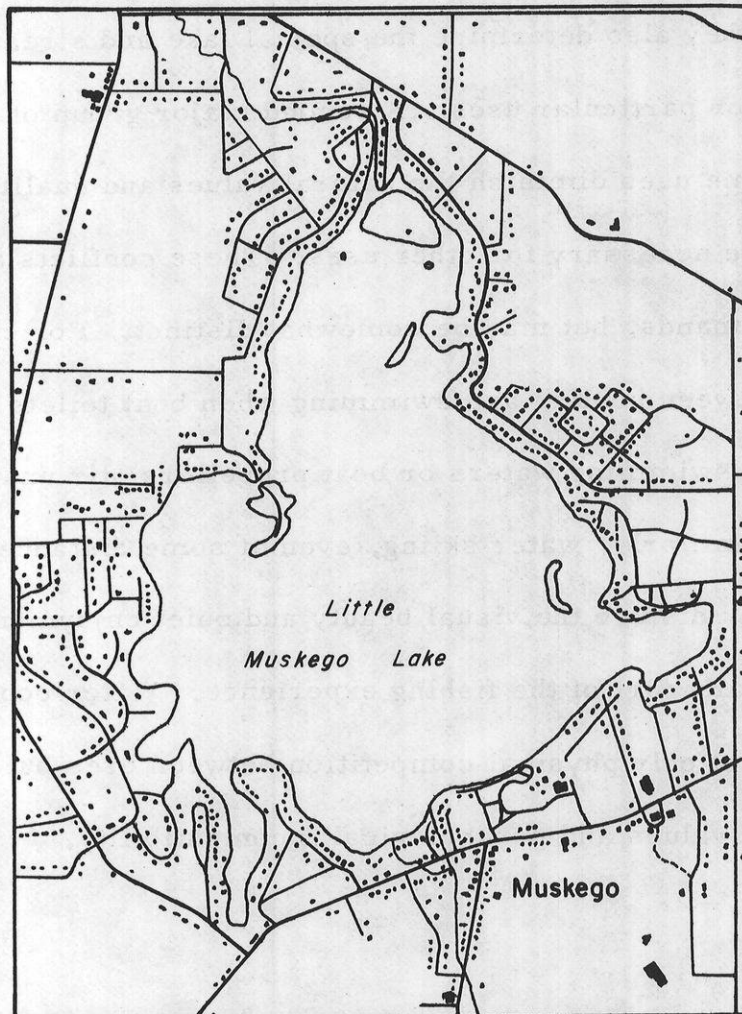
SOME LAKE SHORE DEVELOPMENT PATTERNS



LITTLE DEVELOPMENT



PARTIAL DEVELOPMENT



INTENSE DEVELOPMENT

Source: Zoning for Shoreland Resource Protection.  
J. Kusler, Ph.D. Dissertation, Wis. 1970.



## 2. Conflicts Between Water and Shoreland Uses

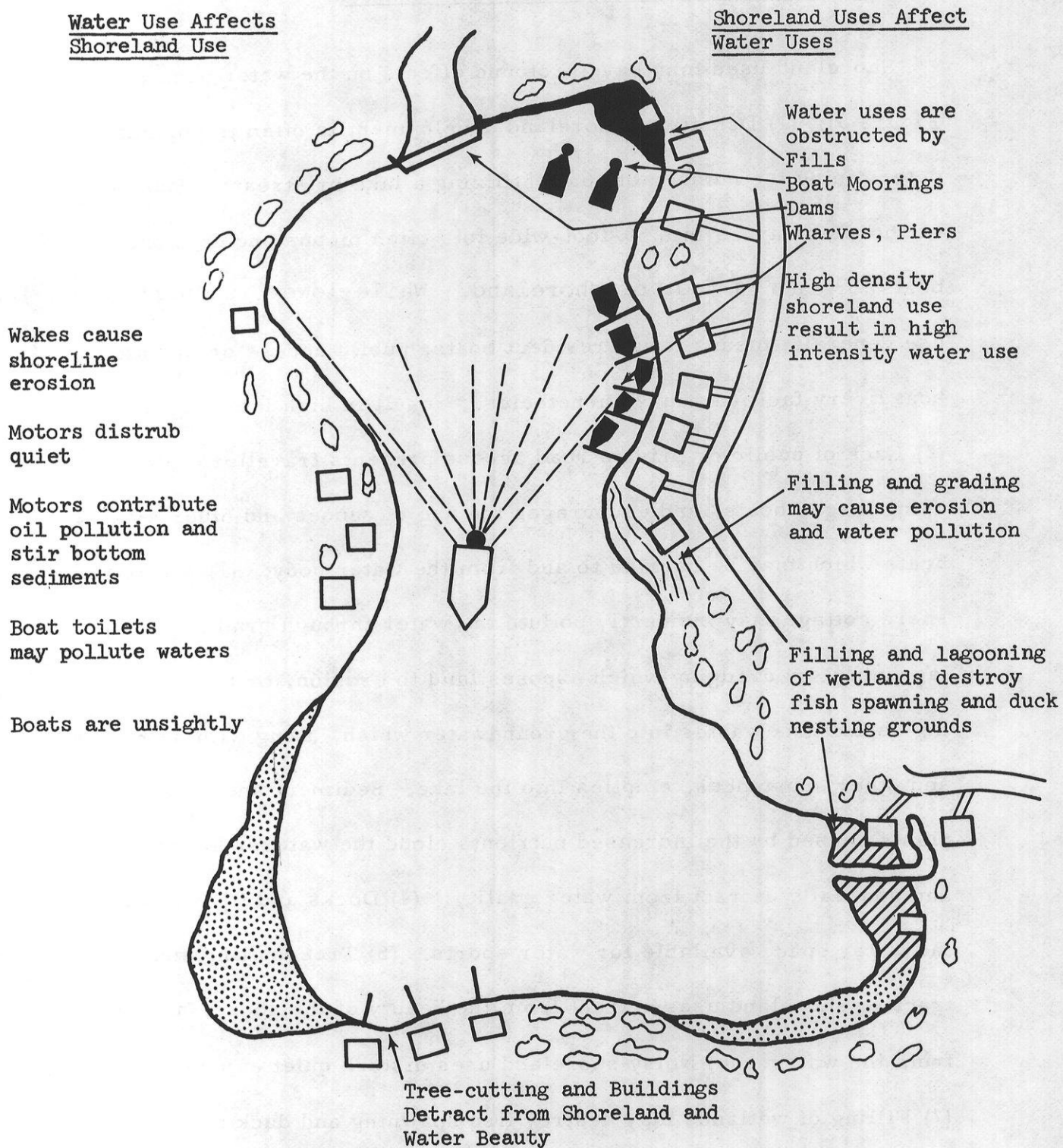
Shoreland uses may have profound effects on the water uses (see Figure 3): (1) Density of shoreland development is often important in determining the number of boats utilizing a lake or stream. Subdivision of shoreland areas into 50-foot-wide lots often means one or more boats for each 50 foot of shoreland. While lower intensity shoreland use generally means fewer resident boats, public access or private boat livery facilities may, nonetheless, result in high intensity uses. (2) Lack of public or private road access prevents travellers from using larger boats, and encourages the use of canoes and other small boats which may be carried to and from the water body. (3) A lake-shore cottage may indirectly pollute the water through grading, filling, lagooning, or dredging which exposes land to erosion, or by discharging septic tank wastes into the groundwater which, along with nutrients and other substances, empties into the lake. Sediment and aquatic plants caused by the increased nutrients cloud the waters, kill fish, and generally detract from water quality. (4) Docks and fill reduce the water space available for water sports. (5) Tree-cutting and unattractive shoreland uses detract from the beauty of the shore, as viewed from the water. (6) Noisy shoreland uses disturb quiet enjoyment. (7) Filling of wetlands may destroy fish spawning and duck nesting grounds.<sup>13</sup>

On the other hand, water uses may also disturb shoreland uses in



Figure 3

INTERRELATIONSHIP OF WATER AND SHORELAND USES



several ways: (1) Motor boats contribute oil and other pollutants to the water, and, due to the turbulence caused by the propellers, stir bottom sediment. (2) Wakes increase shoreline erosion. (3) Boats may also disturb the visual quality of the water, as viewed from the shore. (4) And of great importance, the high-pitched whine of an outboard motor may disturb the quiet enjoyment of hundreds of shoreland owners.

In conclusion, the problem faced in the area of water recreation primarily stems from two interrelated factors: a limited supply of water area; and the increasing conflicts between varying water uses, and between water and shoreland uses. Generally, these factors result in (1) threats to health and safety, (2) deterioration of environmental quality, and (3) inefficient use of the water resources. The use of regulations to minimize these problems will be discussed specifically.<sup>14</sup>

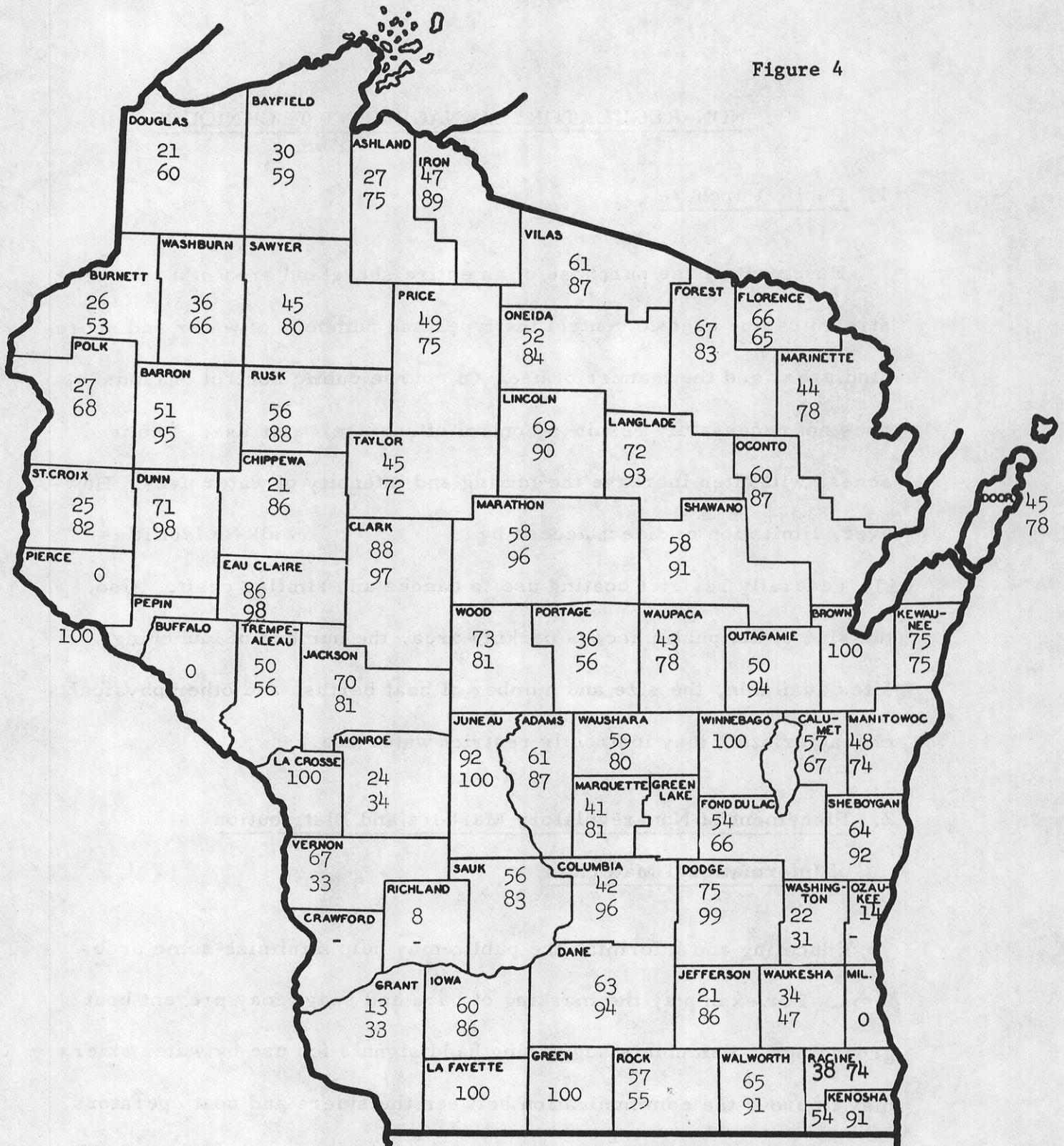
## CHAPTER II: SOLUTION

An attempt to solve the problems presented in Chapter I must involve several simultaneous courses of action: (A) Increases in available water area; (B) Use of certain non-regulatory management techniques to promote appropriate water and shoreland use; and (C) The utilization of regulations to reduce conflicts. Although these solutions must be considered complimentary, the focus of this report will be on the use of regulations.

### A. IMPROVED ACCESS AND NEW WATER AREAS

Programs to provide access and boating facilities for lakes, streams, and the Great Lakes will help meet increased demands and minimize conflicts by opening waters which are presently unavailable. (See Figure 4.) In addition, construction of recreational impoundments, dredging of lakes, and improvement of navigation in rivers will increase the total water space suitable for multiple recreation uses. Increasing the available space may help reduce the intensity of use of any one water recreation area. The importance of large recreational impoundments, each of which may provide new water-based recreation facilities for 8,000 to 16,000 people, cannot be underestimated.<sup>15</sup> However, in light of the enormous projected demands for recreation uses in the near future, these measures can be only a partial solution.

Figure 4



LAKE ACCESS

Upper Figure - % of lakes having access

Lower Figure - % of water acreage with access

Source: The Outdoor Recreation Plan (1966)

Wisconsin Department of Resource Development



## B. NON-REGULATORY MANAGEMENT TECHNIQUES

### 1. Public Purchase

Easement or fee purchase of an entire shoreland area of a lake or stream can be used to control the types and numbers of water and shoreland uses, and the manner of use. Of course public control of lands does not necessarily result in control of surface water use. Public access will often increase the mixing and intensity of water uses. However, limitation of direct access by walk-in facilities will generally restrict boating use to canoes and similar craft. Also, the size of the public access parking area, the number of launching sites available, the size and number of boat berths, and other physical characteristics may indirectly restrict water use.

### 2. Placement of Non-regulatory Markers and Distribution of Informational Materials

Educating and informing the public may help minimize some problems. For example, the marking of bars and snags may prevent boat groundings. Pamphlets suggesting hand signals for use by water skiers may improve the communication between the skiers and boat operators. Hand-outs stressing the importance of wetland preservation to protect fish spawning and duck nesting grounds may encourage conservation-minded owners to refrain from development that destroys the aquatic life.

### C. REGULATION OF WATER AND SHORELAND USES

Regulation of water and shoreland uses is often the most attractive management alternative. Public purchase of all shoreland areas of a lake or stream is expensive. A method of "proprietary control" is probably practical only in park or special preserve areas. Informational techniques, of course, have no "teeth" and are ineffective without co-operation of water and shoreland users. However, police power regulations enacted at the state or local levels can control private water and shoreland activities with the same force of law that is ordinarily associated with speed laws, building codes, and land use zoning. Violators are fined or jailed. Regulations to minimize water use conflicts can (a) prohibit or restrict a mixing of incompatible uses; (b) lower the intensity of water uses; (c) control the elements of nuisance-like uses, and (d) restrict the type, intensity and manner of shoreland uses.

#### 1. Regulation of Surface Water Uses

Regulations for surface water uses may:

a. Restrict the GENERAL USES which may be made of an entire water body or class of waters. For example, regulations might be used to prohibit motors on a small pond or wild river. Or regulations might be used to control methods of operation of equipment, establish rules of the road, set boat safety requirements, establish minimum standards for use of marine toilets, or regulate other matters of

general concern on one water body, all waters of a certain size, or all waters in the state. For the purposes of this report, these general restrictions are not termed "zoning" because they apply to whole water bodies, not particular areas or zones of a water body.

b. Restrict the TIME period for certain activities on an entire water body or class of waters. For example, regulations can be used to prohibit fast boating and water skiing in the early morning and evening--when fishermen are using the waters--and in the evening when visibility is poor. While the fast boating may be safe and unoffensive during the day, night activity with limited visibility can be dangerous.<sup>16</sup> Motor noise may also disturb vacationers sleeping in the shoreland areas. Restrictions on the overnight use of houseboats anchored at off-shore locations or drifting on smaller lakes can help prevent pollution problems caused by discharge of toilet wastes from these "water camping" facilities. Restrictions may also prohibit boat mooring at public lands for more than 24 hours to encourage the free movement of all boats to and from access points.

Time restrictions to phase uses are particularly attractive since in this manner a water body may be used for a variety of activities throughout a day. To some extent, activities are naturally phased. Water skiing is often done in late morning and afternoon. Fishing often takes place in the early morning and evening.

c. Restrict the nature of the use, methods of use, or times of use of PARTICULAR AREAS of water bodies. This approach, in which special restrictions are placed upon one portion of a water body and not upon another, may be termed water use "zoning" because of its similarity to land use zoning which involves division of the land areas of a governmental unit into zones and application of differing regulations to each zone.<sup>17</sup> Land use zoning involves division of a community into residential, agricultural, industrial, commercial, and other areas. Similarly, water use zoning may allocate one portion of a lake surface to swimming use, another to fishing and slow moving boats, and a third to high speed boating and water skiing.

Generally, land use zoning is "cumulative" from more restrictive to less restrictive zones.<sup>18</sup> Industries and commercial uses are not permitted in residential zones (the most restrictive), but residences are permitted in commercial zones, and both residential and commercial uses are permitted in industrial districts (the least restrictive). Similarly, zoning of surface water may restrict the use of water skiing and motor boating in swimming and fishing areas since these uses are space-consuming and threaten the physical well-being of the swimmer or stationary fisherman. But swimming and fishing may generally be allowed in all areas. Such an approach may be efficient for some surface water zoning schemes since swimming and fishing are less space consuming, and therefore, blanket permission for these uses may allow more intense use of a whole water body. However, a cumulative approach



Figure 5

LAKE ZONING

The following water use zoning maps are reproduced from Small Boat Safety, H.R. 15223, H.R. 16655, 90th Congress, 2nd Session (1968) 170, 180, 181, 191, 201 (This is a secondary source).

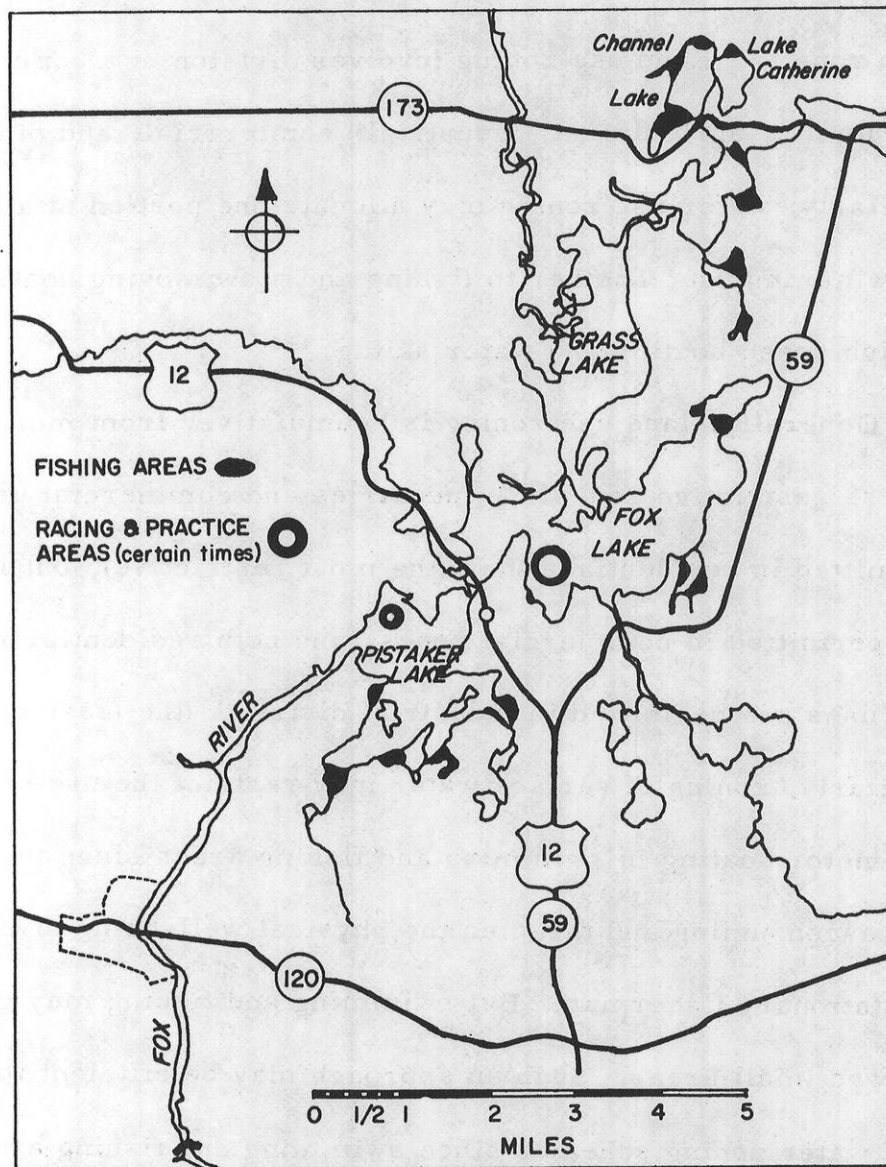
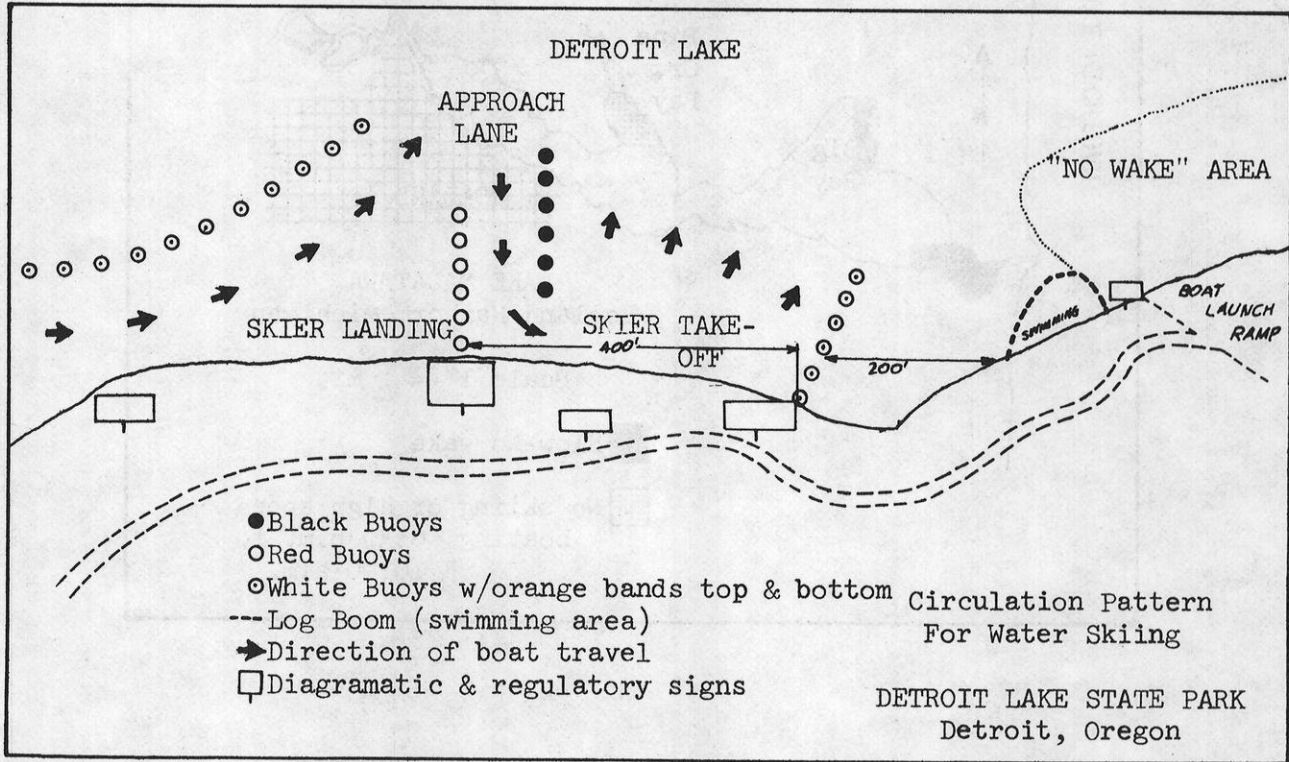


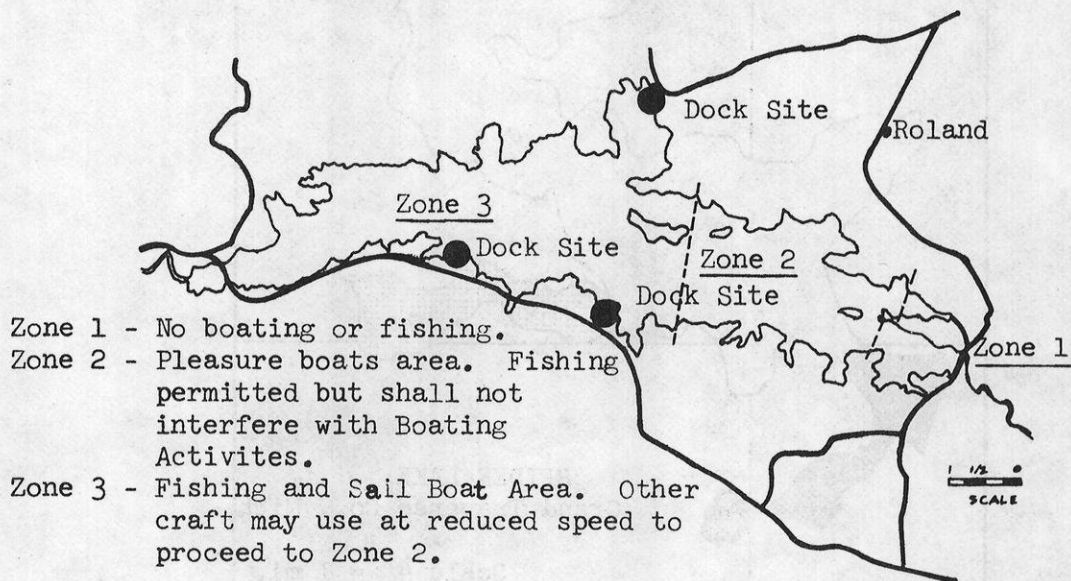
Figure 5 (Cont.)



Multiple-Use Water Supply Reservoir - November, 1960

LAKE MAUMELLE

Sketch Showing Zones • Dock Site Areas • Roadways

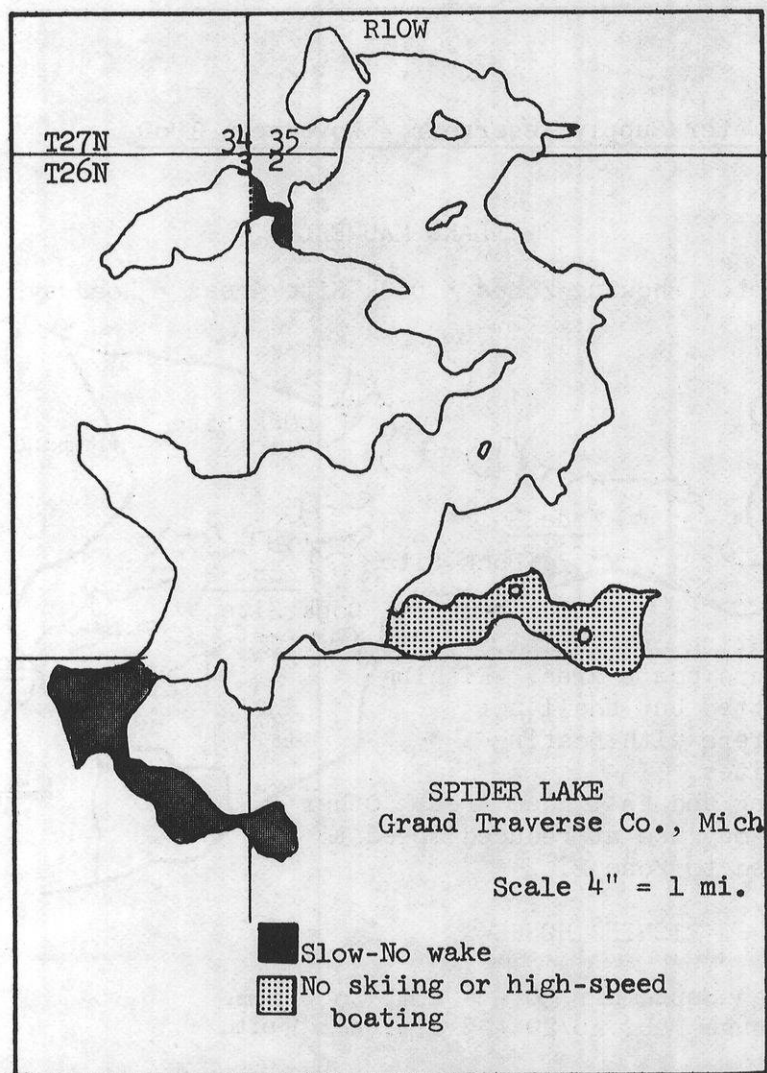
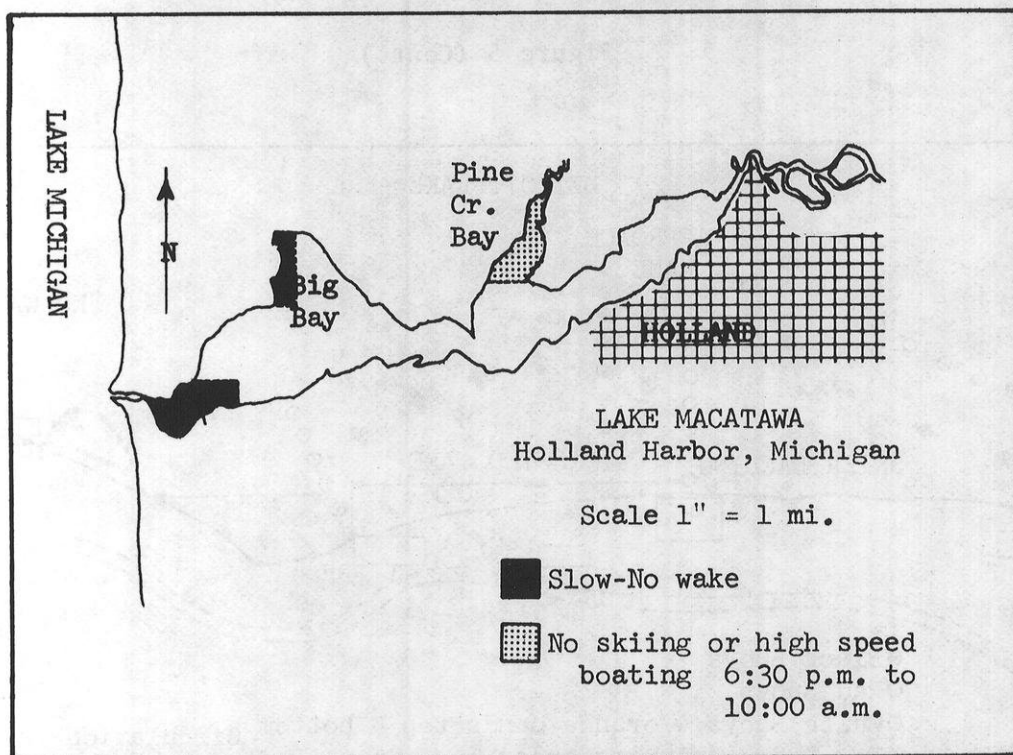


FISHING HOURS

March 1 through September 30 - 4 a.m. to 9 p.m.  
October 1 through Feb. 28/29 - 5 a.m. to 8 p.m.

Figure 5

(Cont.)





to surface water zoning is subject to the same criticisms as cumulative approaches for land use zoning. A residence erected adjacent to an industry may be subject to traffic, noise, smoke, glare, gases and other problems which can affect the occupant's mental and physical well-being. Similarly, swimmers, divers, fishermen and similar slow-moving or stationary users located in traffic lanes or water ski areas may be threatened by the fast-moving boats. In land use zoning, non-cumulative zoning approaches which prohibit residences in industrial areas have been increasingly used to prevent the problems of residential construction in industrial districts.<sup>19</sup> Similarly, non-cumulative water surface zoning may prevent swimming and fishing in traffic lanes or water ski areas.

Surface water zoning may take several more specific forms:

(1) Fixed-Area Zoning. Fixed area zoning, much like land use zoning, restricts specified uses in fixed areas. These areas may be designated by general description, by maps, or by buoys. See Figure 6 for examples of water zoning maps. For example, one common approach is a written rule that swimming is limited to an area within 200 feet of shore.<sup>20</sup> Boats may be prohibited in this area except to ingress and egress at slow speeds. A second approach is to prohibit water skiing within an area, often not regularly shaped, which is marked on a map. This approach is similar to more conventional zoning regulations which set out written rules for districts which are

designated on maps. A third approach is to establish rules for areas marked by a buoy system. These may include swimming areas, spawning grounds, traffic lanes, water ski courses and similar areas. This approach is often the most desirable since a surface water user will often be unaware of general written rules, may have difficulty in judging a distance (such as 200 feet) designated by a rule, or may have difficulty interpreting a map when on the water. A buoy system is readily observable and gives reasonable certainty. However, such a system may be expensive both for initial capital outlay and maintenance costs.

(2) Time-Area Zoning. This approach is a variation of fixed-area zoning in which particular uses are prohibited in particular areas at specified times. For example, water skiing might be prohibited in the mornings and evenings within 500 feet of shore. This approach may have considerable potential in minimizing conflicts between competing uses while allowing multiple use of a water body.

(3) Separation-Distance Zoning.<sup>21</sup> This zoning is quite different than more conventional land use zoning since the special use restrictions are not related to a fixed point or points. Instead, a buffer distance is required between moving uses. For example, all moving boats not accompanying a swimmer or diver may be required to remain at specified distances from anchored or trolling fishing boats to protect them from interference and wake.<sup>22</sup>

## 2. Restriction of Shore-Related Uses and Shoreland Uses

As previously mentioned, water uses and shoreland uses are integrally related. Regulation of shoreland uses may be used to directly and indirectly manage water use: (1) Direct restrictions may be placed upon shore-related uses such as dams, dikes, fills, docks, wharves, and boat houses built over the water which restrict the area of water available for water sports and which sometimes interfere with navigation. Direct restrictions can also be placed upon shoreland uses such as filling of wetlands which may destroy fish spawning and duck nesting areas.<sup>23</sup> Sanitary codes for shoreland areas can control domestic waste disposal, and prevent pollution.<sup>24</sup> (2) Other restrictions can be used to indirectly limit water uses. For example, low intensity lake use may be encouraged by requiring large minimum lot sizes and substantial water frontages for each shoreland cottage. Generally, the smaller number of lots will result in a smaller number of boats.<sup>25</sup> Prohibitions or restrictions on marinas, boat liveries and resorts which provide access for large numbers of users may also limit intensity of use.

#### D. THE PRESENT REGULATORY FRAMEWORK

Prompted by the Federal Boating Act of 1958,<sup>26</sup> Wisconsin in 1959 adopted broad licensing and use requirements for watercraft.<sup>27</sup> The Wisconsin act establishes state-wide regulations pertaining to:

- (1) Capacity plates on boats;<sup>28</sup>
- (2) A numbering of motor boats;<sup>29</sup>
- (3) Identification number to be displayed;<sup>30</sup>
- (4) Equipment requirements pertaining to
  - (a) Lighting<sup>31</sup>
  - (b) Mufflers<sup>32</sup>
  - (c) Life preservers<sup>33</sup>
  - (d) Fire extinguishers<sup>34</sup>
  - (e) Carburetor flame arrestors<sup>35</sup>
  - (f) Bilge ventilators<sup>36</sup>
  - (g) Battery covers<sup>37</sup>
- (4) Traffic rules;<sup>38</sup>
- (5) Speed restrictions (very general);<sup>39</sup>
- (6) Duty to render aid in accidents and to file reports;<sup>40</sup>
- (7) Requirements pertaining to distress signal flag;<sup>41</sup>
- (8) Prohibited operation;
  - (a) Intoxicated operation;<sup>42</sup>
  - (b) Negligent operation;<sup>43</sup>
  - (c) Operation by incapacitated persons;<sup>44</sup>

- (d) Creating hazardous wake or wash;<sup>45</sup>
- (e) Operating in circular course;<sup>46</sup>
- (f) Riding on decks and gunwales;<sup>47</sup>
- (g) Restricted area requirements;<sup>48</sup>
- (g) Anchoring in traffic lanes;<sup>49</sup>
- (i) Overloading;<sup>50</sup>
- (j) Overpowering;<sup>51</sup>
- (k) Unnecessary sounding of whistles;<sup>52</sup>
- (9) Water skiing regulations;<sup>53</sup>
- (10) Skin diving restrictions;<sup>54</sup>
- (11) Special pollution control provisions which apply to  
boats equipped with toilets.<sup>55</sup>

The act also authorizes the Conservation Commission to carry on an educational program to promote boating safety, to establish additional traffic rules,<sup>56</sup> to establish rules pertaining to uniform navigational aids,<sup>57</sup> and to assist in the enforcement of the boating statutes.<sup>58</sup> Other general matters specified in the statutes pertain to service of process on nonresidents,<sup>59</sup> deposit of money to obtain release from arrest,<sup>60</sup> and penalties for violations of the boating acts.<sup>61</sup>

In addition to these basic provisions which have state-wide application, the act empowers towns, villages, and cities to:

- (1) Adopt boating regulations not inconsistent with the state regulations;<sup>62</sup>



(2) Establish municipal water safety patrols;<sup>63</sup>

(3) Adopt regulations for icebound inland waters.<sup>64</sup>

Several features of the boating statutes are to be noted: (1) While the statutes establish general rules which are generally applicable to waters throughout the state, no state agency is empowered to adopt special regulations for particular waters or portions of waters to further restrict type of use, area of use, time of use, speed, and so forth. (2) Counties are not authorized to adopt boating regulations. Instead, the towns have this power in rural areas.<sup>65</sup> Since the state of Wisconsin contains 1269 townships, this authorization badly fragments the regulatory power. One body of water may be subject to regulation by many local units. The statutes prevent the adoption of varying regulations for a single water body by requiring all regulating units to adopt identical regulations.<sup>66</sup> It may be difficult, however, for local units to reach agreement, and the dissent of one unit will prevent all regulation.

#### E. SOME SPECIAL PROBLEMS WITH THE ENFORCEMENT OF WATER USE REGULATIONS

The enforcement of water and shoreland use regulations is essential to an effective program. However, some special enforcement problems arise with water use regulations. First, special equipment is needed. Patrol cars, radar, mileage markers, and similar land-

based equipment are of little use in the enforcement of water use regulations. For a water patrol, a seaworthy, high-powered boat equipped with buoys, lines, grappling hooks, a resuscitator, spare life preservers, and similar specialized equipment is needed.<sup>67</sup> Second, appointment of a seasonal patrol will be necessary to enforce boating and shoreland regulations. State and local general law enforcement officers are often busy with the summer influx of visitors and cannot assume additional law enforcement duties. But lake patrol officers appointed for only brief periods of time often lack the experience necessary for effective enforcement. An active training program may help meet these problems.<sup>68</sup> Third, the very nature of surface water activity poses special enforcement difficulties. A water patrol officer cannot anticipate that a boater will follow a definite course like that of a motorist on a road. An infinite number of routes are available on a lake surface. Generally there are also no mileage markers or stationary points of reference to aid an officer in accurately judging speed. To remedy this, a method for limiting boats to slow speeds has been developed which involves adoption of "no wake" rather than maximum speed restrictions.<sup>69</sup> This approach is premised upon the assumption that only slow speed watercraft will not cause a wake. However, planing boats often cause less wake at high speeds than at intermediate speeds. In the absence of other restrictions, owners of such craft might operate in a "no wake" zone at relatively high speeds with the

assumption that this operation more nearly complies with the law. A more effective approach may be to set both maximum speed and "no wake" restrictions. Enforcement could be based upon violation of either restriction. The fourth problem is that of providing adequate certainty in the restrictions.<sup>70</sup> Regulations which restrict boating or swimming within 200 feet (or some other figure) of shore without marking these areas pose a difficult problem to both the water user and enforcement officers. It is not easy, even for an experienced individual, to accurately judge water distances such as 200 or 500 feet, particularly from a moving watercraft. A map showing designated water use zones poses similar problems unless points of reference are visible from the water. Use of buoys is the most desirable approach for identifying water use zones. However, in some instances, buoys pose threats to night boating; and a buoying system may be costly. Lack of certainty in the application of regulations has occasionally been litigated in more conventional zoning cases. Generally, courts have held that unless land owners are able to locate with reasonable certainty boundaries which are described in the written text or drawn on a map, the ordinance is unenforceable and void. Fifth, and perhaps most serious is the problem of providing water users with notice of restrictions. Informing the resident boater is less difficult than informing the transient boater. For example, if an ordinance prohibits water skiing in a designated bay, without marking the area on the water, resident boaters

may become aware of the restrictions by publication of the ordinance in the local paper, or, in case of unintentional violation, by issuance of a warning ticket by the water patrol.<sup>71</sup> However, the transient boater is not likely to be exposed to local papers; and, while a warning ticket approach for a first offense may prevent his continued violation of the ordinance, it will do little to assure compliance by other vacationers who come and depart each week. Posting of regulations at public access points<sup>72</sup> can be only partially effective since many vacationers gain access to waters from resorts, private marinas, and boat liveries.

CHAPTER III: LEGAL RESTRAINTS IN REGULATING WATER  
AND SHORELAND USES

A. LEGAL REQUIREMENTS, IN GENERAL

Regulations to minimize conflicts between competing water uses (and shoreland uses which affect water uses) raise a variety of inter-related legal issues. In appropriate circumstances, the Federal government, state governments, or local units of government such as cities, villages, towns, and counties might adopt regulations to minimize surface water conflicts. Generally, the Federal government would be exercising its power to regulate commerce.<sup>73</sup> The state would be exercising its inherent power as a sovereign to promote the well-being of its citizens. These inherent state powers are commonly termed "police powers."<sup>74</sup> A local unit of government would be exercising "police powers" delegated to it by the state through a charter, constitutional provision, or state statute. Valid regulations adopted by federal, state, or local governments must generally (1) be adopted in close conformity with the specified procedures such as notice, hearing, voting, and publication;<sup>75</sup> (2) must not violate rights protected by the federal or state constitutions.<sup>76</sup>

The following discussion considers some general legal requirements for surface water regulations and then some constitutional limitations on the use of regulations.

B. DELEGATION OF POWERS, CERTAINTY IN REGULATION

The principal concern of this report is with state statutes directly regulating surface waters,<sup>77</sup> statutes authorizing a state agency to adopt rules and regulations,<sup>78</sup> rules and regulations adopted by such an agency,<sup>79</sup> state statutes authorizing local units of government to adopt ordinances,<sup>80</sup> and local ordinances adopted pursuant to these statutes.<sup>81</sup> State statutes directly regulating surface water uses, rules and regulations adopted by a properly authorized agency, and local ordinances adopted by a properly authorized local unit of government have direct regulatory force in defining what a surface water user may or may not do. Statutes authorizing a state agency to adopt rules and regulations and statutes authorizing local units of government to adopt ordinances have no direct regulatory force in themselves and only "enable" governmental bodies to adopt specific regulations. For example, a New Jersey court<sup>82</sup> held that a penal statute empowering the Board of Commerce and Navigation to establish rules and regulations governing the operation of power vessels could not form the basis for a prosecution until such rules were adopted even though a portion of the statute specified that the "speed of power vessels shall at all times be regulated so as to avoid danger or injury to all manner of floating craft either by the effect of the wave or wash raised by power vessels through excessive speed or otherwise."<sup>83</sup>

1. Statutes or Ordinances Must Set Standards for Administrative Action

A statute or ordinance which empowers an agency to adopt and enforce specific regulations must carefully define the granted powers.<sup>84</sup> Absent standards to limit and guide the agency, the statute or ordinance is invalid as an unlawful delegation of power.<sup>85</sup> For example, an Ohio court<sup>86</sup> held that a statute delegating rule-making power to the Ohio Division of Parks to regulate the operation of watercraft in state parks represented an unconstitutional delegation of legislative power because that statute did not set standards for such rules, failed to prescribe even a broad legislative policy, and apparently only provided that the Division might adopt such rules "as are necessary."<sup>87</sup> The language of the court concisely states the general requirements for a valid delegation:

True, the Legislature may confer upon administrative boards or agencies power to adopt subordinate rules which are administrative in nature and designed to carry out the law designated by the Legislature. However, generally, the Legislature must prescribe fixed definite standards and rules of guidance which must be followed by the subordinate agencies. There must be an adequate yardstick provided for the guidance of the executive or administrative body or officer to execute the law, because such regulations are subordinate to legislative policies defined by statute and must be within the framework of such policy.<sup>88</sup>

In June 1968, Judge Watts of the circuit court of Elkhorn County, Wisconsin, in East Troy v. Majeske,<sup>89</sup> invalidated a town boating ordinance on similar grounds. A section of the town ordinance pro-

vided that

Ski jumping and slalom courses shall not be permitted on lakes in the Town of East Troy, except in designated areas, by written permission of the Town Board.

The court found that this attempted delegation of power provided no standard to govern enforcement, and was therefore invalid.

It is clear that a state administrative agency needs some latitude in formulating rules and regulations which establish surface water zoning restrictions which take into account the water quality, physical characteristics of the water body, shoreland use, recreational pressures, and other unique features of each water body. It is also clear that a state agency or local administrative board must have broad discretion in evaluating permits for special aquatic events on a case-by-case basis at the time the uses are proposed. For example, it may be wholly impractical to attempt to establish permanent areas on a lake for water ski shows, motor boat races, sailing races, car races on the ice, or other rare uses which may be conducted once or several times a year. The number of participants, nature of the use and other factors will differ for each event. Uses of this sort demand a case-by-case evaluation in which all pertinent factors are considered. Courts have generally approved attempts to delegate broad discretion to administrative agencies when the nature of the subject matter requires such discretion and the standards are set out with as much specificity as the subject matter permits.<sup>90</sup> Similarly, broad grants of discretion to administrative



agencies to formulate rules for specific bodies of water or to determine if certain uses are nuisances, on a case by case basis, would likely be upheld.

## 2. Delegations of Legislative Powers Must be Clear and Definite

Generally, the legislative body of a city, village, town or county may exercise only expressly delegated legislative powers in adopting local ordinances.<sup>91</sup> Absent basic enabling authority, an ordinance adopted by a local unit is ultra vires and void.<sup>92</sup> However, home rule units such as cities and villages are considered to have certain broad basic powers to protect the health, safety and well-being of their citizens.<sup>93</sup> The courts of several states have upheld local ordinances, regulating surface water activities, adopted under broad enabling provisions which allowed local units to legislate for the protection of the health and safety of their citizens.<sup>94</sup> But other courts have invalidated watercraft regulations which were not specifically authorized by the enabling acts. For example, the Louisiana Supreme Court<sup>95</sup> invalidated a local ordinance which prohibited operation of motors without mufflers on a lake used for water supply as ultra vires since the state statute gave the adopting municipality jurisdiction over lake waters only for the purpose of preventing pollution. The court found that the "use or nonuse of mufflers does not contaminate, pollute or otherwise affect its water supply,"<sup>96</sup> and, therefore, the attempted regulation

was beyond the scope of the municipal powers. Similarly, the Wisconsin Supreme Court has invalidated an attempt by the City of Madison to impose a license fee on the use of boats within its jurisdiction on the ground that the city did not have power to impose this fee either by express grant or under home rule powers.<sup>97</sup>

A common argument in cases contesting the validity of municipal surface water regulations is that the attempted regulation of the surface of a lake, stream, or ocean is ultra vires because these areas lie outside of the municipal limits, and therefore, the municipality has no jurisdiction over the area.<sup>98</sup> Some cases have also considered the power of a local unit to regulate use of filled land.<sup>99</sup> In Wisconsin, cities, villages, and towns have been granted the power to regulate watercraft, apparently for all waters within their jurisdiction.<sup>100</sup> The counties have not been granted these broad powers, but the counties may regulate waters adjacent to any marina development operated by the county.<sup>101</sup> Additional powers to regulate shoreland uses and water uses which touch the lands underlying waters<sup>102</sup> can also be found in the Wisconsin land use control laws. Counties, cities, and villages<sup>103</sup> may adopt special regulations, including zoning and subdivision regulations,<sup>104</sup> for the protection of navigable waters. These regulations may apply to lands lying under, abutting or lying close to navigable waters;<sup>105</sup> and to areas within 1,000 feet of lakes, ponds, or flowages, and within 300 feet of rivers and streams or to the outer limit of the

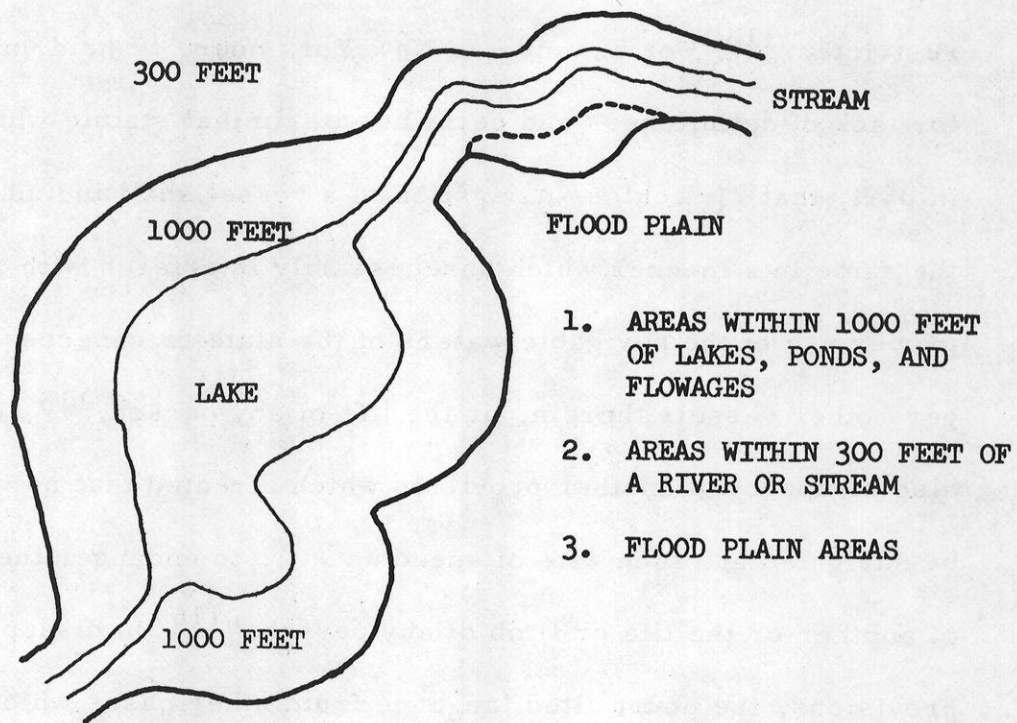
flood plain if this distance is greater.<sup>106</sup> These regulations are to "aid in the fulfillment of the state's role as trustee of its navigable waters"<sup>107</sup> and are for the "efficient use, conservation, development and protection of this state's water resources."<sup>108</sup> The purposes of the regulation may be "to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses and reserve shore cover and natural beauty."<sup>109</sup> This broad mandate of power authorizes programs for regulating shoreland uses, and apparently authorizes programs for regulating use of lands under water for uses such as docks, marinas, wharves, and boat moorings. The counties may adopt these special regulations for unincorporated areas without town board approval.<sup>110</sup> Most counties have adopted special shoreland zoning ordinances pursuant to these statutes.<sup>111</sup> The ordinances generally follow a model prepared by the Wisconsin Department of Natural Resources and University Extension which divides shoreland areas into three basic use districts and applies minimum development standards to each of these areas.<sup>112</sup> (See Figure 6.)

### 3. Regulations Must be Unambiguous and Certain in Their Application

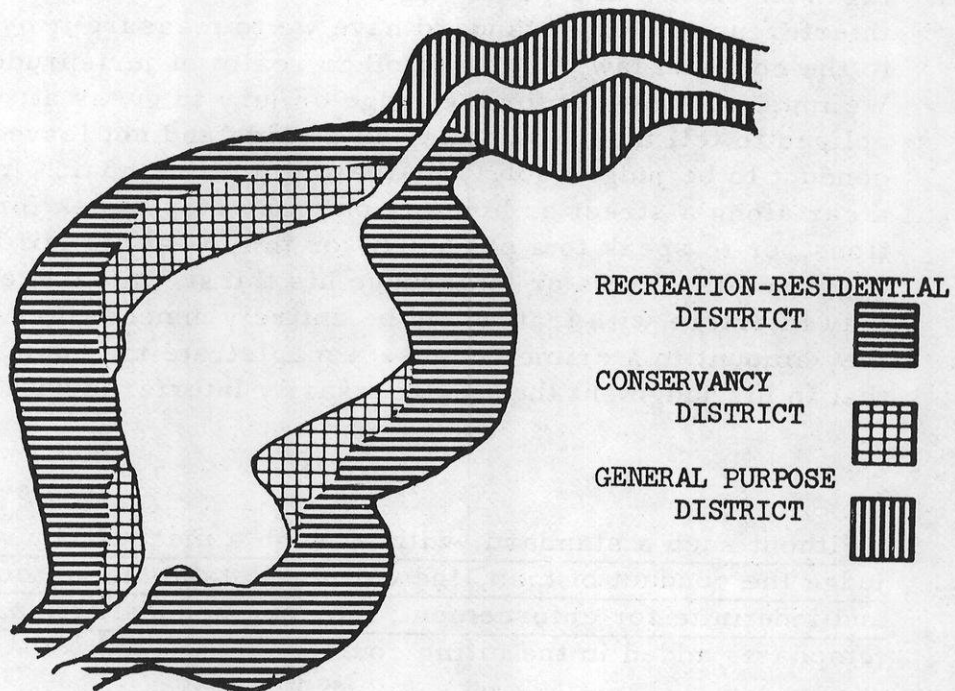
Statutes, rules, or ordinances regulating surface water and shoreland uses must be definite in specifying what conduct is prohibited or

Figure 6

SPECIAL COUNTY SHORELAND ZONING JURISDICTION



THREE DISTRICT ZONING APPROACH SUGGESTED IN THE  
WISCONSIN MODEL SHORELAND ORDINANCE



Source: Zoning for Shoreland Resource Protection.  
J. Kusler, Ph.D. Dissertation, Wis. 1970.

restricted.<sup>113</sup> For example, a New York court<sup>114</sup> held unconstitutional for lack of definiteness and certainty a criminal statute which provided, in part, that "[r]eckless navigation of a vessel shall include operating the same in a manner which unnecessarily interferes with the free and proper use of the navigable waters of the state or unnecessarily endangers other vessels therein, or the life of any person."<sup>115</sup> The court also disapproved another provision which directed that no vessel should be navigated at "such rate of speed as . . . to endanger the property of another or the life or limb of any person."<sup>116</sup> In disapproving these provisions, the court cited language from other cases which had considered traffic laws with similar language. In one of these cases the court said:

How can we deal with this question of 'unnecessarily interfering' with traffic in a public highway? What is unnecessary interference? What standard have we to measure it by, known to the common law, or to any other realm of jurisprudence? We must not leave it for the judge or jury to guess at; we are obliged to tell them something as a guide and not leave a man's conduct to be judged solely by the whim of the hour. In driving a car along a street or highway one may stop to ask for directions, or to speak to a passer-by or to look at his tail light or examine his wheels or to assuage his thirst. All these acts may interfere with traffic and be entirely unnecessary. Can they amount to a crime because a magistrate may determine that in his judgment they unnecessarily interfered with traffic?

. . . .

Without such a standard, without such a measure by which to judge the conduct of man, the criminal statutes are too vague and indefinite for enforcement; they are unconstitutional.<sup>117</sup> (emphasis added in the citing court).

Regulations for surface water areas which broadly prohibit "oper-

ation at unsafe speeds," or require operation at "slow speeds," or with "no wake"<sup>118</sup> might be subject to similar attack as failing to prescribe definite standards of conduct. Particularly serious arguments of "indefiniteness" might be raised to surface water zoning restrictions which fail to provide some method for the water users to determine the zone boundaries on the water surface. In more conventional zoning cases courts have commonly held that district boundaries must be reasonably certain so that land owners have knowledge that zone restrictions apply to their lands.<sup>119</sup> Doubt as to the location of a boundary may render an ordinance unenforceable or void.<sup>120</sup> The use of maps;<sup>120</sup> reference to readily observable natural features such as points of land, and use of buoys may aid in providing reasonable certainty for zone boundaries.

### C. PRINCIPAL CONSTITUTIONAL RESTRAINTS

Regulations adopted at the state or local levels to restrict surface water and adjacent shoreland uses are subject to the same constitutional limitations as other exercises of state police power. Several constitutional issues are particularly likely to arise with surface water zoning and allied regulations: (1) the regulations must serve a valid police power objective;<sup>122</sup> (2) they must have a reasonable tendency to accomplish or aid in the accomplishment of the particular objective;<sup>123</sup> (3) they must not discriminate between similarly situated individuals;<sup>124</sup>

and (4) they must not so severely restrict private property interests that an unconstitutional "taking" of property results.<sup>125</sup>

In determining the constitutionality of a restriction, courts are to some extent bound by their own holdings and those of higher or sister courts on similar facts. But, since each regulation may be slightly different and the factual contexts are almost always different, caution must be exercised in attempting to prognosticate judicial reaction to a particular regulation on the basis of past precedents. This is particularly true in land use zoning, and may also be true for surface water zoning. Often courts uphold the general validity of a zoning ordinance provision, but find it invalid as applied to a particular individual.<sup>126</sup> In at least one boating case a court has taken a similar approach. The Supreme Court of Louisiana upheld<sup>127</sup> an ordinance prohibiting use of outboard motors at night on a lake used as a water supply reservoir, but held unreasonable the enforcement of the provision against the owner of an island home who needed to commute by motor boat with the mainland.

The following discussion attempts to develop some general principles enunciated by courts in interpreting constitutional provisions. It must be remembered that it is almost impossible to definitely say whether or not a particular restriction will be upheld.



1. Validity of the Objectives

Generally, the role of the judiciary is small in considering the appropriateness of regulatory objectives;<sup>128</sup> but occasionally courts have invalidated regulations for lack of proper police power objectives.<sup>129</sup> Regulations for minimizing conflicts between surface water uses may be aimed at securing several objectives including the protection of public health and safety, prevention of nuisances or nuisance-like uses, control of pollution, protection of fish and aquatic life, protection of regional economy and property values, protection of aesthetically pleasing water and shoreland, and the promotion of the most appropriate use of lakes and ponds as scarce and destructible resources. Judicial support in other contexts may be found for regulations enacted to achieve each of these objectives. Generally, the objectives may be grouped as (1) preventing threats to health and safety, (2) protecting the quality of the environment, and (3) promoting the most efficient use of the water resource.

a. Prevent Threats to Health and Safety.

Courts have recognized that protection of public health and safety is one of the most essential functions of government.<sup>130</sup> Reasonable restrictions on private conduct to achieve these objectives have almost always been sustained.

Some uses in water areas threaten the physical well-being of water

sport enthusiasts: (a) Operation of high-speed boats and water skiing activities in a reckless manner, in near-shore or shallow areas, or in intensely used areas can result in capsized boats, grounding, collisions with docks, collisions with other boats, and the maiming or death of swimmers or divers. (b) Swimming or diving in weed areas, in boat lanes, far from shore, or at night may result in the drowning of the swimmer or diver or those who attempt to rescue him.<sup>131</sup> (c) Construction of piers, placement of improperly marked mooring buoys, navigational buoys, or swimming rafts, and placement of fill or low structures in water pose threats to the night boater or one operating in conditions of limited visibility. (d) Operation of an over-powered boat or one otherwise unseaworthy due to faulty design or improper maintenance may result in swamping. (e) Contamination of waters by toilet wastes from boats, overcrowded bathing beaches (or ones without toilet facilities), and inadequate methods for shoreland waste disposal can threaten the health of swimmers or others coming into contact with the water.

b. Prevent Deterioration in Environmental Quality.

Many conflicts are neither physical nor do they pose direct threats to health and safety. Rather, users can disturb one another in the enjoyment of waters. If recreation is to refresh and re-create the mind as well as promote physical well-being, a total recreation experience is important.

Conflicts which diminish the attractiveness of waters for particular uses, rather than threaten health and safety, might be placed in several major categories: (a) Noise. Noise appears to be a major problem in many water areas. Noise from a motor boat, swimming beach, marina, dance hall, moored house boat, and other uses disturb the fisherman, canoist, swimmer, and shoreland dweller. At night, noise from motor boats is a particularly serious problem in near-shore areas. (b) Aesthetics.<sup>132</sup> Water filled with sediment, algae, or rooted aquatics is unattractive to the swimmer, boater, or shoreland dweller. A line of gaudy cottages is less attractive than trees and a natural shoreline. Few would favorably compare the appearance of a water ski boat to that of a quietly moving sail boat or canoe. (c) Destruction of aquatic life.<sup>133</sup> Filling of shoreland wetlands which serve as fish spawning and duck nesting grounds impairs fishing and hunting. Motor boats destroy the white water lily and similar rooted aquatics of great beauty.

Some of these uses are nuisance-like and clearly subject to regulation. Courts have often sustained restrictions which prevent nuisance-like uses or require the abatement of existing ones.<sup>134</sup> For example, courts have declared certain wharves which extend far out into waters are nuisances.<sup>135</sup> Courts have also upheld noise control ordinances.<sup>136</sup> Control of pollution<sup>137</sup> and protection of fish and wildlife<sup>138</sup> have also been recognized as valid police power objectives by

the courts of many states.

At common law, uses which are aesthetically unattractive (detract from visual beauty) have not been considered nuisances. Traditionally, protection of aesthetic values, alone, has also not been considered a proper objective for exercise of police powers.<sup>139</sup> But, the courts of several states have sustained zoning ordinances and billboard controls to protect the aesthetic appeal of areas which depend economically on the tourist industry.<sup>140</sup> Regulations to minimize surface water conflicts and protect the fish, wildlife, and scenery which bring vacationers to Wisconsin might serve similar objectives.<sup>141</sup> These restrictions might also protect shoreland property values. The Wisconsin court in a landmark decision has recognized that regulations which protect the aesthetic appeal of an area may be validly protecting property values.<sup>142</sup> Protection of aesthetic values may also now be a sufficient basis for exercise of police powers. The United States Supreme Court in Behrman v. Parker<sup>143</sup> noted that "[i]t is within the power of the legislature to determine that a community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled." The Wisconsin court also recently indicated that "aesthetic considerations alone may now be sufficient to justify a prohibited use in a zoning ordinance."<sup>144</sup>

c. Encourage Appropriate Use of the Water Resource.

A program to protect and effectively manage waters must consider optimum uses not only with the aim of protecting health and safety and preservation of environmental quality, but also with the aim of meeting increasing recreation demands by careful utilization of the relatively fixed existing supplies of water. In many instances some uses must be prohibited or severely restricted simply because they conflict with other uses and are too space-demanding. For example, an eighty-acre lake could serve as a swimming area for many hundreds of individuals; but it would likely not be sufficient for even three water ski boats which may require a minimum of 40 acres each.<sup>145</sup> Water skiing in such a pond might prevent most swimming, diving, fishing, rowing, and canoeing.

Regulations to promote appropriate space utilization of a water body may be used to restrict a variety of activities related to shore-land or bottom use which decrease the water surface area available for multiple surface uses. These include dams, fences across streams, low bridges, fills in lakes and streams, piers, wharves, marinas, dry docks, boat houses erected out over the water, placement of mooring and navigation buoys, and mooring of boats.<sup>146</sup> Any obstruction may prevent the use of surrounding water by high-speed boats although low-speed uses are less affected.

A variety of conservation laws have been upheld for the protection

and careful management of scarce natural resources. Courts have often sustained regulations prohibiting the waste of oil and natural gas<sup>147</sup> and protecting forests,<sup>148</sup> watersheds,<sup>149</sup> and subsurface waters.<sup>150</sup> At least one court has noted the special nature of lands adjacent to waters and the need to manage them as part of a land-water related resource.<sup>151</sup> Finally, courts have recognized that zoning laws may validly be enacted to promote the most appropriate use of land throughout a municipality.<sup>152</sup> Similarly, restrictions on surface water uses might serve to encourage the most appropriate use of waters. Of course, the most "appropriate" use of a water body will depend upon the criteria for determining appropriateness. If appropriateness is judged by the degree of protection afforded fish, wildlife, and scenic values, the most appropriate use may be low intensity canoeing. If appropriateness is judged by the maximum number of individuals accommodated for water sport use the most appropriate use may be swimming.

## 2. Regulations Must be Reasonably Related to the Regulatory Objectives

Police power regulations must not only be enacted to accomplish valid objectives, but must also be "reasonably necessary for the accomplishment of the purpose in view."<sup>153</sup> Surface water regulations (the means) must have some reasonable tendency to minimize conflicts (the end). Generally, the wisdom of the means chosen to achieve a legitimate policy power objective is a question for the legislative body and

not the courts.<sup>154</sup> In Stephenson v. Binford<sup>155</sup> the United States Supreme Court noted that "[i]t is enough if it can be seen that any degree, or under any reasonable conceivable circumstances, there is an actual relation between the means and the end." However, zoning regulations have commonly been struck down when, in light of all the circumstances, the regulations seem incapable of accomplishing the ostensible objectives.<sup>156</sup>

This requirement of reasonable relation between means and end may be an important objection to poorly conceived regulations or regulations which fail to take into account local differences in water quality, lake size and shape, shoreland use, and other factors which may bear upon the reasonableness of a regulatory classification. For example, the County Court of Racine County in the widely publicized case of Leiske v. Burlington<sup>157</sup> invalidated a 1963 ordinance adopted by the Town Board of Burlington prohibiting the operation of boats having motors in excess of fifty horsepower on the waters of the town. Leiske, owner of a seventy-five horsepower motor, claimed the ordinance was invalid for several reasons including a lack of reasonable tendency to promote the ostensible regulatory objectives. The town argued that a horsepower limitation had a reasonable tendency to reduce speed, protect fish, prevent the stirring of bottom sediments, prevent the cutting of weeds, and reasonably limit the number of boats on the lake. However, Judge Corbett agreed with Leiske that the size of horsepower was



not reasonably related to these objectives. He wrote:

Speed of a motor boat as testified to by witnesses for the plaintiff, whose testimony is uncontroverted, is dependent upon the weight, length, beam and shape of the hull together with the power of the engine. Speed developed by the above combination can be varied by transom length, size of propeller and revolutions per minute of the propeller. The arbitrariness and capriciousness of the ordinance is best brought out in that it has the effect of prohibiting the use of a family boat 17 feet in length, with a 6-1/2 foot beam, powered by a 75 horsepower engine capable of driving the boat to a maximum speed of 33 miles per hour, while it will permit a hydroplane to be used with a ten horsepower engine capable of driving said boat 45 miles per hour. The ordinance is based upon horsepower of an engine, not on actual or potential speed of a boat. This classification is unreasonable if the end sought to be obtained is control of speed and safety. This classification discriminates against use of a boat which in itself is not unsafe by any recognized standard as against a boat of lesser power which will go a great deal faster.<sup>158</sup>

However, one may speculate that the horsepower restriction would have been upheld in different circumstances. Leiske used his boat on Brown Lake, a 396-acre body of water. Operation of such a boat and motor may have been reasonable on a lake of this size which was subject to substantial winds and waves. But a similar or more stringent limitation on motor size for a 50-acre pond might be reasonable. While in all instances a large motor does not mean higher speeds, more turbidity and louder noises, it may be that, in general, the size of motor has some reasonable relationship to these factors. Ordinarily the reasonableness of a regulation is a question for the legislature and not the court.<sup>159</sup> In contrast to Burlington, the appellate courts of two states have upheld regulations which set a maximum size limitation of

6 horsepower for motors used on particular waters.<sup>160</sup> In one case, Springfield v. Mecum,<sup>161</sup> the Springfield Court of Appeals upheld the 6 horsepower limitation for an intensely used lake:

The ordinance of the City of Springfield, which defendants are alleged to have violated, was passed to protect the safety and general welfare of its citizens in their use of said lake. There is evidence in the record to show that the waters of this lake, when used by boats with a larger than six horsepower engine, stirred up mud and debris in said lake but we take it that the main purpose of the ordinance was for the protection of the citizens using such lake as a recreation center.<sup>162</sup>

While it is clear that a legislative body has considerable discretion in establishing general classifications to help accomplish the regulatory objectives,<sup>163</sup> it is also clear that at some point broad classifications which do not account for individual differences will be held unconstitutional.<sup>164</sup> For example, a maximum horsepower restriction might be justified on one lake but not on another of a different size. A prohibition of all outboard motors on lakes less than 100 acres in size might make sense in some instances since these are approximately .4 of a mile or less in width, if circular in shape. Boaters might be reasonably expected to row, paddle, or sail to any point along the shore. In contrast, if the body of water is elongated and on the average only 1000 feet wide, the length would be .8 of a mile. In such circumstances, a small motor might be needed to navigate from one end to the other. A general prohibition of motors on all lakes and ponds of 100 acres would fail to take into account these differences. This is

not to suggest that in fact such a restriction would be invalid. The example is simply for the purposes of discussion.

The Wisconsin Supreme Court several times has invalidated regulations which fail to take into account special local conditions. For example, in one case the court found that a plumbing code provision of the City of Milwaukee and the Metropolitan Sewage Commission of Milwaukee which required that extra heavy cast iron pipe with hot poured lead joints be used for house and building sewers was unreasonable because special soil conditions in some parts of the country corroded the pipe and prevented its efficient use.<sup>165</sup> The court held that:

Failure to provide for exceptions to the rule where soil conditions warrant the use of some other material renders the rule unconstitutional.<sup>166</sup>

In another case,<sup>167</sup> which presented a factual situation more closely analogous to zoning of surface waters, the court held invalid a town zoning ordinance which zoned an entire town for residential use although it was clear that certain areas were suitable for industries and trades and not suited for residential use. The court noted:

In making the classifications . . . the municipality must recognize the natural reasons and differences suggested by necessity and circumstances existing in the area with which the ordinance deals.

Here we have a classification which completely ignores the apparent natural differences existing in the area of the town.<sup>168</sup>

A final example of judicial disapproval of regulations that do not take into account natural differences can be found in the language of the

Florida District Court of Appeals<sup>169</sup> which invalidated inflexible zoning provisions of the City of Miami restricting the size of boathouses on residential properties:

The Court further finds that the restrictions on boathouse structures are so inflexible as to rule out any relationship between the size of the boathouse and the size, location and use of the property involved, or the size and character of the dwelling and other structures thereon. This inflexible limitation emphasizes the arbitrary and discriminatory aspect of the sections of the ordinance under attack.<sup>170</sup>

While these cases emphasize that restriction must be carefully tailored to local conditions, many cases pertaining to surface water regulation can also be cited which uphold the reasonableness of surface-water regulations. These include cases sanctioning maximum horsepower restrictions,<sup>171</sup> speed limits,<sup>172</sup> special water ski restrictions,<sup>173</sup> wake surfing regulations,<sup>174</sup> regulation of the mooring of vessels within 100 feet of a dam,<sup>175</sup> regulation of houseboats,<sup>176</sup> regulation of wharves,<sup>177</sup> and regulation of fills.<sup>178</sup>

Besides legal attacks of unreasonableness or discrimination, inflexible restrictions are also subject to strong non-legal criticism for not being tailored, to the extent practical, to local conditions. In light of the rapidly increasing demands for water use and the limited supply of available waters, restrictions which reduce total use should be imposed only if absolutely necessary. Generally the restrictions should be designed to allow multiple use wherever and whenever possible. For example, a policy to prevent all motor boating on all 100-

acre lakes might satisfy some swimmers, fishermen, and lakeshore users, but it would not help to meet the demands for water skiing and boating. A more realistic approach might be to promote multiple use by restricting water skiing and motor boating at certain times and in certain areas.

Tailoring of restrictions for particular water bodies and water areas requires detailed information concerning (1) physical characteristics of water bodies including water depth, spawning grounds, aquatic weed patterns, beach type, and bottom type; and (2) shoreland uses such as residences which may be affected by noisy motors. Without sound resource data and careful planning, restrictions cannot be reasonably related to regulatory objectives.

### 3. Regulations Must Not Discriminate Between Similarly

#### Situated Individuals

To meet state and federal constitutional requirements of due process and equal protection, regulations must not discriminate between similarly situated individuals. Regulations must not be discriminatory in initial classification<sup>179</sup> or in administration.<sup>180</sup> Apparently regulations could not discriminate between riparian and public users by allowing only private or only public use of the waters. Regulations to protect navigation from obstructions would likely need to apply to existing docks and mooring facilities as well as new ones.<sup>181</sup> Surface water zoning restrictions adopted for some areas and not others need to be based upon

sound factual and planning considerations to avoid charges of discrimination.<sup>182</sup>

4. Regulations Must Not Violate Public Rights in Navigable Waters or "Take" Riparian Rights

Regulations which severely restrict either (or both) public and private use of navigable waters may be subject to a variety of legal attacks. For example, regulations which prohibit the use of all motors on a wild river and which severely restrict private shoreland development may give rise to the objections that the regulations interfere with commerce, prevent the exercise of public rights in navigable waters, "take" private riparian rights, and "take" private shoreland property by preventing all economic use of the property.

a. Public Rights.

Article Four of the Northwest ordinance adopted on July 13, 1787 provides:

The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between them, shall be common highways and forever free, as well to the inhabitants of said territory as to the citizens of the United States and those of any other States that may be admitted into the confederacy, without any tax, impost or duty therefore.<sup>183</sup>

While the Northwest ordinance is probably no longer in effect,<sup>184</sup> similar language was incorporated into the Wisconsin State Constitution.<sup>185</sup> The concept that the State of Wisconsin holds navigable waters

in trust for the public apparently originated in this language or the English common law.<sup>186</sup> Whatever the source of the doctrine, the Wisconsin court has repeatedly held that the state holds waters in trust for the public<sup>187</sup> and the public has a right to use navigable waters for navigation,<sup>187a</sup> hunting,<sup>188</sup> fishing,<sup>189</sup> sailing, rowing, canoeing, bathing, skating,<sup>190</sup> and "enjoyment of the scenic beauty."<sup>191</sup> Practically all lakes<sup>192</sup> and streams<sup>193</sup> are apparently navigable by the state supreme court test of navigability, and are subject to public rights. Stringent regulation or prohibition of public use of a lake or stream might give rise to arguments that the regulations conflict with federal navigation laws or interfere with commerce,<sup>194</sup> violate provisions of the Wisconsin Constitution that navigable waters "shall be common highways and forever free"<sup>195</sup> (language like that contained in the Northwest Ordinance), or in some other manner unlawfully restrict public rights in navigable waters.<sup>196</sup> Reasonable regulation of boating would likely be upheld. But severe restriction or prohibition might not. Quite clearly the provisions of the Wisconsin Constitution, which follow those of the Northwest Ordinance, were intended primarily to prevent imposition of a tax, impost or duty on the use of navigable waters.<sup>197</sup> Both the United States Supreme Court<sup>198</sup> and the Wisconsin court<sup>199</sup> have held that this or similar provisions do not prevent states from authorizing the construction of physical obstructions to commerce. But, the Supreme Court has also noted that such



a provision applies to "political regulations which would hamper the freedom of commerce."<sup>200</sup> Therefore, the clause might be interpreted to prohibit the adoption of regulations which would substantially restrict or prohibit public use of lakes or streams for commercial navigation and, possibly, recreational navigation.

b. Private Rights.

Severe restriction of surface water or shoreland use will, at some point, violate the Fifth<sup>201</sup> and Fourteenth<sup>202</sup> amendments of the United States Constitution and similar provisions in state constitutions<sup>203</sup> which prohibit taking of private property without payment of compensation.

(1) Riparian Rights to Reasonable Use of Navigable Waters.

Severe restriction of boating, swimming, fishing, and construction of wharves, docks, and boat mooring facilities may give rise to constitutional objections that the regulations take riparian rights. Riparian rights to the use of waters are incidental to the ownership of riparian land.<sup>204</sup> However, they are not rights in the corpus of the water but inexactly defined rights<sup>205</sup> to make reasonable use of the water while respecting the reciprocal rights of other riparians. They constitute property and enter into the value of the land.<sup>206</sup> The most common riparian rights are for the use of water for agriculture,<sup>207</sup> domestic,<sup>208</sup> and recreational purposes.<sup>209</sup> However, other

"rights," such as the right to access to navigable waters,<sup>210</sup> the right to construct piers or wharves,<sup>211</sup> and a right to dam waters,<sup>212</sup> may interfere with or affect surface water use.

Each riparian has the right to make reasonable use of waters<sup>213</sup> but public rights in navigable waters are paramount to private riparian rights.<sup>214</sup> Courts have also commonly held that police power regulations may be utilized to reasonably restrict riparian rights.<sup>215</sup> However, several Wisconsin cases have held that a municipal unit or the state must not totally prevent the exercise of riparian rights without payment of compensation.<sup>216</sup> In one such case, Bino v. City of Hurley,<sup>217</sup> the court invalidated, as an unconstitutional taking of riparian rights, a municipal ordinance which prohibited a riparian from fishing, swimming, and boating in a lake from which the city drew its water supply. It is to be noted, however, that the city was not attempting to simply protect recreation uses, but was attempting to preserve high quality water by prohibiting riparian and public recreation uses. Although the case might be limited to its facts, it does suggest that a state or local regulations which prohibit or severely restrict riparian boating, swimming, or fishing might be declared unconstitutional.

Courts have sustained severe limitations on the exercise of riparian rights in limited situations where such limitations promote navigation<sup>218</sup> or prevent the clashing of private interests.<sup>219</sup> The legislature has broad power to adopt rules and regulations to achieve these

objectives.<sup>220</sup> Regulations to minimize surface water conflicts may need to specifically regulate the exercise of several traditional riparian rights such as erection of wharves or piers which provide access to waters<sup>221</sup> because, in some instances, piers, docks and moorings interfere with navigation.<sup>222</sup> One very innovative approach to regulation of docking and mooring, approved by the Minnesota court, effectively limited the number of boats using a small lake.<sup>223</sup> A municipality constructed a public boat livery with a limited number of slips and prohibited boat mooring at other places on the lake.

Courts have often sustained residential classifications for shoreland areas which prevent the establishment or expansion of marinas or boat liveries<sup>224</sup> which are nuisance-like in residential surroundings because of noise, traffic, exhaust gases, and activity. Several cases have sustained these residential classifications despite landowner claims that the restrictions prevented the exercise of riparian rights.<sup>225</sup> In one case the court observed:

To the extent that by zoning regulations a municipality may limit the uses to be made of property generally, it may also by zoning regulations limit the exercise of riparian rights.<sup>226</sup>

(2) A Right to the Economic Use of Private Lands.

Regulations which severely restrict shoreland development to protect natural scenery, to lower intensity of shoreland and water use, to prevent water pollution, and to preserve wetlands may unconstitutionally "take" private property. Private property interests

in land involve a bundle of rights, powers, and privileges which relate to the use and disposal of lands. Police power regulations may be utilized to restrict the exercise of some of these property interests,<sup>227</sup> but at some point restrictions will unconstitutionally take private property.<sup>228</sup> Many factors, too numerous and complex to discuss here in depth, are germane to the reasonableness of restrictions.<sup>229</sup> But it must be noted that, in general, courts have invalidated zoning restrictions which not only limit but prevent all reasonable use of private lands.<sup>230</sup> Usually "reasonable use" is interpreted to mean economic use.<sup>231</sup> Therefore, regulations may be considered unconstitutional although some uses are possible under the regulations if the permitted uses are not profitable in terms of the cost of the land, taxes, and other factors.<sup>232</sup> For this reason zoning classifications which limit lands to essentially open space uses such as private and public parks, wildlife areas, parking lots, and flood storage areas have generally been invalidated.<sup>233</sup> Arguments that severe restrictions on development "take" private property present serious objections to regulations which restrict lakeshore properties to open space uses. Lakeshore lots only 100 feet wide may cost two thousand to seven thousand dollars, or more.<sup>234</sup>

Courts have ordinarily held that zoning regulations must not prohibit uses which are sufficiently remunerative to allow improvement of lands subject to natural development limitations such as swampiness,

steep slopes, erosion, and flooding.<sup>235</sup> But, the filling and grading necessary to improve such lands is a likely source of pollution and a threat to fish spawning and duck nesting areas. Severe restrictions of such filling and grading might be held to take property, but several decisions suggest that such regulations might be sustained if there were /a clear demonstration of the nuisance-like effects of proposed development. Several courts have departed from the general test for "taking" (i.e., whether the restrictions prevent all reasonable use of lands) in situations where the only economic uses are nuisance-like in their surroundings. For example, the California court<sup>235a</sup> sustained a prohibition of sand and gravel operations--the only economic use for lands subject to recurrent flooding--where there was evidence that the operations might affect a nearby haven for the sufferers of respiratory ailments. Similarly, several other courts<sup>235b</sup> have sustained residential zoning of swampy areas, in spite of evidence that the lands could not be economically filled for residential use, where there was evidence that the proposed nonresidential uses to be placed on fill would adversely affect nearby residential properties.

In conclusion, an examination of the cases suggests that regulations clearly may be used to restrict or prohibit private and public uses which interfere with navigation, threaten health or safety, or causes nuisances. But attempts to severely restrict or prohibit all public or private navigation, swimming, boating, construction of

wharves, and other such uses not clearly threatening health or safety may give rise to a variety of legal objections. Severe restriction of private land uses might be found unconstitutional, as a taking of private property, if all economic uses are prohibited including those not of a nuisance character. A sound regulatory program must balance public and private rights and management needs.

CHAPTER IV: STATE OR LOCAL ADOPTION OF SURFACE  
WATER ZONING

A program to manage waters, whether undertaken at the state or local levels, must generally involve: (1) an inventory of water and shoreland characteristics, (2) estimation of present and anticipated water sport demands, (3) development of management policies and plans to meet the demands, and (4) plan implementation. A regulatory program to promote the most appropriate use of state waters will involve the development and implementation of use restrictions for specific waters or portions of waters. Should water surface zoning and similar restrictions be adopted (a) at the state level, or (b) by local units of government such as the cities, villages, towns, and counties? The state of Wisconsin has already adopted statewide boating regulations of a general nature. Adoption of specific restrictions is in local hands. Should a state agency also be empowered to adopt specific surface water use restrictions? Or is some other new legislation needed for encouraging the adoption of local regulations consistent with statewide needs?

The answer to the questions may depend upon several legal and policy considerations. The legal issues concern the constitutionality of state statutes delegating regulatory powers over water surface uses to local units. Broad policy considerations concern the tradition of



local regulation, the need for local involvement in the regulatory process to assure cooperation and compliance, the need to promote both state and local interests, and the need to formulate regulations in light of transient boater needs.

#### A. CONSTITUTIONAL CONSIDERATIONS

Can the state legislature constitutionally delegate to local units of government power to adopt surface water use regulations? The constitutionality of an attempted delegation may well depend upon the extent of the delegated powers, whether the delegation is to a county or another local unit, and whether the state retains supervisory powers.

Generally, local units of government have no inherent powers and must derive powers to enact ordinances from state statutes, charters, or the state constitution.<sup>236</sup> Powers delegated to the counties must be local in nature. Article IV, section 22, of the Wisconsin Constitution provides that the legislature may confer upon the counties "such powers of a local, legislative and administrative character as they shall from time to time prescribe." (emphasis added). Interpreting this provision, the Wisconsin Supreme Court held unconstitutional a statute empowering county boards to override refusals of the Public Service Commission of dam permits when such dams would violate public rights to enjoyment of fishing, hunting, and natural scenic beauty.<sup>237</sup> The court held that such an attempted delegation was a "complete abdication"<sup>238</sup>

of the public trust in navigable waters, and that, "interference with public rights of hunting, fishing, and scenic beauty by the erection of a dam on a navigable stream is of state-wide concern. . . ."239 and therefore not delegable to the counties.

Cities and villages, in part, derive their general powers from the home rule amendment which empowers these local units "to determine their local affairs and government. . . ."240 (emphasis added). In Fond du Lac v. Empire<sup>241</sup> and Menne v. Fond du Lac<sup>242</sup> the Wisconsin Supreme Court held that regulation of ground water extraction was a matter of state-wide concern, and therefore, not properly a subject of local regulation. Following this rationale, the court might also hold unconstitutional an attempt to broadly delegate power to cities and villages to legislate for matters concerning surface water use.

However, the language of the court in Madison v. Tolzmann,<sup>243</sup> the only Wisconsin Supreme Court decision dealing with local boating regulations, suggests that a carefully circumscribed delegation to a city or village could be upheld. In this case the defendant contested the enactment of a boating ordinance of the city of Madison which required that boats be equipped with air tanks and life preservers and that an annual license fee be paid for operation of boats. The court held that the license fee was invalid since the legislature had not expressly granted the city authority to impose such a fee and this

authority was not inherent in home rule powers. The court did not consider the constitutionality of delegation of power to the city to enact safety regulations relating to boats because the validity of such delegation was apparently conceded by both parties. Considering the question of delegation the court noted:

We realize that trustees may delegate some authority. However, in this instance where the state is trustee not only for residents of Wisconsin but for all of the people, such delegation of authority [to license boats] should be in clear and unmistakable language and cannot be implied from the language of a general statute delegating police power to cities.<sup>244</sup>

In summary, the cases suggest that delegation to counties of the power to regulate boating might well be held unconstitutional unless some measure of supervision were retained by the state.<sup>245</sup> But a clear and carefully circumscribed delegation to cities and villages might be upheld.

## B. BROADER POLICY CONSIDERATIONS

### 1. Zoning and Similar Controls Have Traditionally Been a Local Function

Separation of state and local powers in Wisconsin, a home rule state, has always been a keen political issue. Traditionally land use zoning has been exclusively a local function although several minor forms of land use control have been exercised at the state level.<sup>246</sup> One court noted that "[a] zoning resolution in many of its features

is distinctly a city affair, a concern of the locality, affecting as it does the density of population, the growth of city life, and the course of city values."<sup>247</sup> However, in recent years state legislatures have recognized that the impact of certain classes of land uses are regional or state-wide. Statutes authorizing state level regulation of flood-plains<sup>248</sup> and shoreland areas<sup>249</sup> have been adopted in several states, including Wisconsin. Zoning of surface water and shorelands may be necessary not only to protect and promote local needs, but also to protect the state recreation industry and the public trust in navigable waters. An increasing general concern for the quality of the environment, including recreation resources, may provide a climate favorable to a change in the present regulatory framework. Several modifications short of exclusive state level regulatory powers are discussed in Chapter V.

## 2. Local Involvement May Be Necessary For Effective Enforcement

Political acceptability at the local level may be necessary for effective enforcement of regulations. Local adoption of regulations may increase public awareness and cooperation. Local enforcement may also be efficient since local police, resident users, and local water patrols may have the time and interest to provide effective supervision. However, state-level enforcement could involve all levels of enforcement personnel.

3. Regulations Should Give Recognition to Broad State and  
Local Interests

A program for management of surface waters undertaken at the state level could view the entire in-state and out-of-state recreation needs and the available waters to satisfy these needs, and, based upon this information, could allocate specific waters to specific uses. Likely this would result in quite different policies and plans for specific waters than would a local program. For example, prohibition of motor boats to preserve a wild river in an undeveloped region might seem unnecessary to a local unit whose residents have little interest in wild river canoeing. Even if there were some interest, it might be satisfied by the restriction of general boating uses on short stretches of river. However, preservation of hundreds of miles of canoe waters is needed to meet the recreation demands of the state as a whole when one includes the several million urban dwellers from the metropolitan Milwaukee area.

State and local governments both have an economic interest in the use of surface waters and shoreland areas. Half a billion to one billion dollars are spent in Wisconsin each year on recreation activities.<sup>250</sup> The attractiveness of the lakes and streams which bring vacationers from Illinois, Iowa, Minnesota, Indiana and from throughout the nation are of vital importance to the state's economy,<sup>251</sup> and, particularly, to the economy of the recreation areas of northern Wisconsin. State

level regulations for such waters are likely to reflect a strong orientation to protect the economic interests of the state as a whole. In contrast, local units are likely to be more concerned about the well-being of their residents.

In some instances local regulation may result in less restrictive regulatory policies, and in other instances more restrictive policies than similar state regulations. For example, in some instances local units may allow intense use of waters and subdivision of lakeshore properties into small lots since this may increase the tax base while placing a modest demand upon schools and similar public services. In other instances, if local units wish to lower the intensity of water use and protect the value of existing shoreland development, the units may prohibit high speed water uses and zone shorelands for low density residential use. Arguments can be made for placing greater emphasis on state or local points of view. The economy of the state as a whole must be protected and promoted; and yet, the use of waters and development of shorelands may have significant local effects on property values and the tax base, on the need for public services such as roads and police, and on the total tourist and non-tourist expenditures in the area.

In recent years, a variety of economic techniques for evaluating recreation uses have been developed which utilize the distance a recreation user is willing to travel as a measure of value.<sup>252</sup> This approach may result in placing a much higher value on the use of a northern lake

for muskelunge fishing by a few high income, out-of-state vacationers who drive 500 miles for a two-week vacation, than upon higher intensity use for boating and swimming by local people and residents of Milwaukee who come for a day or weekend visit. While this travel-distance approach does have some utility, it does not adequately take into account the broader social values which may be promoted by convenient and inexpensive recreational opportunities for low income rural and urban dwellers. Rest and leisure for the low income groups may be important in promoting social and political stability.

#### 4. Recognition of Transient Boater Needs

A state-wide check of 23,000 boaters on the water in 1961 revealed that 41 percent were not residents of the state.<sup>253</sup> In-state and out-of-state vacationers who travel many miles have no way of being aware of local water use regulations. Imagine the frustration of a Chicago vacationer who arrives at a resort with his water ski boat only to discover that skiing is prohibited on the lake. Any program for managing waters by limiting uses, particularly the use of whole bodies of water, must provide adequate notice of restrictions to vacationers. In the course of study for this report, the author encountered unanimous criticism of the lack of uniformity and inadequate notice to transient users which result from local regulation of waters. But, adoption of specific state level regulations for particular bodies of water will also result in a

lack of uniformity. Diversity in regulation is, to some extent, required in order to take into account local conditions and to promote the most appropriate use of each water body. State level regulation will not cure the diversity problem but it may prevent needless lack of uniformity and facilitate compilation and dissemination of information concerning regulations.

### C. SUMMARY OF ARGUMENTS

A summary of legal and policy considerations which may bear upon allocation of responsibilities may be helpful. Arguments for adoption of specific regulations on the local levels include: (1) adoption of land use controls and other special regulations such as building codes, subdivision regulations, some speed laws, and many other special controls has traditionally been a local function; (2) specific regulations for swimming zones, traffic zones, water skiing and fast boating areas, marinas, and docks must depend, in part, upon local needs and preferences for water and shoreland use; (3) local adoption involving local citizens will increase public awareness and cooperation; (4) enforcement at the local level may be efficient since the local police, resident users of the bodies of water, and local water patrols may have the time and interest to provide effective supervision.

Arguments for adoption of specific regulations at the state level include: (1) the state is trustee of navigable waters and must protect



public rights in these waters for all the people; (2) delegation of powers over navigable waters may be unconstitutional; (3) needless lack of uniformity in regulations will frustrate the exercise of public rights, particularly by the transient user; (4) local regulations may fail to properly take into account the recreation needs of the whole state and the broader economic and social interests which may be promoted by the most appropriate state-wide use of waters; (5) certain technical aspects of data gathering and planning such as identification and planning for special wetlands, fish spawning grounds, and bank areas subject to erosion may be better undertaken by a technically staffed state agency; and (6) state-level enforcement may involve all levels of police enforcement including conservation wardens and state police, county enforcement, and the staff of local units.

Considering these legal and broader policy considerations, it seems essential that both the state and local units be involved in the adoption and enforcement of regulations. Chapter V discusses several alternative approaches for such conjunctive state-local action.

## CHAPTER V: ALTERNATIVES FOR THE WISCONSIN PROGRAM

### A. IN GENERAL

This report does not propose a draft surface water regulation ordinance for adoption by local units of government. This is due in part to the limited scope of the study and, in part, to the author's reluctance to propose general regulations which would not be tailored to the special needs of each water body. However, Appendix note D contains several types of materials which may aid a local unit in preparing ordinances: (1) An outline of a comprehensive local ordinance and a whole ordinance for illustrating the format and content of an entire ordinance, (2) A synopsis of typical provisions found in local ordinances, (3) A list of provisions indicating the frequency with which they appear in Wisconsin ordinances, and (4) One example of each listed provision, selected from local ordinances in Wisconsin.

The report does contain several alternative amendments to the state statutes authorizing state or local regulation of waters.

### B. THE NEED FOR FURTHER ACTION

When the Wisconsin program for minimizing surface water conflicts is compared with programs of other states, several features stand out: (1) Wisconsin has relatively comprehensive statutory con-

trol of general watercraft operations on a state-wide basis; (2) Wisconsin also affords local units broad discretion to adopt additional regulations.<sup>254</sup> No doubt additional specific regulations are now needed for some bodies of water and many more will be needed as recreation uses multiply. But, in many instances, the problem is not one of too few restrictions, but of arbitrary classifications, conflicting provisions, lack of adequate notice to transient boaters, and inadequate enforcement. In 1967, at least 108 villages, towns, and cities had adopted local regulations.<sup>255</sup> These ordinances contained at least 125 separate types of restrictions with many more individual variations.<sup>256</sup> Examples of 125 sorts of special local ordinance provisions are set out in Appendix Note D. It is interesting to note that certain local ordinance provisions frequently reappear which may indicate a general feeling that these matters need further attention at the state or local levels. In 108 local ordinances, the following provisions, which supplement state regulations, appeared 10 or more times (actual numbers indicated at the right).

1. Permits required for races, regattas, sporting events and exhibitions - 28
2. Operation within \_\_\_\_\_ feet of shore prohibited - 16
3. Boats may not enter swimming areas - 23
4. Speed restrictions - 76
5. Number of persons in a canoe regulated - 12
6. Vessels leaving piers have right-of-way - 30

7. Horsepower restrictions - 11
8. Motorboats, water skiing prohibited within \_\_\_\_\_ feet of shore, anchorage, swimmer, canoe, anchored fishing boat, public landing - 35
9. Age restrictions - 36
10. Two persons on board when towing skier - 63
11. Hour restrictions on water skiing (often more stringent than state-wide standards) - 43
12. Restrict number of skiers to be towed - 13
13. Water skiing prohibited - 12
14. Persons under 16 with snorkel prohibited - 12
15. Swimming from unanchored boat prohibited - 18
16. Mooring lights required - 32
17. Reflectors required on rafts, piers or moored craft - 18
18. Color of rafts designated - 17
19. Interference with markers prohibited - 39
20. Rafts to have freeboard above water line - 27
21. Owner of boat for hire responsible for seaworthiness - 10
22. No intoxicated person to be accepted as passenger on commercial boat - 10
23. Littering prohibited on ice, water shores - 54

While the statutes do require the posting of regulations at local public access points,<sup>257</sup> many transient boaters do not use public access facilities. One may imagine the confusion of an in-state or out-of-state vacationer who is faced with almost an infinite number of

combinations in local regulations. The problem is more than theoretical. Commonly a vacationer travels with his boat to a cottage, resort, or motel from which he makes short additional trips to several or many of the surrounding waters. The present chaos in local regulations can only encourage his frustration and disrespect for the law. This is not to imply that total uniformity of regulation is desirable or possible. Any attempt to apply broad rules to highly variable factual situations will result in arbitrariness. What makes sense in one situation will be irrational in another. Regulations which are sound from several points of view will need to combine uniformity, to the extent possible, with consideration of local factual differences. Both state-wide and local needs must be taken into account. Of course, such a balancing of considerations is not an easy task.

An indication of the general concern with boating may also be found in the fact that in the 20-year period of 1947-67, at least 74 bills dealing with watercraft were introduced in the state legislature.<sup>258</sup> In 1969, 9 more bills were pending.

The remainder of this report will focus upon alternative courses for the future Wisconsin program. These alternatives will depend upon (1) What unit of government should be given principal responsibility for adopting specific use restrictions for specific bodies of water? (2) What general types of regulations should be adopted by this unit and other units? These questions are interrelated and will be discussed together.

C. ALTERNATIVE APPROACHES--STATE OR LOCAL  
REGULATIONS

A variety of combinations are possible for allocating between state and local units the responsibility for regulation of water uses.

Several principal approaches include:

(1) Minor modifications of the present statutory framework. Presently, certain basic minimum regulations apply state-wide. Local units such as towns, cities, and villages are delegated broad powers to enact more specific standards not inconsistent with the general state-wide standards.

(2) Compulsory state-level review by an administrative agency of all local regulation.

(3) Direct state level adoption of specific regulations for bodies of water through enactment of special statutes or state administrative regulations. Local units might be allowed to: (a) continue to exercise broad powers in adopting regulations, (b) might be prohibited from adopting local regulations, or (c) might be partially limited in their power to adopt regulations.

(4) Review of local regulations combined with a positive agency role to require local units to adopt satisfactory regulations. In the event local units fail to adopt such regulations for critical areas by a specified date, the agency shall adopt such regulations. This is essentially the framework for the Wisconsin Shoreland and Floodplain Zoning

programs.

1. Minor Modifications in the Existing Framework

The existing Wisconsin framework for regulation of surface water activities--broad statutory control of watercraft operation throughout the state and local ordinances for more specifically restricting water bodies or portions of water bodies--is only partially satisfactory. The advantages and disadvantages of the general features have been discussed. It is also possible that the Wisconsin Supreme Court would find that watercraft regulation is a matter of such state-wide concern that it cannot be delegated to local units, or, that the present statutes do not spell out local roles with sufficient clarity. Even if the essentials of the existing framework are retained, several courses of action to improve the present program should be considered.

First, an accelerated program at the state level is needed to aid local units in adopting satisfactory regulations and to disseminate information on these regulations. State-level preparation of more detailed resource data on shoreland and water characteristics will aid local units in allocating specific waters or portions of these waters to particular uses. A state-wide inventory of surface water resources prepared by the Wisconsin Department of Natural Resources will supply much of this information.<sup>259</sup> However, in some instances additional data concerning shoreland uses and water body characteristics is

needed.<sup>260</sup> The Department is now preparing detailed water and shoreland use plans for selected waters in the state.<sup>261</sup> Wide-scale production of these detailed plans will aid the local units in preparing sound water and shoreland use restrictions.

Studies supplied to local units concerning specific user space demands, the desirability of specific use combinations and the effectiveness of various regulatory schemes are also needed. While widely varying standards for user space demands have been proposed (see Appendix note A), few concrete studies now suggest what are the optimum mixing and intensity of use in a given circumstance. Preparation of such studies will assist the state and local units in planning and regulating water uses. The preparation of a manual of recommended practices concerning the planning, adoption, and enforcement of surface water regulations would also assist local units in developing rationally and legally sound programs.

A printed compilation of local ordinances should also be prepared at the state level<sup>262</sup> and distributed widely. As a practical matter this may be difficult since the ordinances are so variable. This, in itself, suggests the need for a change in local regulatory practices. A list of bodies of water subject to local regulations could be compiled and disseminated.<sup>263</sup> This would at least put the transient boater on notice of the special regulations.

Second, state and local roles should be clarified through an amend-



ment to the statutes. Unfortunately the existing statutes which authorize local units to adopt regulations are ambiguous and confusing. They provide, in part:

30.77 Local regulation of boating

(1) Local regulation prohibited; exceptions. Sections 30.50 to 30.71 shall be uniform in operation throughout the state. No municipality may:

(a) Enact any local regulation requiring local numbering, registration or licensing of boats or any local regulation charging fees for inspection, except as provided in sub. (3) (b); or

(b) Except as provided in subs. (2) and (3), enact any local regulation which in any manner excludes any boat from the free use of the waters of this state or which pertains to the use, operation or equipment of boats or which governs any activity regulated by ss. 30.50 to 30.71.

(2) Ordinances conforming to state law. Any municipality may enact ordinances which are in strict conformity with ss. 30.50 to 30.71 or rules of the commission enacted pursuant thereto.

(3) Local regulations. (a) Any town, village or city may, in the interest of public health or safety, adopt local regulations not contrary to or inconsistent with this chapter, relative to the equipment, use or operation of boats or relative to any activity regulated by ss. 30.60 to 30.71, but no such local regulation which in any manner pertains to the equipment, use or operation of a boat on an inland lake is valid unless all towns, cities and villages having jurisdiction on the waters of the lake have enacted an identical local regulation. If any county operates any marina development adjacent to any waters or lake, the authority heretofore conferred upon any town, village or city shall exclusively vest in said county in respect to adoption of such local regulations insofar as they relate to the development, operation and use of said facility and its adjoining waters.<sup>264</sup>

Section 30.77 first provides in subsection (1) that "(S)ections 30.50 to 30.71 shall be uniform in operation throughout the state." Sections 30.60 to 30.71 regulate water skiing,<sup>265</sup> skin diving,<sup>266</sup> traffic rules,<sup>267</sup> speed restrictions,<sup>268</sup> use of boats in restricted areas,<sup>269</sup> and many

other matters. Does this mean that local more restrictive regulations cannot be adopted pertaining to these matters? Subsection (2) authorizes ordinances in strict conformity with sections 30.50 to 30.71 or rules of the commission enacted pursuant thereto. This seems to further imply that adoption of local regulations is to be severely restricted. But then, subsection (3) authorizes town, village or city regulations "not contrary to or inconsistent with this chapter, relative to the equipment, use or operation of boats or relative to any activity regulated by ss. 30.60 to 30.71. . . ." Most individuals interviewed by the author as part of this study frankly admitted they had no idea what "contrary to or inconsistent with" means.

The 1959 Interim Boating Committee report which proposed these sections for adoption suggests that the language was not intended to prohibit adoption of local regulations for "traffic lanes, . . . water skiing, speed and horsepower" and other such matters:

To the extent that this bill writes into the statutes boat regulations which now are enacted at the local level, a step toward uniformity has been taken, for this section prohibits local regulations which are inconsistent with the state law. Local regulations on the points covered by state law must be in strict conformity with such law.

. . . .

At the same time that this section provides protection for the boater, it vests in the local authorities a considerable amount of power to enact local boating regulations supplementing the state law. Subjects presently covered by various local ordinances in various municipalities which probably could continue to be regulated to some extent under this section include the placing of buoys and other navigation aids, zoning of the

waters to avoid conflicts among the various groups of water users, location of traffic lanes, swimming from boats, races, regattas and exhibitions, skin diving, water skiing, houseboats, speed and horsepower.<sup>270</sup>

Are local, more restrictive regulations, dealing with the same subjects as the statutes not contrary to or inconsistent with the statutes? In other contexts the Wisconsin court has approved more restrictive local regulations for subjects already regulated by state statutes.<sup>271</sup> Therefore, more restrictive regulations are likely consistent with the chapter. But, clarification of local powers is needed even if the present distribution of power between state and local units remains unchanged.

Third, the power to specifically regulate surface water uses for rural areas might be extended to the counties. There are presently 1269 towns in Wisconsin but only 72 counties. Adoption of regulations at the county level would provide a less fragmented approach and would partially remedy the problem of reconciling several divergent views of regulatory units bordering on one water body.<sup>272</sup> County control should probably not be subject to town board approval. Counties have already been authorized and directed to adopt special shoreland zoning regulations for rural areas without town board approval.<sup>273</sup> Over a period of time these shoreland zoning and surface water zoning programs should be carefully integrated. Strong arguments can be made that regulation of watercraft uses is a matter of state-wide concern, and therefore, counties cannot be delegated such unsupervised pow-

ers.<sup>274</sup> However, if county regulations were subject to state-level approval or were required to meet minimum state standards like the county shoreland regulations, such a delegation would likely be upheld.<sup>275</sup> State approval or review would, of course, involve some redistribution of power between local to state levels. Alternatives for such reallocation will be discussed shortly.

Fourth, certain modifications and limitations on local legislative powers through statutory changes would help promote uniformity and facilitate dissemination of information while essentially preserving the present distribution of powers:

(1) The subject matter of local regulations not in strict conformity with state-wide regulations could be limited to matters uniquely related to local conditions such as speed limits, shore protection zones, special time restrictions, marking of swimming areas and so forth. The local units would not be permitted to adopt special regulations for matters largely unrelated to local conditions including navigational rules of the road, boat equipment, age restrictions, use of boat toilets, reflectors on rafts, number of persons in a canoe, and so forth. This would reduce the number of local regulations, complexity, and lack of uniformity. This restriction on powers might be provided by an amendment which would specify that:

Draft Provision I:

CITIES, VILLAGES AND TOWNS MAY ENACT ORDINANCES IDENTICAL TO OR MORE RESTRICTIVE THAN WISCONSIN STATUTES, RULES, AND REGULATIONS AND AMENDMENTS THERETO REGULATING (1) THE HORSE-POWER OF INBOARD OR OUTBOARD MOTORS, (2) WATER-CRAFT SPEED, (3) THE TIME PERIODS FOR WATER SPORT USES, (4) AREAS FOR BATHING, SWIMMING, DIVING, FISHING, MOTOR BOATING, WATER SKIING, AND OTHER ACTIVITIES, (5) RACES, REGATTAS, MARINE PARADES, AND OTHER SPECIAL AQUATIC EVENTS, (6) PIERS, DOCKS AND WHARVES, AND (7) THE ANCHORING AND MOORING OF WATERCRAFT.

(2) Local units could be given options to adopt provisions from a range of common specific restrictions which would apply to whole bodies of water such as shore protective zones, special speed restrictions, special time restrictions, horsepower restrictions, and so forth. By requiring local units to select from a range of specific options established by statute or administrative rules, uniformity could be promoted and compilation at the state level would be greatly facilitated. For example, a state bulletin could be published designating all lakes and streams with special surface water regulations. A key could establish symbols for specific regulations. The symbols would be placed along-

side the name of each body of water. A statute could provide that:

Draft Provision 2:

THE DEPARTMENT OF NATURAL RESOURCES SHALL ADOPT, AS AN ADMINISTRATIVE RULE, A RANGE OF SUGGESTED SPECIFIC USE RESTRICTIONS WHICH MAY BE INCORPORATED IN LOCAL ORDINANCES ADOPTED PURSUANT TO 30.77 FOR REGULATION OF WATERCRAFT, SWIMMING, AND DIVING USE. LOCAL ORDINANCE PROVISIONS PERTAINING TO MATTERS SET OUT IN THE SUGGESTED USE RESTRICTIONS SHALL BE VOID UNLESS IN STRICT CONFORMITY TO ONE OR MORE SUGGESTED OPTIONS.

Administrative rules might then provide that:

Draft Provision 3:

ORDINANCE PROVISIONS ADOPTED BY CITIES, VILLAGES, AND TOWNS PERTAINING TO THE FOLLOWING MATTERS SHALL BE IDENTICAL TO THE STATUTES OR TO ONE OR SEVERAL OF THE FOLLOWING SUGGESTED ALTERNATIVES: 1. MAXIMUM HORSEPOWER: (a) MOTORS PROHIBITED, (b) 6 HORSEPOWER, (c) 15 HORSEPOWER, (d) 30 HORSEPOWER, (e) 50 HORSEPOWER, (f) 100 HORSEPOWER; 2. SHORE PROTECTION ZONE FOR FIVE MILES PER HOUR MAXIMUM SPEED AND NO WAKE: (a) 100 FEET, (b) 200

FEET, (c) 300 FEET, (d) 500 FEET; 3. SEPARATION DISTANCES TO BE MAINTAINED BETWEEN MOTOR BOATS OPERATED AT SPEEDS IN EXCESS OF 10 MPH AND SAILBOATS, CANOES, AND STATIONARY OR TROLLING FISHING BOATS: (a) 100 FEET, (2) 200 FEET, (3) 300 FEET;

4. MAXIMUM SPEED LIMITS: (a) 5 MILES PER HOUR AND NO WAKE, (b) 10 MILES PER HOUR, (c) 20 MILES PER HOUR, (d) 30 MILES PER HOUR; (5) WATER SKIING SHALL BE PROHIBITED BETWEEN: (a) SUNSET TO SUNRISE, (b) ONE HOUR BEFORE SUNSET AND ONE HOUR AFTER SUNRISE; (c) TWO HOURS BEFORE SUNSET AND TWO HOURS AFTER SUNRISE, . . . .

(3) Local units could be required to use a marker system or to clearly designate portions of a water body which are affected by zone restrictions. Such an approach for specific zone restrictions seems essential to give reasonable certainty in zone boundaries and to inform the transient boater. These "zoning" restrictions are most difficult to describe in print and compile at a state level. Unless clearly designated by reference to natural or man-made features, they are also difficult to locate on the water surface. A state-wide system for marking these areas would prevent confusion by the resident and visitor. The Wisconsin statutes presently authorize the Department of Natural Resources to establish a system for marking waters.<sup>276</sup> The Depart-

ment might establish a system for designating special zones for water skiing, swimming, speed restrictions, and so forth, by a buoying system more specialized than the one presently in effect. Color and buoy shape could be used to indicate areas of water subject to special zone restrictions. A visitor could readily observe such marked areas. It does not seem essential that the visitor be informed, prior to his travel, of special zone restrictions since they apply to only a portion of a water body, as opposed to restrictions which apply to a whole body of water. A statute might provide that:

Draft Provision 4:

THE DEPARTMENT OF NATURAL RESOURCES SHALL ESTABLISH, PURSUANT TO WIS. STAT. 30.74(2), A UNIFORM MARKING SYSTEM FOR DESIGNATING AREAS FOR SWIMMING, DIVING, FISHING, MOTOR BOATING, SPECIAL SPEED LIMITS, AND OTHER SPECIAL PROTECTION AREAS. LOCAL UNITS DESIGNATING AREAS FOR SPECIAL USE CONTROL SHALL USE SUCH A UNIFORM MARKING SYSTEM.

2. State-Level Review of Local Regulations

The Wisconsin statutes could provide that all local regulations be submitted to the Wisconsin Department of Natural Resources for review prior to adoption. The review might be advisory only.<sup>277</sup> This would provide the Department with an opportunity to study the ordinances and



make recommendations. But if the Department lacked veto or approval powers, the procedure might be meaningless. A better approach would require agency review and approval of local regulations prior to adoption. At least five states have adopted such requirements.<sup>278</sup> The agency could be required to establish standards and criteria for local regulations. Such a procedure would promote uniformity, aid in compilation or regulations, and help prevent the adoption of arbitrary or contradictory local regulations. Nevertheless, the power to adopt specific regulations would remain in local hands.

The statutes might provide, in a manner similar to the Connecticut statutes,<sup>279</sup> that:

Draft Provision 5:

a. ANY CITY, VILLAGE, OR TOWN MAY, BY ORDINANCE, ADOPT LOCAL REGULATIONS RESPECTING WATER SPORT USES AND INCLUDING THE OPERATION OF ALL VESSELS ON ANY BODY OF WATER WITHIN ITS TERRITORIAL LIMITS. UPON ADOPTION, EACH SUCH ORDINANCE SHALL BE SUBMITTED TO THE DEPARTMENT OF NATURAL RESOURCES AND, IF NOT DISAPPROVED BY THE DEPARTMENT WITHIN SIXTY DAYS THEREAFTER, SHALL TAKE EFFECT AS PROVIDED IN SUBSECTIONS b AND c OF THIS SECTION. THE DEPARTMENT MAY DISAPPROVE ANY ORDINANCE OR PART THEREOF WHICH IT FINDS TO BE ARBITRARY, UNREASON-

ABLE, UNNECESSARILY RESTRICTIVE, INIMICAL TO UNIFORMITY OR INCONSISTENT WITH THE POLICY OF THESE STATUTES.

b. ALL LOCAL REGULATIONS ADOPTED PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL TAKE EFFECT ON THE FIRST DAY OF APRIL FOLLOWING THEIR ADOPTION, EXCEPT UPON A FINDING BY THE DEPARTMENT THAT AN EMERGENCY EXISTS WHICH REQUIRES AN EARLIER EFFECTIVE DATE.

c. ON OR BEFORE THE FIRST DAY OF APRIL ANNUALLY THE DEPARTMENT SHALL PUBLISH IN PAMPHLET FORM AND DISTRIBUTE ALL GENERAL AND SPECIAL LAWS AND ALL REGULATIONS AND ORDINANCES PERTAINING TO OR AFFECTING BOATING AND BOATING ACTIVITIES, OR A DIGEST OR RESUME OF SUCH LAWS, REGULATIONS AND ORDINANCES, TOGETHER WITH INFORMATION RESPECTING RULES, FORMS AND PROCEDURES PRESCRIBED FOR THE ADMINISTRATION OF THIS PART. NO REGULATION OR ORDINANCE SHALL TAKE EFFECT UNTIL SO PUBLISHED AND DISTRIBUTED, EXCEPT UPON EMERGENCY CERTIFICATION BY THE DEPARTMENT PURSUANT TO THE PROVISIONS OF SUBSECTION b OF THIS SECTION.

Such state level review should be combined with provisions similar to those suggested in Draft Provisions 1, 2, and 4 which carefully limit local action and facilitate compilation of regulations.

### 3. Special Regulation by Statute or State Administrative Regulations

To a limited extent the Wisconsin statutes presently impose specific use restrictions on bodies of water. Special statutes set special speed limits for the Brule River<sup>280</sup> and prohibit public access to Lake Lions which is used as a recreational area for the physically handicapped.<sup>281</sup> Some other states have adopted very specific statutory use restrictions for bodies of water. See Appendix note D. But a legislative procedure for adoption of specific restrictions is cumbersome. A better approach may be to authorize direct adoption of such restrictions as rules and regulations of the Wisconsin Department of Natural Resources. Such an approach should clearly define administrative powers through a precise definition of policies, standards for administrative action, and adoption procedures.

What is to be the role of local units if specific regulations are to be adopted by a state administrative agency? Several roles are possible: (1) the local units might be allowed to continue to exercise broad powers in adopting local regulations. But this would lead to even greater complexity in the regulations throughout the state, and possibly to conflicts between the state agency and the local units. (2) The local units

might be prohibited from adopting local regulations. This also seems unsatisfactory for several reasons. First, local needs and preferences, in many instances, should be carefully taken into account in any regulatory scheme. Certainly the preferences of riparians and nonriparians on a local body of water should be given weight at least equal to that given preferences of other members of the public. In addition, certain matters are of unique local concern, such as regulation of noise from night motor boating on small lakes surrounded by residences. Second, regulations of surface waters cannot be divorced from regulation of shoreland areas which continues to be primarily a matter of local concern. An effective surface water zoning program must be integrated, over time, with detailed shoreland zoning programs. Third, adoption of local regulations, even if identical to those of the state, may assure a degree of local involvement, cooperation, and most important, enforcement.

The most satisfactory approach may be to limit the power of local units to adopt regulations while encouraging their participation in the regulatory process. Many states allow adoption of local regulations identical to those of the state.<sup>282</sup> Many others allow local units to petition the state agency to adopt special local regulations.<sup>283</sup> The Michigan statutes set out, at considerable length, the state agency powers and procedures for adoption of special regulations.<sup>284</sup> Local units may adopt ordinances identical to these special state-level regu-

lations. A statutory amendment might be adopted in Wisconsin to follow the Michigan approach [Mich. Stat. Ann. Sec. 18.1287(12), (14), (16), and (17) (Supp. 1969) ]:

Sec. 18.1287(12) Regulatory powers; special regulations.] Sec. 12. The department may regulate the operation of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances on the waters of this state. Where special regulations are determined necessary the department may establish vessel speed limits; prohibit the use of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances; restrict the use of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances by day and hour; establish and designate areas restricted solely to boating, skin or scuba diving, fishing, swimming or water skiing; and, prescribe any other regulations relating to the use or operation of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances which will assure compatible use of state waters and best protect the public safety. The department shall prescribe local regulations in such a manner as to make the regulations uniform with other special local regulations established on other waters of this state insofar as is reasonably possible.

. . . .

Sec. 1287(14) Special rules; investigations; procedure.] Sec. 14. The department may initiate investigations and inquiries into the need for special rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances on any of the waters of this state. When controls for such activities are deemed necessary, or changes or amendments to or repeal of an existing regulation required, a regulation shall be prepared and presented to the commission for consideration. Upon approval by the commission, notice of a public hearing shall be made in a newspaper of general circulation in the area wherein the regulations are to be imposed, amended or repealed, at least 15 calendar days prior to the hearing. Interested persons shall be afforded an opportunity to present their views on the proposed rule either orally or in writing.

Sec. 18.1287(15) Submission of proposed rules; decision; adoption. ] Sec. 15. The proposed rule shall then be submitted

to the governing body of the political subdivision in which the controlled waters lie. Within 30 calendar days the governing body shall inform the department that it approves or disapproves of the proposed rule. If the required information is not received within the time specified, the department shall consider the proposed rule meets the approval of the concerned political subdivision. If the governing body disapproves the proposed rule, no further action shall be taken. If the governing body approves the proposed rule, or when the 30 calendar day period has elapsed without a reply having been received from the governing body, the rule shall be adopted as specified in this act.

Sec. 18.1287(16) Special local rules; request of local subdivision; procedure. ] Sec. 16. Local political subdivisions which believe that special local rules of the type authorized by this act are needed on waters subject to their jurisdiction shall inform the department and request assistance. All such requests shall be in the form of an official resolution approved by a majority of the governing body of the concerned political subdivision. Upon receipt of such resolutions the department shall proceed as required by the provisions of sections 14 and 15.

Sec. 18.1287(17) Local ordinances pursuant to state rules; enforcement.] Sec. 17. (1) Local political subdivisions within whose jurisdiction specially controlled waters lie shall enact a local ordinance identical in all respects to the established state rule. Whenever the department changes, amends or repeals an existing rule, the concerned local political subdivision shall change, amend or repeal the previously enacted ordinance to assure uniformity with state regulations.

(2) The sheriff or his authorized deputies shall enforce local ordinances enacted in accordance with the provisions of this act.

(3) Local political subdivisions may enact as an ordinance any or all of sections 2 to 8, 31 to 34, 36, 61, 62, 71 to 79, 91 to 98, 101, 111 to 113, 151, 152 and 161 to 168.

A state level program will only partially reduce the number of specific regulations needed for individual bodies of water or portions of these waters. For example, general and special watercraft regulations of the Ohio Department of Natural Resources fill 115 pages.<sup>285</sup> A

certain amount of complexity and lack of uniformity are essential if regulations are to be tailored to the unique characteristics of each body of water so as to promote the most appropriate use. Advantages of state-level regulation may be found in the minimization of needless lack of uniformity, protection of the broad public interest, and in assuring a widespread distribution of regulations. It is suggested that state-level regulations follow the format recommended for local regulations, that being: (1) state-wide adoption of regulations for matters of general concern--those not depending upon local conditions, (2) a simplified approach for adopting regulations for whole bodies of water from among a specified range of restrictions, and (3) a sophisticated uniform marking system or other clear designation technique for special water-use zones.

#### 4. Review of Local Regulations Combined with a Positive Agency Role to Require Adoption of Satisfactory Regulations

A statute might specify that an agency must approve all local regulations prior to adoption, and in addition, that the agency could require adoption of local regulations under certain circumstances. In the event that local units would fail to adopt satisfactory regulations for designated areas by a specified date, the agency would be empowered to adopt and administer such regulations. Primary responsibility for adoption of specific regulations would remain in the local units, but

with this arrangement, the state would have positive powers.

This regulatory framework is essentially that of the successful Wisconsin shoreland and floodplain zoning programs. Chapter 614 of the Laws of 1965 required counties to adopt zoning regulations for the unincorporated shorelands of navigable waters by January 1, 1968.<sup>286</sup> While most counties were unable to meet the deadline, a state-wide program for the zoning of shorelands is now well underway.<sup>287</sup>

A similar statute might require the adoption of surface water zoning restrictions by a specified date. However, a blanket requirement that local units adopt regulations by a specified date might be inadvisable since many bodies of water presently do not need specific regulations. A better approach might follow somewhat the conjunctive state-local floodplain zoning program of Nebraska.<sup>288</sup> When adequate data is available for a local unit to adopt floodplain regulations, the state agency informs the local unit and allows the unit one year in which to adopt satisfactory regulations.<sup>289</sup> If the local unit fails to adopt such restrictions, the state agency must do so.<sup>290</sup> Similarly, a statute could empower the Wisconsin Department of Natural Resources to propose regulations for critical bodies of water where the amount of existing shoreland development, the recreational surface water use, the special problems pose threats to public health and safety. Local units would be given one year (or some other designated period) to adopt satisfactory regulations. While such a joint state-local approach is



more complex than an exclusive state or an exclusive local role, it could assure that proper attention be given to both state and local interests. The following draft language incorporates most of the recommendations proposed throughout this chapter and represents a redraft of Wis. 30.77 along the lines which appear most satisfactory to the author. Notice that the subject matter of local regulations has been limited, responsibility for regulation of unincorporated areas is placed in the county, enforcement of regulations is made a responsibility for all levels of government, and the state has carefully prescribed powers, in certain circumstances, to require adoption of regulations to protect public health and safety and to promote the public trust in navigable waters:

30.77 LOCAL REGULATION OF BOATING

1. LOCAL REGULATION PROHIBITED; EXCEPTIONS.

NO CITY, VILLAGE, TOWN OR COUNTY MAY:

(a) ENACT ANY LOCAL REGULATION REQUIRING LOCAL NUMBERING, REGISTRATION OR LICENSING OF BOATS OR ANY LOCAL REGULATION CHARGING FEES FOR INSPECTION, EXCEPT ANY CITY, VILLAGE, OR TOWN MAY CHARGE REASONABLE FEES FOR THE USE OF PUBLIC BOAT LAUNCHING FACILITIES OWNED OR OPERATED BY IT AND MAY CHARGE REASONABLE FEES FOR INSPECTION OF BOATS CARRYING PASSENGERS FOR HIRE WHICH OPERATE

FROM A BASE WITHIN ITS JURISDICTION.

(b) EXCEPT AS PROVIDED IN SUBS. 2, ENACT ANY LOCAL REGULATION WHICH IN ANY MANNER EXCLUDES OR RESTRICTS ANY WATER SPORT ACTIVITY OR IN ANY MANNER EXCLUDES ANY WATERCRAFT FROM THE FREE USE OF THE WATERS OF THIS STATE OR WHICH PERTAINS TO THE USE, OPERATION OR EQUIPMENT OF BOATS OR WHICH GOVERNS ANY ACTIVITY REGULATED BY SS. 30.50 TO 30.71.

2. LOCAL REGULATION PERMITTED.

ANY CITY, VILLAGE OR COUNTY MAY, IN THE INTEREST OF PUBLIC HEALTH, SAFETY, AND WELFARE AND TO PROMOTE AND PROTECT THE STATE'S TRUST IN NAVIGABLE WATERS:

(a) ADOPT AN ORDINANCE IN STRICT CONFORMITY TO SS. 30.50 TO 30.71 AND THIS SECTION OR THE RULES OF THE DEPARTMENT ENACTED PURSUANT THERETO.

(b) AS PROVIDED IN SUBS. 3., ADOPT AN ORDINANCE WITH PROVISIONS MORE RESTRICTIVE THAN SS. 30.50 TO 30.71 PERTAINING TO (1) THE HORSEPOWER FOR INBOARD OR OUTBOARD MOTORS, (2) WATERCRAFT SPEED, (3) TIME PERIODS FOR WATER SPORT USES, (4) AREAS FOR BATHING, SWIMMING, DIVING, FISHING, MOTOR BOATING,

WATER SKIING, AND OTHER ACTIVITIES, (5) RACES, REGATTAS, MARINE PARADES, AND OTHER SPECIAL AQUATIC EVENTS, (6) PIERS, DOCKS, AND WHARVES, AND (7) THE ANCHORING AND MOORING OF WATERCRAFT. NO SUCH LOCAL REGULATION SHALL BE VALID UNTIL ALL COUNTIES, CITIES AND VILLAGES HAVING JURISDICTION OF THE WATERS OF THE LAKE HAVE ENACTED AN IDENTICAL LOCAL REGULATION. LOCAL UNITS DESIGNATING SPECIAL AREAS FOR BATHING, SWIMMING, DIVING, FISHING, MOTOR BOATING AND OTHER ACTIVITIES SHALL USE A UNIFORM MARKING SYSTEM AS ESTABLISHED BY THE DEPARTMENT PURSUANT TO SUBS. 4 OF THIS SECTION.

(c) UPON ADOPTION OF ORDINANCES AS PROVIDED IN 2(b), EACH CITY, VILLAGE, OR COUNTY SHALL SUBMIT THE ORDINANCE TO THE DEPARTMENT OF NATURAL RESOURCES AND, IF IT IS NOT DISAPPROVED BY THE DEPARTMENT WITHIN SIXTY DAYS THEREAFTER, THE ORDINANCE SHALL TAKE EFFECT AS PROVIDED IN THIS SECTION. THE DEPARTMENT MAY DISAPPROVE ANY ORDINANCE OR PART THEREOF WHICH IT FINDS TO BE ARBITRARY, UNREASONABLE, UNNECESSARILY RESTRICTIVE, INCONSISTENT WITH DEPARTMENT STANDARDS AND CRITERIA PREPARED PURSUANT TO SUBSECTION 5., INIMICAL TO UNIFORMITY, OR

INCONSISTENT WITH THE POLICY OF THESE STATUTES OR ADMINISTRATIVE RULES AND REGULATIONS.

(d) ALL LOCAL REGULATIONS ADOPTED PURSUANT TO THE PROVISIONS OF SUBS. 2. (b) SHALL TAKE EFFECT ON THE FIRST DAY OF APRIL FOLLOWING THEIR ADOPTION, EXCEPT UPON A FINDING BY THE DEPARTMENT THAT AN EMERGENCY EXISTS WHICH NECESSITATES EARLIER EFFECTUATION. ON OR BEFORE THE FIRST DAY OF APRIL ANNUALLY THE DEPARTMENT SHALL PUBLISH IN PAMPHLET FORM AND DISTRIBUTE ALL GENERAL AND SPECIAL LAWS AND ALL REGULATIONS AND ORDINANCES PERTAINING TO OR AFFECTING BOATING AND BOATING ACTIVITIES, OR A DIGEST OR RESUME OF SUCH LAWS, REGULATIONS AND ORDINANCES, TOGETHER WITH INFORMATION RESPECTING RULES, FORMS AND PROCEDURES PRESCRIBED FOR THE ADMINISTRATION OF THIS PART. NO REGULATION OR ORDINANCE SHALL TAKE EFFECT UNTIL SO PUBLISHED AND DISTRIBUTED, EXCEPT UPON EMERGENCY CERTIFICATION BY THE DEPARTMENT PURSUANT TO THE PROVISIONS OF THIS SUBSECTION. ALL REGULATIONS ADOPTED UNDER THIS SUBSECTION SHALL BE PROMINENTLY POSTED BY THE AUTHORITY WHICH ENACTED THEM AT ALL PUBLIC ACCESS POINTS ON BODIES TO WHICH THE RESTRICTIONS APPLY.

3. DEPARTMENT TO ESTABLISH STANDARDS AND CRITERIA. THE DEPARTMENT OF NATURAL RESOURCES SHALL ADOPT STANDARDS AND CRITERIA FOR LOCAL REGULATIONS TO ENCOURAGE UNIFORMITY AND FACILITATE COMPILATION. SUCH STANDARDS SHALL INCLUDE A RANGE OF SPECIFIC USE RESTRICTIONS FROM WHICH LOCAL UNITS MAY SELECT AND ADOPT RESTRICTIONS APPROPRIATE TO THEIR CIRCUMSTANCES. LOCAL ORDINANCE PROVISIONS PERTAINING TO MATTERS SET OUT IN THE SUGGESTED USE RESTRICTIONS AND NOT IN STRICT CONFORMITY TO SUCH RESTRICTIONS SHALL NOT BE APPROVED BY THE DEPARTMENT AND SHALL BE VOID.

4. DEPARTMENT TO ESTABLISH RULES AND REGULATIONS. THE DEPARTMENT OF NATURAL RESOURCES MAY ADOPT ALL RULES AND REGULATIONS NECESSARY TO CARRY OUT THE PURPOSES OF THIS ACT. THE DEPARTMENT SHALL ESTABLISH, PURSUANT TO S. 30.74(2) A UNIFORM MARKING SYSTEM FOR DESIGNATING SPECIAL WATER USE ZONES FOR SWIMMING, DIVING, FISHING, MOTOR BOATING, WATER SKIING AND OTHER ACTIVITIES. DEPARTMENT PERSONNEL AND ALL LEVELS OF STATE AND LOCAL ENFORCEMENT PERSONNEL SHALL AID IN THE ENFORCEMENT OF DEPARTMENT OR LOCAL REGULATIONS ADOPTED PURSUANT TO THIS SECTION.

5. REGULATORY POWERS; SPECIAL REGULATIONS.

THE DEPARTMENT MAY INITIATE INVESTIGATIONS AND INQUIRIES INTO THE NEED FOR SPECIAL RULES FOR SWIMMING, DIVING, THE USE OF WATERCRAFT, WATER SKIS, WATER SLEDS, AQUAPLANES, OR OTHER WATER SPORT USES FOR PARTICULAR BODIES OF WATER OR PORTIONS THEREOF. WHEN CONTROLS ARE DEEMED NECESSARY TO PROTECT PUBLIC HEALTH AND SAFETY OR TO PROTECT PUBLIC RIGHTS IN NAVIGABLE WATERS THE DEPARTMENT SHALL PROPOSE APPROPRIATE REGULATIONS. THE PROPOSED REGULATIONS SHALL BE SUBMITTED TO THE GOVERNING BODY OF THE POLITICAL SUBDIVISION IN WHICH THE CONTROLLED WATERS LIE. THE DEPARTMENT SHALL ALLOW THE CITY, VILLAGE, OR COUNTY ONE YEAR FROM THE DATE OF SUCH SUBMISSION TO ADOPT THE PROPOSED REGULATIONS UNLESS THE DIVISION DETERMINES THAT, DUE TO EMERGENCY CONDITIONS, A SHORTER PERIOD IS NECESSARY. IF THE SUBDIVISION FAILS TO ADOPT SUCH A PROPOSED RULE OR FAILS TO ENFORCE ONE WHICH HAS BEEN ADOPTED, THE DEPARTMENT SHALL, AFTER A PUBLIC HEARING IN THE POLITICAL SUBDIVISION, ADOPT THE SPECIAL REGULATION. THIRTY DAYS NOTICE OF ALL HEARINGS SHALL BE GIVEN TO THE CITY, VILLAGE, OR COUNTY

CLERK OF ALL AFFECTED AREAS. THE DEPARTMENT SHALL KEEP AN OFFICIAL RECORD OF ALL PROCEEDINGS. ALL RULES MADE UNDER THIS SUBSECTION SHALL BE SUBJECT TO REVIEW UNDER CH. 227 AND BE EFFECTIVE IN THE MANNER PROVIDED BY SUBSECTION 2(d) OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL BE OF THE SAME EFFECT AS IF ADOPTED BY THE CITY, VILLAGE OR COUNTY. THEREAFTER, IT IS THE DUTY OF THE CITY, VILLAGE, OR COUNTY TO ADMINISTER AND ENFORCE THE SAME AS IF THE CITY, VILLAGE, OR COUNTY HAD ADOPTED IT. THE COST OF ORDINANCE PROMULGATION AND ENFORCEMENT BY THE STATE SHALL BE ASSESSED AGAINST THE CITY, VILLAGE OR COUNTY CONCERNED AND COLLECTED IN SUBSTANTIALLY THE SAME MANNER AS OTHER TAXES LEVIED BY THE STATE.

FOOTNOTES

- <sup>1</sup> Holt, Young, & Cartwright, The Water Resources of Wisconsin, WISCONSIN BLUE BOOK 178, 182 (1964).
- <sup>2</sup> STATE OF WISCONSIN, CONSERVATION DEPARTMENT, WATER RESOURCES PROGRAM, 12 (1966).
- <sup>3</sup> Report of the Outdoor Recreation Resources Review Commission by the George Washington University, SHORELINE RECREATION RESOURCES OF THE UNITED STATES 142 (ORRRC Study Report 4) (1962). Inland waters make up 3.1% of the state. WISCONSIN BLUE BOOK 104 (1968).
- <sup>4</sup> See generally WISCONSIN DEPARTMENT OF RESOURCE DEVELOPMENT, THE OUTDOOR RECREATION PLAN 16-78 (1966). It is stated:

In Wisconsin, the demand for recreation space comes not only from four million residents, but also from millions of vacationers from surrounding states. They come to Wisconsin now because it offers a wide variety of recreation opportunities. As interstates and major traffic arteries improve, they will come in still greater numbers.

It has been estimated that on an average Sunday in 1960, over two million persons were pursuing various outdoor recreational activities in Wisconsin. By 1980, the number should be nearly double; by 2000, the number could exceed nine million. It is estimated that non-residents comprised 30 percent of the 1960 recreationists. By 1980 this proportion is expected to rise to 36 percent, and by the year 2000 it could reach 44 percent." Id. at 1.

- <sup>5</sup> See Threinen, An Analysis of Space Demands for Water and Shore, in TRANSACTIONS OF THE TWENTY-NINTH NORTH AMERICAN WILDLIFE AND NATURAL RESOURCES CONFERENCE 353, 367 (1964). The following chart estimates the size classes of lakes as of 1958:

TABLE 2. SIZE CLASSES OF WISCONSIN'S NAMED LAKES<sup>1</sup>

	Size Classes	Number of lakes	Frontage Character
Small	0-19	980	Mostly soft bottoms in littoral
	20-49	1,241	
	50-99	783	
Medium	100-499	893	25 percent
	500-999	126	50 foot bottoms in littoral
	1,000-1,999	56	Mostly firm bottoms in littoral
Large	2,000-9,000	50	All firm bottoms in the littoral
	10,000-99,999	6	
	100,000-999,000	1	
Very Large	200,000+	2	
	Total	4,138	

<sup>1</sup> Source: Wisconsin Conservation Department (1958).



- <sup>6</sup> G. WILSON, LAKE ZONING FOR RECREATION 16 (1964) in which the author recommends that lakes of less than 50 acres, not a part of a connected chain, be limited to boats without motors:

Lakes of this size are small. If circular in shape, as most lakes tend to be, they will be only 0.33 miles wide. Crossing a lake of this size at a rowing or paddling speed of 4 miles per hour would take only 5 minutes. A planing type of boat traveling at 10 miles per hour would only require 2 minutes to cross and a boat traveling at 20 miles per hour would require 1 minute. At 40 miles per hour, the near maximum speed, it would take 0.5 minutes to cross. When the space for intensive shore line activities is taken into account, a distance of 200 feet from shore, only 32.48 acres of open water surface remain. A boat traveling 4 miles per hour would be able to make 3.3 circles of the lake in an hour on a perimeter 200 feet from shore. A boat traveling 20 miles per hour could make 16.59 circles on this 0.829 mile perimeter.

- <sup>7</sup> Threinen, note 5, supra, at 367.
- <sup>8</sup> Id.
- <sup>9</sup> ORRRC Study Report 4, note 3, supra, at 142: "On both shorelines (Lake Superior and Lake Michigan) extensive beaches are conspicuous by their absence."
- <sup>10</sup> See WISCONSIN DEPARTMENT OF LOCAL AFFAIRS AND DEVELOPMENT, BUREAU OF RECREATION, A PROGRAM FOR OUR RECREATIONAL WATERS (1968).
- <sup>11</sup> Threinen, note 5, supra, at 360.
- <sup>12</sup> If recreation is to refresh the mind as well as the body the total onsite experience must be pleasing and restful. In addition the psychological impact of a recreation experience begins before the actual onsite experience and continues after. As Marion Clawson and Jack L. Knetsch noted in Outdoor Recreation Research: Some Concepts and Suggested Areas of Study, 3 NATURAL RESOURCES JOURNAL 250, 252, 253 (1963): "A concept basic to an understanding of outdoor statistics and to outdoor recreation is that a visit is something more than what is experienced on the recreation site." The whole experience involves (1) planning or anticipating,

(2) travel to, (3) onsite experiences, (4) travel back, and (5) recollection. Id. at 253.

- <sup>13</sup> Threinen, note 5, supra, at 364-65, notes that flooded marsh vegetation forms the spawning habitat for the northern pike, a popular Wisconsin game fish. The mallard duck nests in grass cover near a water body and uses rushes, cattails and brush along the shore as escape cover. Id. at 366.

Based in part upon the need to preserve a portion of each lake shore as wildlife habitat, Threinen has recommended that at least 25 percent of the shore of each lake or impoundment be preserved in a wild state. See C. W. Threinen, Lake and Stream Classification Recommendation No. 8 (mimeo) (1965)

- <sup>14</sup> See text accompanying notes 130-152 infra.

- <sup>15</sup> N. E. Isaacson Associates, alone, have completed or have in the planning stage 7 impoundment projects with 12,275 lots. If it is assumed that 4 persons make use of each lot, 49,100 people might be accommodated. While all of those people will not be using the water, the construction of houses and recreation facilities in the shore areas of these impoundments may provide the users with land-based but water-oriented recreation. Of course, inadequately constructed impoundments may cause pollution problems. If impoundment waters become unusable for water sports then the shoreland owners will be forced to seek recreation opportunities in nearby natural waters, likely placing greater demands on these waters than if the impoundments had never been constructed. And, even if the waters remain usable, shoreland owners can be expected to place some demand upon recreation facilities in surrounding areas. Construction of impoundments may play a significant role in providing new water space; but they should receive careful review by state agencies and local governments.

- <sup>16</sup> See Dickey v. Thornburgh, 187 P.2d 132 (Cal. D. Ct. App. 1947).

- <sup>17</sup> The California Supreme Court in Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381, 384 (1925), error dismissed, 273 U.S. 781 (1927), noted that

"[i]n its original and primary sense, zoning is simply the division of a city into districts and the prescription and application of different regulations in each district."

<sup>18</sup> The landmark case, *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), in which the United States Supreme Court sustained the general concept of zoning, involved such cumulative use districting.

<sup>19</sup> See generally 1 R. ANDERSON, AMERICAN LAW OF ZONING, §8.15, at 595-600; and 2 R. ANDERSON, AMERICAN LAW OF ZONING, §8.34, at 5-8. See also, Annot., Validity of Zoning Regulation Residential Use in Industrial Districts, 38 A.L.R.2d 1141 (1954).

<sup>20</sup> See G. WILSON, note 6, supra, at 12. C.W. Threinen of the Wisconsin Division of Conservation recommends that a 200 foot wide activity zone be established for lakes in which the speed of boats would be limited to five miles per hour. See C.W. Threinen, Lake and Stream Classification, Recommendation No. 2 (mimeo) Division of Conservation (Madison, Wis., 1962).

<sup>21</sup> G. WILSON, note 6, supra at 14, designates this as "Protective Space Zoning." But, the author of this report prefers the term "Separation-Distance Zoning" as a more specific classification because "protective spaces" may be either defined in terms of fixed points or as separation distances maintained between moving uses.

<sup>22</sup> G. WILSON, note 6, supra, at 14, states:

The most commonly recommended distances for this protective zone are 200 feet in case of an anchored fisherman, and 500-1000 feet in the case of a sailing craft engaged in a sailing race. Any boat approaching closer than these prescribed distances would be required to slow to five miles per hour (the speed at which planing boats do not cause wakes) until it cleared the prescribed minimum distance. It should be pointed out that considerate boatmen already observe these courtesies as a matter of good boating practice.

- <sup>2 3</sup> See WISCONSIN DEPARTMENT OF NATURAL RESOURCES, WISCONSIN'S MODEL SHORELAND PROTECTION ORDINANCE (December, 1967). Section 12 places wetlands in a "Conservancy District." Filling may be permitted as a special exception use (sec. 12.44) but filling is prohibited which "would result in substantial detriment to navigable waters by reason of erosion, sedimentation, or impairment of fish and aquatic life. . . ." Id. sec. 9.1. However, the courts of other states have invalidated restrictions on filling when reclamation is essential to allow some economic use of swamp lands. See, e.g., Morris County Land Imp. Co. v. Parsippany-Troy Hills Tp., 40 N.J. 539, 193 A.2d 232 (1963).
- <sup>2 4</sup> See WISCONSIN'S MODEL SHORELAND PROTECTION ORDINANCE, note 21, supra, §§4.0, 5.0, for waste and sewage disposal provisions.
- <sup>2 5</sup> However, public or private access areas open to the public may result in high intensity water use although the shoreline is undeveloped for cottage or similar use.
- <sup>2 6</sup> 46 USC §§527 et seq.
- <sup>2 7</sup> WIS. STAT. §§30.50-30.90 (1967). These were not the first Wisconsin boating regulations but they were more comprehensive than earlier laws. See REPORT OF THE INTERIM BOATING COMMITTEE TO THE 1959 LEGISLATURE, 3,4 for a discussion of earlier laws. Regulations pertaining to lighting equipment, life preservers, fire extinguishers and rules for passing and docking were adopted in 1913. Ch. 736, Wis. Laws of 1913. Mufflers have been required since 1929. Ch. 135, 523, Wis. Laws of 1929. Reckless boating has been prohibited since 1933. Ch. 197, Wis. Laws of 1933. Municipal regulation of motor boats was authorized in 1905. Ch. 280, Wis. Laws of 1905. See also ch. 335, Wis. Laws of 1917. Towns were given power to regulate motor boats in 1939. Ch. 251, Wis. Laws of 1939.
- <sup>2 8</sup> WIS. STAT. §30.501 (1967).
- <sup>2 9</sup> WIS. STAT. §§30.51-30.52 (1967).
- <sup>3 0</sup> WIS. STAT. §30.53 (1967).
- <sup>3 1</sup> WIS. STAT. §30.61 (1967).
- <sup>3 2</sup> WIS. STAT. §30.62(2) (1967).

- 3 3 WIS. STAT. § 30.62(3) (1967).
- 3 4 WIS. STAT. § 30.62(4) (1967).
- 3 5 WIS. STAT. § 30.62(5) (1967).
- 3 6 WIS. STAT. § 30.62(6) (1967).
- 3 7 WIS. STAT. § 30.62(8) (1967).
- 3 8 WIS. STAT. § 30.65 (1967).
- 3 9 WIS. STAT. § 30.66 (1967).
- 4 0 WIS. STAT. § 30.67 (1967).
- 4 1 WIS. STAT. § 30.675 (1967).
- 4 2 WIS. STAT. § 30.68(1) (1967).
- 4 3 WIS. STAT. § 30.68(2) (1967).
- 4 4 WIS. STAT. § 30.68(3) (1967).
- 4 5 WIS. STAT. § 30.68(4) (1967).
- 4 6 WIS. STAT. § 30.68(5) (1967)
- 4 7 WIS. STAT. § 30.68(6) (1967).
- 4 8 WIS. STAT. § 30.68(7) (1967).
- 4 9 WIS. STAT. § 30.68(8) (1967).
- 5 0 WIS. STAT. § 30.68(9) (1967).
- 5 1 WIS. STAT. § 30.68(10) (1967).
- 5 2 WIS. STAT. § 30.68(11) (1967).
- 5 3 WIS. STAT. § 30.69 (1967).
- 5 4 WIS. STAT. § 30.70 (1967).
- 5 5 WIS. STAT. § 30.71 (1967).
- 5 6 WIS. STAT. § 30.65(2) (1967).
- 5 7 WIS. STAT. § 30.74(2) (1967).
- 5 8 WIS. STAT. § 30.74(3) (1967).

59 WIS. STAT. §30.75 (1967).

60 WIS. STAT. §30.76 (1967).

61 WIS. STAT. §30.80 (1967).

62 WIS. STAT. §30.77 (1967).

63 WIS. STAT. §30.79 (1967).

64 WIS. STAT. §30.81 (1967). Counties may also adopt such regulations, WIS. STAT. §30.81(2) (1967), for waters not regulated by other local units.

65 WIS. STAT. §30.74(3) (1967).

66 Id. However counties may regulate waters adjacent to marinas. Id.

67 See G. WILSON, note 6, supra, at 27, 28, for a listing of the typical equipment needed for a water patrol boat.

68 See id. at 26, 27.

69 Id. at 17, notes:

For all practical purposes, a wake could be defined as the wave moving out from the watercraft trailing along behind the watercraft in an ever-widening "V." Watercraft when moving at slow enough speeds of two to five miles an hour, even watercraft of the displacement hull type, will not create a wake problem. However, when they exceed a given speed, depending upon the particular type of watercraft and the hull design, a visible wake will be created.

70 See generally notes 113-120 infra and accompanying text.

71 Captain Vernon Anderson of the Lake Minnetonka Water Patrol, Spring Lake, Minnesota, explained that a "warning" approach for first offenses was quite successful in preventing subsequent offenses by residents of the lake. A record of an earlier warning ticket issued by the water patrol could be used to refute the arguments of a boater, stopped for a second offense, that he was unaware of restrictions. Interview Nov. 6, 1969.

72 WIS. STAT. §30.77(4)(1967) provides that local regulations "shall be prominently posted by the local authority which enacted them at all public access points within the local authority's jurisdiction . . . ."

- <sup>73</sup> The federal government has power under the Constitution to regulate and protect commerce between the states. U.S. CONST. art. I, §8, authorizes the federal government to regulate commerce among the several states. U.S. CONST. art. III, §2, clause 1, also extends the federal judicial power to "all cases of admiralty and maritime jurisdiction." See 12 AM. JUR. 2d Boats and Boating, §§4, 5 at 393 et seq. (1964). Waite, Pleasure Boating in a Federal Union, 10 BUFF. L. REV. 427 (1961).

This power extends to regulation of navigable waters. For a discussion of the federal definition of navigability (susceptible of being used in its ordinary condition as a highway for commerce) see The Montello, 87 U.S. 430 (1874). See also Waite, Pleasure Boating in a Federal Union, 10 BUFF. L. REV. 427, 432 et seq. (1961). Federal navigation laws, which are generally enforced by the Coast Guard, have been enacted to control certain aspects of operation and maintenance of boats on navigable waters. See, e.g., 33 U.S.C. §154-232 (1964) (navigation rules for harbors, rivers, and inland waters); Motor Boat Act of 1940, 46 U.S.C. §§526 et seq. (1964) (regulation of motor boats); Federal Boating Act of 1958, 46 U.S.C. §527 (1964) (numbering of motor boats by the Coast Guard or the states). While the Federal government could clearly exercise its paramount Constitutional powers and exclude all state and local regulation of these waters [see, e.g., Willamette Iron Bridge Co. v. Hatch, 125 U.S. 1, 12 (1888)] it has not chosen to do so. The states and properly authorized local units of government may concurrently adopt regulations so long as these regulations are not in conflict with federal regulations. See People v. Bianchi, 3 Misc. 2d 696, 155 N.Y.2d 703, 706 (Nassau County D. Ct. 1956).

- <sup>74</sup> The Tenth Amendment to the United States Constitution states: "The powers not delegated to the United States . . . nor prohibited . . . to the States are reserved to the States, respectively, or to the people." These powers are broad and inclusive. See Berman v. Parker, 348 U.S. 26 (1954).

- <sup>75</sup> See, e.g., 1 R. ANDERSON, THE AMERICAN LAW OF ZONING, §4.03 at 158: "The procedural steps required by state zoning enabling statutes usually are regarded as mandatory. A substantial failure to comply with such requirements renders a zoning ordinance invalid." (footnote, citing many cases, omitted.).

- <sup>76</sup> See, e.g., Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).

- <sup>77</sup> For example, WIS. STAT. §§30.50-90 (1967) establish minimum state-wide rules for the licensing, equipment, and operation of watercraft. See also Appendix note F.
- <sup>78</sup> See, e.g., UTAH CODE ANN. §73-18-4 (1968) (boating laws): "73-18-4. Adoption of rules and regulations by commission. The commission shall adopt such rules and regulations as it shall deem necessary for the proper administration of its powers and duties for the carrying out of the purposes of this act."; VA. CODE ANN. §62.1-172(k) (1968): "(k) The Commission is hereby authorized to make rules and regulations modifying the requirements contained in this chapter to the extent necessary to keep these requirements generally in conformity with the provisions of the federal navigation laws, or, with the rules promulgated by the United States Coast Guard."
- <sup>79</sup> See Appendix note G for examples of such rules.
- <sup>80</sup> See Appendix note E.
- <sup>81</sup> See Appendix note D.
- <sup>82</sup> State v. Cale, 19 N.J. Super. 397, 88 A.2d 529 (1952). The court at 531 noted: "It [the statute] goes no further than to authorize and empower the Board of Commerce and Navigation to establish a rule making compliance therewith a requirement. Since there can be no violation of the statutory provision, standing alone, there can be no valid conviction of a violation thereof."
- <sup>83</sup> N.J. STAT. ANN. §12:7-35, cited in 88 A.2d at 530.
- <sup>84</sup> See generally, 1 F. COOPER, STATE ADMINISTRATIVE LAW 31-94 (1965).
- <sup>85</sup> See generally Annot., Attack on the Validity of Zoning Statute, Ordinance, or Regulations on Ground of Improper Delegation of Authority to Board or Officer, 58 A.L.R.2d 1083 (1958), and many cases cited therein.
- <sup>86</sup> State v. Pairan, 80 Ohio L. Abs. 484, 159 N.E.2d 829 (1958).
- <sup>87</sup> Id., 159 N.E.2d at 832.
- <sup>88</sup> Id., 159 N.E.2d at 831.
- <sup>89</sup> No. 16061 (Cir. Ct. Elkhorn County, Wis., filed June 20, 1968).
- <sup>90</sup> See 1 F. COOPER, STATE ADMINISTRATIVE LAW 63-67 (1965). For cases sustaining broad grants of administrative discretion where the subject matter demanded broad discretion



see, e.g., *Grams v. Cudahy*, 226 F. Supp. 385 (E.D. Wis. 1964); *Texas Co. v. Montgomery*, 73 F. Supp. 527 (E.D. La. 1947), *aff'd.*, 332 U.S. 827 (1947); *Water and Power Resources Board v. Green Springs Co.*, 394 Pa. 1, 145 A.2d 178 (1958).

<sup>9 1</sup> See generally *Pawhusa v. Pawhusa Oil and Gas Co.*, 250 U.S. 394, 397 (1918); *Hunter v. Pittsburg*, 207 U.S. 161, 178 (1907).

<sup>9 2</sup> See, e.g., *Rockhill v. Chesterfield*, 23 N.J. 117, 128 A.2d 472 (1957); *Hobart v. Collier*, 3 Wis. 2d 182, 87 N.W.2d 868 (1957).

<sup>9 3</sup> Cities and villages are granted basic home rule powers by WIS. CONST. art XI, §3. See Note, 1955 WIS. L. REV. 145 for cases interpreting home rule powers.

<sup>9 4</sup> See, e.g., *Miller v. Fabius Township Board*, 366 Mich. 250, 114 N.W.2d 205 (1962), which upheld a town ordinance limiting the hours of water skiing on an inland lake pursuant to a broad statute authorizing townships to "adopt ordinances regulating health and the safety of persons and property therein . . . .", [P.A. No. 55, §1, [1959] Mich. Pub. & Loc. Acts 56-57]. See also *Stillman v. Kinsman Mfg. Co.*, 109 N.H. 126, 244 A.2d 188 (1968), which upheld the power of a town to adopt an ordinance restricting surfing activities pursuant to a broad statute authorizing the town to "make by-laws for the use of the public parks, commons and other public institutions of the town." (Cited as R.S.A. 31:39).

<sup>9 5</sup> *Shreveport v. Case*, 198 La. 702, 4 So. 2d 801 (1941).

<sup>9 6</sup> *Id.*, 4 So. 2d at 804.

<sup>9 7</sup> *Madison v. Tolzmann*, 7 Wis. 2d 570, 97 N.W.2d 513 (1959).

<sup>9 8</sup> See cases cited in Appendix Note B under heading of "jurisdiction."

<sup>9 9</sup> See, e.g., *Poneleit v. Dudas*, 141 Conn. 413, 106 A.2d 479 (1954), in which the court held that the residential zoning classification which applied to adjacent lands also applied to filled lands approximately 225 feet in depth.

<sup>1 0 0</sup> See WIS. STAT. §30.77(3) (1967). Apparently a local unit may regulate all waters surrounded by lands of the local unit although this is not spelled out in the statute. However, if more than one local unit borders a water, adoption of identical regulations by all local units is necessary before any regulation becomes effective.

- 101 WIS. STAT. §30.77(3) (1967).
- 102 WIS. STAT. §144.26(1) (1967) authorizes adoption of municipal regulations for all lands lying "under" navigable waters. It would appear, therefore, that docks, wharves, fills, and boat moorings which touch the lands underlying waters could be regulated.
- 103 WIS. STAT. §144.26(1) (1967). See definition of "municipality" in WIS. STAT. §144.26(2)(c) (1967).
- 104 WIS. STAT. §144.26(2)(c) (1967).
- 105 WIS. STAT. §144.26(1) (1967) authorizes adoption of municipal "shoreland zoning" regulations. Shorelands are defined by WIS. STAT. §144.26(g) (1967) to include lands under, abutting, or lying close to navigable waters and other areas defined by WIS. STAT. §59.971(1) (1967).
- 106 WIS. STAT. §§144.26(2)(g), 59.971(1) (1967).
- 107 WIS. STAT. §144.26(1) (1967).
- 108 Id.
- 109 Id.
- 110 WIS. STAT. §59.971(2)(a) (1967). Other county zoning regulations require town board approval. WIS. STAT. §59.971(5)(a) (1967).
- 111 For a general discussion of the law and zoning programs see Yanggen and Kusler, Natural Resource Protection Through Shoreland Regulation: Wisconsin, 44 LAND ECONOMICS 73 (1968). For a more detailed discussion see J. KUSLER, ZONING FOR SHORELAND RESOURCE PROTECTION: USES AND LIMITATIONS, Ph.D., University of Wisconsin (January, 1970).

In January 1968, after the January 1 statutory deadline for adoption of county shoreland ordinances (WIS. STAT. §59.971(6) (1967), the Department surveyed the progress of the counties and found that few counties had enacted regulations, although many were considering them. In light of the short period between the passage of the statute and the deadline (only eighteen months) the time required for the Department and other cooperating groups to prepare model regulations for the counties (twelve months) and the very short period remaining after that (six months), the Department decided that no action would be taken immediately against a county in the process of preparing regulations.

A list of counties was made indicating the status of compliance. Counties with "full compliance" were considered complying with the act, those with "partial compliance" had satisfactory ongoing programs working toward compliance; and those in "non-compliance" were those with regulations that did not meet minimum standards or with unsatisfactory programs.

By September 1, 1969, the Department had received proposed or adopted shoreland ordinances from 65 of the 72 counties. Many counties had prepared and adopted shoreland zoning ordinances, subdivision controls, and sanitary codes, separately rather than as part of an integrated ordinance. The counties had adopted 42 shoreland zoning ordinances, 26 subdivision controls, and 37 sanitary codes. An additional 35 proposed ordinances have been submitted to the Department for review without being adopted. As contrasted with this, a year before only 19 counties had zoning ordinances, a few had subdivision regulations, and 3 had sanitary codes.

As of October 29, 1969, the Department had approved the combined zoning ordinances, sanitary codes, and subdivision regulations for 29 of the 72 counties. In addition, 10 of the remaining counties had adopted acceptable subdivision controls, and 28 had adopted acceptable sanitary codes. Information supplied by T. Lauf, Planner, Department of Natural Resources, State of Wisconsin.

<sup>112</sup> WISCONSIN DEPARTMENT OF NATURAL RESOURCES, WISCONSIN'S SHORELAND PROTECTION ORDINANCE (December, 1967).

<sup>113</sup> United States v. Brewer, 139 U.S. 278, 288 (1891).

<sup>114</sup> People v. Bogner, 189 N.Y.S.2d 777 (1959).

<sup>115</sup> N.Y. NAV. LAW §45(1), cited in 189 N.Y.S.2d at 781.

<sup>116</sup> Id.

<sup>117</sup> People v. Grogan, 260 N.Y. 138, 183 N.E. 273 (1932), cited in People v. Bogner, 189 N.Y.S.2d 777, 782-83 (1959). However, in Grogan the court interpreted "unnecessarily interferes" or "unnecessarily endangers" as "unreasonably interferes" or "unreasonably endangers," thereby forming a standard of ordinary care. With such an interpretation the statutes were to be constitutional.

- <sup>118</sup> However, some support for control of wake may be found in negligence cases which hold that a larger vessel causing a wake or swell must exercise due care in preventing threats to the safety of smaller boats. See, e.g., Byrd v. Belcher (D.C. Tenn.) 203 F. Supp. 645 (1962) (outboard caused swells which capsized another outboard). Moran v. The Georgia May (D.C. Fla.) 164 F. Supp. 881 (1958) (outboard was capsized by swells from a yacht); Daniels v. Carney, 148 Ala. 81, 42 So. 452 (1906) (small boat capsized by swells from steamboat).
- <sup>119</sup> Slattery v. Caldwell, 83 N.J. Super. 317, 199 A.2d 670 (1964). See also 1 R. ANDERSON, AMERICAN LAW OF ZONING §8.05 at 574 (1968); Annot., 39 A.L.R.2d 766 (1955).
- <sup>120</sup> 1 R. ANDERSON, AMERICAN LAW OF ZONING §8.05 at 574 (1968).
- <sup>121</sup> See Figure 5, pp. 16-18, supra.
- <sup>122</sup> See, e.g., Lawton v. Steele, 152 U.S. 133, 137 (1894).
- <sup>123</sup> See, e.g., Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).
- <sup>124</sup> See, e.g., Yick Wo v. Hopkins, 118 U.S. 356 (1886).
- <sup>125</sup> See, e.g., Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).
- <sup>126</sup> See 1 ANDERSON, THE AMERICAN LAW OF ZONING §§2.11-12, at 57 et seq. (1968).
- <sup>127</sup> Shreveport v. Wilkinson, 182 La. 763, 162 So. 621 (1935).
- <sup>128</sup> See, e.g., Behrman v. Parker, 348 U.S. 26, 33 (1954).
- <sup>129</sup> See, e.g., Barney & Casey Co. v. Milton, 324 Mass. 440, 87 N.E.2d 9 (1949) (aesthetic objectives); Morris County Land Improvement Co. v. Parsippany-Troy Hills Tp., 40 N.J. 539, 193 A.2d 232 (1963) (open space and flood storage purposes); Miller v. Beaver Falls, 368 Pa. 189, 82 A.2d 34 (1951) (reserve park lands for later public purchase). In each of the cases the court was dissatisfied not only with the regulatory objectives but the fact that the regulations prevented reasonable use of the lands.

<sup>130</sup> See generally *Cleaners Guild v. Chicago*, 312 Ill. App. 102, 37 N.E.2d 857 (1941); *Denver & R.G.R.R. v. Denver*, 250 U.S. 241 (1919).

<sup>131</sup> In recent years a variety of laws have been adopted to protect the individual from his own foolish acts. See Note, 1969 WIS. L. REV. 320 for a discussion of statutes which require motor cycle riders to wear crash helmets. Most courts have upheld these laws. Id.

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Threinen, note 5, supra, at 354, lists degree of participation by percentage of the population for various aquatic activities on inland lakes of Wisconsin. Note the prominence of esthetics:

TABLE 1. APPROXIMATE DEGREE AND INTENSITY OF PARTICIPATION AND SPACE CONSUMPTION BY VARIOUS AQUATIC ACTIVITIES ON THE INLAND LAKES OF WISCONSIN.<sup>1</sup>

Activity	Degree of Participation (%) of population	Intensity Rating (%) of year	Space consumption	Open water Space consumption	Unit of Measurement
Esthetics	50	67	High	Low	Space, miles of shoreline, acres of littoral
Swimming	50	30	High	Low	Speed and time, 2 mph, short times
Fishing	25	83	Medium	Medium	Space, 1 acre
Motorboating (including skiing)	20	42	Medium	High	Speed and time 20 mph-fast boats unlimited
Canoeing and Rowing	10	42	Low	Low	Speed and time 5 mph-unlimited
Sailing	1	42	Medium	Medium	Speed and time 5 mph-unlimited
Wildlife Observation <sup>2</sup>	25	67	Medium	Low	Space—acres of marsh, miles of shoreline
Duck Hunting	2	12	High	Medium	Space—acres of marsh miles of shoreline, 150 yards spacing
Trapping	1	12	High	Low	Space—acres of marsh, miles of bank

<sup>1</sup> Source: Wisconsin license sales data, Threinen (1961), U. S. Fish and Wildlife Service (1960), Fine and Werner (1961) and ORRRC reports.

<sup>2</sup> A consolidated heading under which the element of aquatic life study is lumped as well as recreational observation. Much of the heading might also be listed under esthetics.

Threinen has presented at 355, an excellent analysis of aesthetic experience:

Perhaps the most important ingredient in the esthetic demand for water is just space. The city or country dweller can look out across the expanse of water unobstructed by factories or apartment houses. With this dimension, all the events of nature, whether sunrise, lightning storm, cloud formations or blue sky, can be viewed at their best. Secondly, I would list motion in the form of waves and currents. Water in motion whether a stream or a lake has the same fascination as a dancing campfire—it's entrancing. In the summertime, it also has a significant cooling effect. Whatever the vantage-point, these physical values will always be present and enjoyable provided there are not counteracting negative factors such as excessive odors from pollution or algae or excessive noise. Besides the physical attributes of the water, several water-derived resources contribute to the esthetic experience. These may include the water-skimming tern, the different types of fish swimming in the shallows, the wedge of ducks, the croaking of a frog, the brilliant blossom of the water lily and many others. The wild shore with contrasting water, marsh and woodland frontage offers the greatest value. Part of the esthetic experience also lies in observing man's activities such as the sailboat fleet or the graceful diver. In reality, the flat surface of water alone has little esthetic value without the contrast of shore and water and the element of space. Water space is valuable just so long as the shore is in view. The center portions of large lakes such as Lake Michigan are relatively worthless esthetically. The esthetic experiences in themselves have no prospect of damaging water quality, but they can compete with other activities because they have a spatial requirement for both shore and water.

If one were to rate esthetics in relation to other activities centered on water, it would rate high. Why else should scenic roads be built close to water, and lands fronting on waters become so built up with cottages, parks, and resorts? The esthetic experience can be obtained from all types of waters, from the little brook to big river and from the farm pond to large lakes. Participation by 50 percent of the public is estimated.

Recently, the University of Minnesota sent questionnaires to thousands of lakeshore owners on lakes larger than 150 acres. A compilation of specific problems mentioned by respondents is interesting. [UNIVERSITY OF MINNESOTA, MINNESOTA'S LAKESHORE, Part I at 32 (1970)]

Table 14 - Principal Problems Mentioned by Lake Home Owners. Seventy-five percent of respondents (2027 of 2709) mentioned specific problems on their lakes.

Percent of Respondents	Problem	
39%	Pollution	(Weed and algae growth; lakehome sewage dumped in lake; farm fertilizer in lake)
26%	Poor Fishing	(Need stocking; rough fish problem; limit spear fishing)
11%	Fluctuating Water Level	(Control of dams; low water level; high water level)
10%	Government Administration	(Taxes too high for services rendered; inadequate road maintenance; lack of protection)
9%	Nuisance Activities	(Speedboating and waterskiing, rude or messy tourists and fishermen; snowmobiles)
4%	Physical Surroundings	(Crowding on lots; shore erosion; too many public facilities)
1%	Bugs and Animals	

The United States Department of Interior has suggested that recreation waters should be (1) safe from pathogenic organisms and toxic materials, (2) aesthetically pleasing (free from scum, debris, objectionable color, odor, taste, turbidity, and excessive algae and (3) provide for the enjoyment of recreation activities involving fish, waterfowl, and other forms of life. See NATIONAL TECHNICAL ADVISORY COMMITTEE TO THE SECRETARY OF THE INTERIOR, WATER QUALITY CRITERIA (1968) §1, recreation and aesthetics, pp. 1-14; and §§111, fish, other aquatic life, and wildlife, pp. 28-98.

<sup>133</sup> Threinen, note 5, supra, at 362-66.

<sup>134</sup> See, e.g., Pierce Oil Corp. v. New York, 248 U.S. 498 (1919); Hadacheck v. Los Angeles, 239 U.S. 394 (1915); Reinman v. Little Rock, 237 U.S. 141 (1915).

<sup>135</sup> See Obrecht v. National Gypsum Co., 361 Mich. 399, 105 N.W.2d 143 (1960). But see Yates v. Milwaukee, 77 U.S. 497 (1870).

<sup>136</sup> Dube v. City of Chicago, 7 Ill. 2d 313, 131 N.E.2d 9 (1955) Chicago v. Reuter Brothers, 398 Ill. 202, 75 N.E.2d 355 (1947); Singer v. Ben How Realty, 160 Fla. 53, 33 So. 2d

409 (1948). For excellent common law cases see Phelps v. Winch, 309 Ill. 158, 140 N.E. 847 (1923); Malm v. Dubrey, 325 Mass. 63, 88 N.E.2d 900 (1949). But see Steudel v. Troberg, 76 Ohio App. 136, 63 N.E.2d 241 (1945).

137 See State ex rel. Martin v. Juneau, 238 Wis. 564, 300 N.W. 187 (1941). See also Utica v. Water Pollution Control Board, 5 N.Y.2d 164, 156 N.E.2d 301 (1959), and cases cited therein.

138 See, e.g., Geer v. Connecticut, 161 U.S. 519 (1895).

139 See, e.g., Barney & Casey Co. v. Milton, 324 Mass. 440, 87 N.E.2d 9 (1949); Cooper Lumber Co. v. Dammers, 27 N.J. Misc. 289, 125 A. 325 (1924).

140 In re Opinion of the Justices, 103 N.H. 286, 169 A.2d 762 (1961); Miami Beach v. Ocean & Inland Co., 147 Fla. 480, 3 So. 2d 364 (1941).

141 See the opinion of the United States Court of Appeals, 7th Circuit, in Nemekagon Hydro Company v. Federal Power Comm'n., 216 F.2d 509 (1954), in which the court upheld an order of the Federal Power Commission which denied a license for construction of a dam and hydroelectric project on the Nemekagon River in northern Wisconsin. The court noted the importance of the water based recreation attracted by rivers like the Nemekagon to the economy of the state:

For many years past the tourist business has been an important business activity in the State of Wisconsin. In the summer season many thousands of visitors come annually from various states to the northern part of Wisconsin to spend their vacations and for recreation. The state of Wisconsin spends about \$450,000.00 a year in advertising and publicizing this resort and recreational area of the state. In those advertisements emphasis is laid upon Wisconsin's eight thousand lakes and its miles of fishing streams. Many tourists are attracted by the facilities for fishing and boating. Id. at 511.

For other indications of the importance of the recreation industry to the state of Wisconsin see generally WISCONSIN DEPARTMENT OF RESOURCE DEVELOPMENT, THE ECONOMIC IMPACT OF RECREATION (1965); ECONOMIC RESEARCH SERVICE, U.S. DEPARTMENT OF AGRICULTURE, AN ECONOMIC SURVEY OF THE NORTHERN LAKE STATES REGION, 78 (Agricultural Economic Report No. 108) (1967); S. STANIFORTH, R. CHRISTIANSEN and R. WOLTER, CABIN RESORT INCOME IN NORTHERN WISCONSIN (Experiment Station, College of Agriculture, Bull. 576, University of Wisconsin) (1965).



- <sup>142</sup> State ex rel. Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955). As early as 1923, in State ex rel. Carter v. Harper, 182 Wis. 148, 196 N.W. 451, 453, (1923), J. Owen speaking for the court used the following prophetic language:

It seems to be that aesthetic considerations are relative in their nature. With the passing of time, social standards conform to new ideals. As a race, our sensibilities are becoming more refined, and that which formerly did not offend cannot now be endured. The rights of property should not be sacrificed to the pleasure of an ultra-aesthetic taste. But whether they should be permitted to plague the average or dominant human sensibilities well may be pondered.

- <sup>143</sup> 348 U.S. 26, 33 (1954). The court was technically not considering the constitutionality of regulations but rather the acquisition of property for redevelopment through the use of eminent domain powers.

- <sup>144</sup> Racine County v. Plourde, 38 Wis. 2d 403, 157 N.W.2d 591, 595 (1967).

- <sup>145</sup> OUTDOOR RECREATION PLAN, note 4, supra, at 11.

- <sup>146</sup> In Hixon v. Public Service Comm'n, 32 Wis. 2d 608, 146 N.W.2d 577 (1966), the Supreme Court of Wisconsin affirmed a denial of a permit to maintain a breakwater on the grounds that the breakwater was an unnecessary obstruction to navigation, did not allow for free flow of water, and was detrimental to the public interest. The rationale of the court is illuminating:

There are over 9,000 navigable lakes in Wisconsin covering an area of over 54,000 square miles. A little fill here and there may seem to be nothing to become excited about. But one fill, though comparatively inconsequential, may lead to another, and another, and before long a great body of water may be eaten away until it may no longer exist. Our navigable waters are a precious natural heritage; once gone, they disappear forever. Id., 146 N.W.2d at 589.

- <sup>147</sup> E.g., Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911); Ohio Oil Co. v. Indiana, 177 U.S. 190 (1899).

- <sup>148</sup> E.g., State v. Dexter, 32 Wash. 2d 551, 202 P.2d 906 (1909) aff'd, 338 U.S. 863 (1949).

- <sup>149</sup> E.g., Perley v. North Carolina, 249 U.S. 510 (1919).

- <sup>150</sup> E.g., State ex rel. Normile v. Cooney, 100 Mont. 391, 47 P.2d 637 (Mont. 1935); Eccles v. Ditto, 23 N.M. 235, 167 P. 726 (1917).
- <sup>151</sup> The Iowa Supreme Court in Iowa Natural Resources Council v. Van Zee, ---Iowa---, 158 N.W.2d 111, 118 (1968), noted that "Proper control of rivers and streams, of course, involves the exercise of control of the use of property adjoining these streams or in the recognized floodway or flood plains. Police power properly regulates use of that property because uncontrolled use could be harmful to the public interest."
- <sup>152</sup> The New Jersey Supreme Court in Cobble Close Farm v. Board of Adjustment, 10 N.J. 442, 92 A.2d 4,9 (1952), noted that zoning regulations are to be formulated with a view of "encouraging the most appropriate use of land throughout such municipality."
- <sup>153</sup> See, e.g., Nectow v. Cambridge, 277 U.S. 183, 188 (1928) (zoning ordinance invalidated as not serving a public purpose).
- <sup>154</sup> See, e.g., Smith v. Government of Virgin Islands, 329 F.2d 135 (1964), cert. denied, 377 U.S. 979 (1964), and many cases cited therein; State v. Dried Milk Products Co-op., 16 Wis. 2d 357, 114 N.W.2d 412 (1962).
- <sup>155</sup> 287 U.S. 251, 272 (1932).
- <sup>156</sup> See, e.g., Nectow v. Cambridge, 277 U.S. 183 (1928); Geisenfeld v. Shorewood, 232 Wis. 410, 287 N.W. 683 (1939); Rowland v. Racine, 223 Wis. 488, 271 N.W. 36 (1937); Tingley v. Gurda, 209 Wis. 63, 243 N.W. 317 (1932).
- <sup>157</sup> Civil No. 62-001-B (Racine County Ct. filed April 17, 1964). See discussion of the case in comment, Chaos or Uniformity in Boating Regulations? The State as Trustee of Navigable Waters, 1965 WIS. L. REV. 311, 317-319.
- <sup>158</sup> This language is cited in Chaos or Uniformity in Boating Regulations?, note 157, supra, at 318-19.
- <sup>159</sup> See cases cited in note 154, supra.
- <sup>160</sup> Springfield v. Mecum, 320 S.W.2d 742 (Mo. Ct. App. 1959); Long v. Division of Watercraft, Dept. of Nat. Res., 118 Ohio App. 369, 195 N.E.2d 128 (1963). See also, Shreveport v. Wilkinson, 182 La. 783, 162 So. 621 (1935), upholding a prohibition of night use of outboard motors to prevent pollution of a lake used for water supply purposes.

- 161 320 S.W.2d 742 (Mo. Ct. App. 1959).
- 162 Id. at 745.
- 163 In *Euclid v. Ambler Realty Co.* 272 U.S. 365, 388-89 (1926), the United States Supreme Court noted that classification may validly be somewhat over-inclusive: "The inclusion of a reasonable margin to insure effective enforcement, will not put upon a law, otherwise valid, the stamp of invalidity." The court also noted that "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." Id. at 388.
- 164 See *Brennan v. Milwaukee* 265 Wis. 52, 60 N.W.2d 704 (1953), in which the court held that a housing code which attempted to relate the number of required bath tubs and showers in an apartment to the number of rooms in the apartment was discriminatory and unconstitutional. The number of occupants and not the number of rooms was considered the more precise and reasonable basis for such regulation. See also cases cited in notes 165, 168, and 169, infra.
- 165 *McGraw-Edison Co. v. Sewerage Comm'n. of Milwaukee*, 11 Wis. 2d 46, 104 N.W.2d 161 (1960).
- 166 Id., 104 N.W.2d at 163.
- 167 *Hobart v. Collier*, 3 Wis. 2d 182, 87 N.W.2d 868 (1957).
- 168 Id., 87 N.W.2d at 872.
- 169 *Miami v. duPont*, 181 So. 2d 599 (Fla. D. Ct. App. 1966).
- 170 Id., 181 So. 2d at 601.
- 171 *Shreveport v. Wilkinson*, 182 La. 783, 162 So. 621 (1935); *Springfield v. Mecum*, 320 S.W.2d 742 (Mo. Ct. App. 1959); *Long v. Division of Watercraft, Dept. of Nat. Res.*, 118 Ohio App. 369, 195 N.E.2d 128 (1963).
- 172 *Dickey v. Thornburgh*, 187 P.2d 132 (Cal. D. Ct. App., 1947) (12 mile per hour speed limit between 5 p.m. and 10 a.m.).
- 173 *Miller v. Fabius Township Board*, 366 Mich. 250, 114 N.W.2d 205 (1962).
- 174 *State v. Zetterberg*, 109 N.H. 126, 244 A.2d 188 (1968).
- 175 *Lovern v. Brown*, 390 S.W.2d 448 (Ky. Ct. App. 1965).

- <sup>176</sup> Harris v. State, 207 Okla. 589, 251 P.2d 799 (1952).
- <sup>177</sup> The Port of Portland v. Reeder, 203 Oreg. 369, 280 P.2d 324 (1955).
- <sup>178</sup> Hixon v. Public Service Comm'n, 32 Wis. 2d 608, 146 N.W.2d 577 (1966).
- <sup>179</sup> See, e.g., Hayes v. Missouri, 120 U.S. 68 (1887); Anderson v. Forest Park, 239 F. Supp. 576 (10th Cir. 1965); Ronda Realty Corp. v. Lawton, 414 Ill. 313, 111 N.E.2d 310 (1953).
- <sup>180</sup> See generally Yick Wo v. Hopkins, 118 U.S. 356 (1886).
- <sup>181</sup> See Katt v. Sturtevant, 269 Wis. 638, 70 N.W.2d 188 (1955) (ordinance which prohibited future uses of property but which permitted the continuance of the same types of existing uses was held discriminatory). See also Juneau v. Badger Co-operative Oil Co., 227 Wis. 620, 279 N.W. 666 (1938); State ex rel. Ford Hopkins Co. v. Mayor, 226 Wis. 215, 276 N.W. 311 (1937).
- <sup>182</sup> See the following cases in which the Wisconsin court invalidated more traditional zoning classifications not soundly based in fact as unrelated to the regulatory objectives and discriminatory: Geisenfeld v. Shorewood, 232 Wis. 410, 287 N.W. 683 (1939); Rowland v. Racine, 223 Wis. 488, 271 N.W. 36 (1937); Tingley v. Gurda, 209 Wis. 63, 243 N.W. 317 (1932).
- <sup>183</sup> NORTHWEST ORDINANCE OF 1787, art. IV, 1 Stat. 51-53 (1789).
- <sup>184</sup> See Economy Light and Power Co. v. United States, 256 U.S. 113, 120 (1921).
- <sup>185</sup> WIS. CONST. art. IX, §1.
- <sup>186</sup> See Waite, The Dilemma of Water Recreation and a Suggested Solution, 1958 WIS. L. REV. 542, 567-77.
- <sup>187</sup> See, e.g., Muench v. Public Service Comm'n, 261 Wis. 492, 53 N.W.2d 514, 55 N.W.2d 40 (1952) and many cases cited therein.
- <sup>187a</sup> E.g., Olson v. Merrill, 42 Wis. 203 (1877).
- <sup>188</sup> E.g., Willow River Club v. Wade, 100 Wis. 86, 76 N.W. 273, 277 (1898).
- <sup>189</sup> E.g., Diana Shooting Club v. Husting, 156 Wis. 261, 145 N.W. 816, 820 (1914).
- <sup>190</sup> See, e.g., Nekoosa-Edwards Paper Co. v. Railroad Comm'n, 201 Wis. 40, 228 N.W. 144, 147, 229 N.W. 631 (1930).

- <sup>191</sup> Muench v. Public Service Comm'n , 261 Wis. 492, 53 N.W.2d 514, 522, 55 N.W.2d 40 (1952). The controversy centered around a portion of WIS. STAT. §31.06 (3) which at that time allowed a county board or boards of the county or counties to approve by a two-third vote, in spite of Public Service Commission disapproval, the constructions of dams. The Court held that such a procedure unconstitutionally preempted the power of the Public Service Commission to deny construction permits. The court held that the duty of the state to protect the public right to the enjoyment of fishing, hunting or natural scenic beauty could not constitutionally be delegated in this manner to the counties.
- <sup>192</sup> Practically any lake or pond in Wisconsin seems to be "navigable." In Baker v. Voss, 217 Wis. 415, 259 N.W. 413 (1935), two Langlade County lakes of 5.24 and 2.35 acres which had been used for rowboats and fishing by the public were held to be navigable lakes. In Ne-pee-nauk Club v. Wilson, 96 Wis. 290, 71 N.W. 661 (1897), a marshy area 35 to 65 rods in width and about three miles long, in places covered by rushes and wild rice, and navigable in ordinary stages of water only by craft such as canoes or hunting skiffs propelled by poles or paddles, was held to be a navigable. In Pewaukee v. Savoy, 103 Wis. 271, 79 N.W. 436 (1899), where a navigable lake was dammed, the court held that the public rights in and on the artificially raised waters were the same as on natural waters. However, a wholly artificial pond created by drilling wells or damming a non-navigable stream is private property. Mayer v. Grueber, 29 Wis. 2d 168, 138 N.W.2d 197 (1965); Delta Fish and Fur Farms Inc. v. Pierce 203 Wis. 519, 234 N.W. 881 (1931).
- <sup>193</sup> A stream is navigable in law if in fact it will float a saw log to market, Olson v. Merrill, 42 Wis. 203 (1877), although it may be capable of doing so only during a spring freshlet normally lasting six weeks. Falls Mfg. Co. v. Oconto River Imp. Co., 87 Wis. 134, 58 N.W. 257 (1894). In terms more relevant to present uses, it must be "capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreation purposes." Muench v. Public Service Comm'n , 261 Wis. 492, 53 N.W.2d 514, 519 (1952). The navigability of a given body, in the absence of legislative declaration, is a question of fact. Angelo v. Railroad Comm'n , 194 Wis. 543, 217 N.W. 570 (1928). Once a stream has been shown to be naturally navigable "it is presumed to be navigable and 'forever free'." Nekoosa Edwards Paper Co. v. Railroad Comm'n , 201 Wis. 40, 228 N.W. 144 (1935).
- <sup>194</sup> See note 73 supra for a discussion of general federal powers. Restrictions which prevent motorized craft on an interstate wild river used for minor commercial purposes might be held invalid as interfering with

interstate commerce. Cf. Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959); Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945). Or regulations may be invalid if they conflict with a federal navigation statute or establish diverse rules in an area requiring uniformity. See Kelly v. Washington, 302 U.S. 1, 9 (1937). However, the Supreme Court has sustained a variety of state or local regulations restricting some use of navigable waters. Huse v. Glover, 119 U.S. 543 (1886) (sanction on obstruction of navigable waters); Willamette Iron Bridge Co. v. Hatch, 125 U.S. 1 (1888), (approve erection of bridges over navigable streams); Clyde Mallory Lines v. Alabama ex rel. State Docks Comm'n., 296 U.S. 261 (1935) (require payment of fees as an incident to use of harbors; Cummings v. Chicago, 188 U.S. 410 (1903) (control location of docks); and Ouachita Packet Co. v. Aiken, 121 U.S. 444 (1887) impose wharfage charges.

- 195 The Wisconsin Constitution, art. IX, §1, is similar to art. IV of the Northwest Ordinance, and provides:

And the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.

- 196 Severe restriction upon the exercise of public rights might be held unconstitutional as depriving citizens of vested rights without due process of law. No decision has so held but the language of the court in several decisions suggests that public rights in navigable waters may enjoy a status somewhat similar to private property rights. In Muench v. Public Service Comm'n, 261 Wis. 492, 53 N.W.2d 514, 522 (1952), the court noted that "[t]he right of the citizens of the state to enjoy our navigable streams for recreational purposes, including the enjoyment of scenic beauty, is a legal right that is entitled to all the protection which is given financial rights." In Rossmiller v. State, 114 Wis. 169, 89 N.W. 839, 844 (1902), the court also noted that "[s]ince the whole beneficial use of navigable lakes is unchangeably vested in the people, every one within the state having the right to enjoy the same as long as he does not invade the like right of another, . . . any law invading that individual possession is, in effect, an invasion of the right to liberty and property without due process of law, contrary to said fourteenth amendment." (emphasis added). See also Witke v. State Conservation Commission, 244 Iowa 261, 56 N.W.2d 582 (1953)

- 197 See Willamette Iron Bridge Co. v. Hatch, 125 U.S. 1, 10 (1888), in which the Supreme Court interpreted a similar clause in an act of Congress admitting Oregon to the Union.

- <sup>198</sup> Willamette Iron Bridge Company v. Hatch, 125 U.S. 1 (1888); Huse v. Glover, 119 U.S. 543 (1886).
- <sup>199</sup> In Re Southern Wisconsin Power Co., 140 Wis. 245, 122 N.W. 801 (1909).
- <sup>200</sup> Willamette Iron Bridge Company v. Hatch, 125 U.S. 1, 12 (1888). See also In Re Southern Wisconsin Power Co., 140 Wis. 245, 122 N.W. 801, 807 (1909).
- <sup>201</sup> U.S. Const. amend. V.
- <sup>202</sup> U.S. Const. amend. XIV, §1.
- <sup>203</sup> See, e.g., WIS. CONST. art. I, §13.
- <sup>204</sup> See, e.g., Colson v. Salzman, 272 Wis. 397, 75 N.W.2d 421, 423 (1956).
- <sup>205</sup> H. TIFFANY, 3 THE LAW OF REAL PROPERTY §722 at 117 (3rd ed. 1939).
- <sup>206</sup> See Yates v. Milwaukee, 77 U.S. 497 (1870); Bino v. Hurley, 273 Wis. 10, 76 N.W.2d 571 (1956); see especially Doemel v. Jantz, 180 Wis. 225, 193 N.W. 393, 395 (1923).
- <sup>207</sup> See, e.g., Hazeltine v. Case, 46 Wis. 391, 1 N.W. 66 (1879).
- <sup>208</sup> Id.
- <sup>209</sup> See, e.g., Bino v. Hurley, 273 Wis. 10, 76 N.W.2d 571 (1956).
- <sup>210</sup> E.g., Delaplame v. Chicago & N.W. Ry., 42 Wis. 214 (1877).
- <sup>211</sup> E.g., Colson v. Salzman, 272 Wis. 10, 75 N.W.2d 421 (1956).
- <sup>212</sup> E.g., Water Power Cases, 148 Wis. 124, 134 N.W. 330, 339 (1912).
- <sup>213</sup> See 39 WIS. OP. ATTY. GEN. 564, 566 (1950). In Timm v. Bear, 29 Wis. 254 (1871), the court stated some of the factors which are germane to the "reasonableness" of a riparian use:

What constitutes reasonable use depends upon the circumstance of each particular case, and no positive rule of law can be laid down to define and regulate such use with entire precision . . . . In determining this question, regard must be had to the subject matter of the use, the occasion and manner of its application, its object, extent and the necessity for it, to the previous usage, and to the nature and condition of the improvements upon the stream; and so also the size of the stream, the fall of water, its volume, velocity and prospective rise and fall, are important elements to be considered. Id. at 265.

- <sup>214</sup> See, e.g., Willow River Club v. Wade, 100 Wis. 86, 76 N.W. 273 (1898). For discussions of riparian and public rights in Wisconsin see Beuscher, Wisconsin Law of Water Use, 1958 WIS. B. BUL. 30; Coates, Present and Proposed Legal Control of Water Resources in Wisconsin, 1953 WIS. L. REV. 256; Kanneberg, Wisconsin Law of Waters, 1946 WIS. L. REV. 345; Note, Riparian Water Law - Lakeshore Developments, 1966 WIS. L. REV. 172.
- <sup>215</sup> See, e.g., Yates v. Milwaukee, 77 U.S. 497 (1870); Bino v. Hurley, 273 Wis. 10, 76 N.W.2d 571 (1956); Water Power Cases, 148 Wis. 124, 134 N.W. 330 (1912).
- <sup>216</sup> See, e.g., Bino v. Hurley, 273 Wis. 10, 76 N.W.2d 571 (1956); Hermansen v. Lake Geneva 75 N.W.2d 439, 272 Wis. 293 (1956).
- <sup>217</sup> 273 Wis. 10, 76 N.W.2d 571 (1956). Accord: Pounds v. Darling, 75 Fla. 125, 77 So. 666 (1918) (Court struck down a city ordinance which prohibited bathing by riparians in a lake used for municipal water supply); People v. Hulbert, 131 Mich. 156, 91 N.W. 211 (1902) (Court held unconstitutional an ordinance prohibiting bathing in a lake used for municipal water supply); George v. Chester, 202 N.Y. 398, 95 N.E. 767 (1911) (Court held that municipal ordinance could not prevent reasonable use of a lake for fishing, swimming and boating). Contra: State v. Heller, 123 Conn. 492, 196 A. 337 (1937) (Court sustained a Connecticut Statute prohibiting anyone from bathing in any stream, tributary to a city water reservoir); Commonwealth v. Hyde, 230 Mass. 6, 118 N.E. 643 (1918) (Court sustained a regulation of the State Board of Health prohibiting fishing in a lake used as a source of water supply); State v. Quattropani, 99 Vt. 360, 133 A. 352 (1926) (Court upheld regulation of State Board of Health which prohibited boating on a pond used for water supply).
- <sup>218</sup> Both federal and state courts have generally held that an impairment of riparian rights is not compensable if the impairment arises in connection with an improvement of navigation. See, e.g., United States v. Twin City Power Co., 350 U.S. 222 (1956); Colberg v. State, 62 Cal. 401, 432 P.2d 3 (1967), and many cases cited therein. See also, Green Bay & M. Canal Co. v. Kaukauna Water-Power Co., 90 Wis. 370, 61 N.W. 1121, 1124 (1895), in which the court noted that "[t]he right of the state to improve the stream as a highway, and for the purpose of aiding the navigation, is superior to the rights of riparian owners. It may take and divert, absolutely and without compensation, so much of the water of the stream as may be required to improve its navigation. But that is the limit of its right."



219 The excellent discussion by the Minnesota Supreme Court in Nelson v. DeLong, 213 Minn. 425, 7 N.W.2d 342 (1942), concerning the role of regulations in resolving conflicts between competing riparian uses, bears repeating:

The power to regulate the use of navigable waters involves an exercise of the police power, under which rules may be prescribed to insure to all the equal enjoyment of public rights and to prevent and to suppress the clashing of private interests and resulting public disorder. In Osborne Knife Falls Boom Corp., 32 Minn. 412, 21 N.W. 704, Am. Rep. 590, we sustained a statute conferring on a boom corporation the exclusive right, as against the rights of riparian owners and all others who might otherwise use a navigable stream, to take, drive, float, separate, and deliver all logs and to charge the owners thereof toll for such services. We there pointed out that, absent regulation, there would be a clashing of interests with respect to rights of floatage and use of the waters and a resulting confusion that might well prevent reasonable enjoyment of such rights by all. We said (32 Minn. 419, 21 N.W. 707): 'Who is to fix upon the just and proper compromise of their conflicting interests? Obviously, the legislature, -- that department of government which, in the exercise of a law-making and a police power, prescribes the rules by which the use of public

highways in general is regulated, \* \* \* and save as controlled by paramount law -- that is to say, in this instance, by our state constitution or enabling act -- the discretion of the legislature in the premises is practically unlimited. It may enact laws prescribing the manner in which the common right of floatage shall be enjoyed. It may determine what means shall be adopted, and by what agency, to secure results which, in its judgment, are the best and fairest practical compromises of conflicting interests, -- the best attainable good of all concerned. \* \* \* In the exercise of its legislative discretion, it may authorize suitable means and instrumentalities to secure this end to be provided and employed by a private person or by a corporation, and it may prescribe what these means and instrumentalities may be -- as booms, dams, piers, sluiceways -- and what use may be made of them, and, in general, in what manner the business shall be conducted. Id., 7 N.W.2d at 348.

Since one of the objects of regulation is to secure the orderly use of public waters, it is proper to ordain where, when, and how the several uses of which the waters are susceptible shall be enjoyed. For example, . . . [a] part of a navigable body of water may be devoted to one public use to the exclusion of others. Id., 7 N.W.2d at 350.

2 2 0 Id.

2 2 1 See, e.g., Colson v. Salzman, 272 Wis. 10, 76 N.W.2d 571 (1956).

2 2 2 In Cohn v. Wausau Boom Co., 47 Wis. 314, 322 (1879), the court said:

It is settled in this state that a riparian owner on navigable water may construct in front of his land, in shoal water, proper wharves, piers, and booms in aid of navigation, at his peril of obstructing it, for enough to reach actually navigable water. This is properly a riparian right resting on title to the bank, and not upon title to the soil under the water. It is a private right, however, resting, in the absence of prohibition, upon a passive or implied license by the public; is subordinate to the public use, and may be regulated or prohibited by law.

See also Port of Portland v. Reeder, 203 Oreg. 369, 280 P.2d 324 (1955) and many cases cited therein. S. PLAGER & F. MALONEY, CONTROLLING WATERFRONT DEVELOPMENT, Public Administration Clearing Service, Univ. of Florida, Studies in Public Administration No. 30 (1968).

2 2 3 Nelson v. DeLong, 213 Minn. 425, 7 N.W.2d 342 (1942).

2 2 4 See cases cited in Appendix Note B, "Marinas."

2 2 5 Dennis v. Tonka Bay, 64 F. Supp. 214, (D. Minn. 1946), aff'd, 156 F.2d 672 (1946); Poneleit v. Dudas, 141 Conn. 413, 106 A.2d 479 (1954).

2 2 6 Poneleit v. Dudas, 141 Conn. 413, 106 A.2d 479, 481 (1954).

2 2 7 See 1 R. ANDERSON, THE AMERICAN LAW OF ZONING §2.20 at 85 et. seq. (1968); and many cases therein. See also, id. §2.23 at 101 et. seq.

2 2 8 See, e.g., Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).

- 229 Among such factors may be the highest and best use to which the land can be put, the amount of financial loss, the suitability of land for permitted uses, adjacent uses, the path of development and the demand for land. See 1 R. ANDERSON, THE AMERICAN LAW OF ZONING §2.20 et. seq. at 85 et. seq. (1968).
- 230 See, e.g., Little Rock v. Hocott, 220 Ark. 421, 247 S.W.2d 1012 (1952); Corthouts v. Newington, 140 Conn. 284, 99 A.2d 112 (1953); Hammond v. Carlyon, 96 So. 2d 219 (Fla. 1957); Forde v. Miami Beach, 146 Fla. 676, 1 So. 2d 642 (1941); Tews v. Woolhiser, 352 Ill. 212, 185 N.E. 827 (1933); Hamilton Co. v. Louisville & Jefferson County P. & Z. Comm'n, 287 S.W.2d 434 (Ky. Ct. App. 1956); Baltimore v. Cohn, 204 Md. 523, 105 A.2d 482 (1954); Robyns v. Dearborn, 341 Mich. 495, 67 N.W.2d 718 (1954); Grand Trunk Western R. v. Detroit, 326 Mich. 387, 40 N.W.2d 195 (1949); Oschin v. Redford, 315 Mich. 359, 24 N.W.2d 152 (1946); Pleasant Ridge v. Cooper, 267 Mich. 603, 255 N.W. 371 (1934); Morris County Land Imp. Co. v. Parsippany-Troy Hills Tp., 40 N.J. 539, 193 A.2d 232 (1963); Summers v. Glen Cove, 270 N.Y.S.2d 611, 217 N.E.2d 663 (1966); Hempstead v. Lynne, 32 Misc. 2d 312, 222 N.Y.S.2d 526, (Nassau County Sup. Ct. 1961); Brockman v. Morr, 112 Ohio App. 445, 168 N.E.2d 892 (1960).
- 231 See, e.g., Morris County Land Imp. Co. v. Parsippany-Troy Hills Tp., 40 N.J. 539, 193 A.2d 232 (1963); Hempstead v. Lynne, 32 Misc. 2d 312, 222 N.Y.S.2d 526 (Nassau County Sup. Ct. 1961).
- 232 See, e.g., Dooley v. Town Plan and Z. Comm'n, 151 Conn. 304, 197 A.2d 770 (1964); Morris County Land Imp. Co. v. Parsippany-Troy Hills Tp., 40 N.J. 539, 193 A.2d 232 (1963).
- 233 See, e.g., Sanderson v. Willmar, ---Minn.---, 162 N.W.2d 494 (1968) (parking lot purposes); Morris County Land Imp. Co. v. Parsippany-Troy Hills Tp., 40 N.J. 539, 193 A.2d 232 (1963) (flood storage and open space purposes); Plainfield v. Middlesex, 69 N.J. Super. 136, 173 A.2d 785 (1961) (school, park or playground use); Vernon Park Realty v. Mount Vernon, 307 N.Y. 493, 121 N.E.2d 517 (1954) (parking lot purposes); Greenhills Home Owners Corp. v. Greenhills, 202 N.E.2d 192 (Ohio Ct. App. 1964), rev'd, 5 Ohio St. 2d 207, 215 N.E.2d 403 (1966), cert. denied, 385 U.S. 836 (1967) (greenbelt and park purposes). But see McCarthy v. Manhattan Beach, 257 P.2d 679 (Cal. D. Ct. App. 1953), rev'd, 41 Cal. 2d 879, 264 P.2d 932 (1953), cert. denied, 348 U.S. 817 (1954) (zone for beach recreation purposes upheld).

- 2 3 4 These costs are generally in line with prices suggested by several real estate brokers to the author. For articles dealing with lakeshore land values, see generally C. HUMPHRYS, C. SCHAFFER, F. SCHAFFER, KENT COUNTY, MICHIGAN LAKE PROPERTY VALUE STUDY, Department of Resource Development, Agricultural Experiment Station, Michigan State University (1967); David, The Exploding Demand for Recreational Property, 45 L. ECON. 206 (1969); Comment, Components of Rural Land Values in Northern Wisconsin, 40 L. ECON. 87 (1964).
- 2 3 5 See, e.g., Little Rock v. Hocott, 220 Ark. 421, 247 S.W.2d 1012 (1952) (Steep slopes); La Salle National Bank v. Highland Park, 27 Ill. 2d 350, 189 N.E.2d 302 (1963) (flooding); Kracke v. Weinberg, 197 Md. 339, 79 A.2d 387 (1951) (flooding); Hempstead v. Lynne, 32 Misc. 2d 312, 222 N.Y.S.2d 526 (Nassau County Sup. Ct. 1961) (Swampiness); In Re Garbev, Inc., 385 Pa. 328, 122 A.2d 682 (1956) (flooding).
- 2 3 5a Consolidated Rock Products Co. v. Los Angeles, 57 Cal. 2d 515, 370 P.2d 34, appeal dismissed, 371 U.S. 36 (1962).
- 2 3 5b See Hodge v. Lockett, 357 S.W.2d 300 (Ky. Ct. App. 1962); Filister v. Minneapolis, 270 Minn. 2d 53, 133 N.W.2d 500 (1964), cert. denied, 382 U.S. 14 (1965).
- 2 3 6 See cases cited in note 91, supra.
- 2 3 7 Muench v. Public Service Comm'n , 261 Wis. 492, 53 N.W.2d 514 (1952), aff'd on rehearing, 261 Wis. 515, 55 N.W.2d 40 (1952).
- 2 3 8 Id., 55 N.W.2d at 46.
- 2 3 9 Id., 53 N.W.2d at 524.
- 2 4 0 WIS. CONST. art. XI, §3.
- 2 4 1 273 Wis. 333, 77 N.W.2d 699 (1956). However, these cases did not resolve an attempt to expressly delegate power to villages to regulate ground water extraction.
- 2 4 2 273 Wis. 341, 77 N.W.2d 703 (1956).
- 2 4 3 7 Wis. 2d 570, 97 N.W.2d 513 (1958).
- 2 4 4 Id., 97 N.W. at 516.
- 2 4 5 A requirement that county regulations be approved by the state would likely supply the needed measure of supervision. See note 275, infra.

- <sup>2 4 6</sup> WIS. STAT. §89.25 (1967) authorizes direct control of access on designated rural portions of the state trunk highway system. WIS. STAT. §84.30 (1967) authorizes regulation of outdoor advertising along the interstate highway system; WIS. STAT. §84.103 (1967) authorizes regulation of location, slope, height, size and setback of structures along the Silent Cross Memorial Highway and adjacent land. WIS. STAT. ch. 236 (1967) establishes state level control of subdivisions. For a discussion of the state-level platting law see Lathrop, Wisconsin's 1955 Platting Law, 1956 WIS. L. REV. 385.
- <sup>2 4 7</sup> Adler v. Deegan, 251 N.Y. 467, 167 N.E. 705, 711 (1929).
- <sup>2 4 8</sup> See, e.g., CONN. GEN. STAT. REV. §§25-3 to 25-4g, and 25-7g to 25-7f (1958 and Supp. 1967); IOWA CODE ANN. §§ 455.35, .37, .39 (Supp. 1969) WIS. STAT. 87.30 (1967).
- <sup>2 4 9</sup> Ch. 777, Minn. Acts of 1969, WIS. STAT. §§59.971, 144.26 (1967).
- <sup>2 5 0</sup> See WISCONSIN DEPARTMENT OF RESOURCE DEVELOPMENT, THE ECONOMIC IMPACT OF RECREATION, "Forward" (1965).
- <sup>2 5 1</sup> Id., See also note 141, supra.
- <sup>2 5 2</sup> See, e.g., Daiute, Methods for Determination of Demand for Outdoor Recreation, 42 LAND ECONOMICS 326 (1966); SECKLER, ON THE USES AND ABUSES OF ECONOMIC SCIENCE IN EVALUATING OUTDOOR RECREATION, 42 LAND ECONOMICS 485 (1966); Thrice & Wood, Measurement of Recreation Benefits 34 LAND ECONOMICS 197 (1958). Wood Comment, The Distance-Traveled Technique for Measuring Value of Recreation Areas: An Application, 37 LAND ECONOMICS 363 (1961).
- <sup>2 5 3</sup> THE OUTDOOR RECREATION PLAN, note 4, supra, at 38.
- <sup>2 5 4</sup> Many states prohibit, or severely restrict adoption of local regulations. See note 286, infra.
- <sup>2 5 5</sup> Files of the WISCONSIN DIVISION OF CONSERVATION, Synopsis of Local Boating Ordinances in Wisconsin (mimeo) (July, 1967). In July 1967, 108 village, town and city ordinances were on file. The Synopsis is reproduced in Appendix Note C.
- <sup>2 5 6</sup> A summary of ordinance provisions prepared by H. Hettrick. See Appendix Note C.
- <sup>2 5 7</sup> WIS. STAT. §30.77(4) (1967).
- <sup>2 5 8</sup> Based upon examination of bill index, Wisconsin Legislative Reference Library, Madison, Wisconsin.

- 259 This inventory is authorized by WIS. STAT. §23.09(7)(m) (1967). Lake and stream classification reports are due to be completed for all counties by 1971. Interview with C. W. Threinen, Department of Natural Resources, November, 1969.
- 260 Unfortunately, most surface water inventory reports contain limited data concerning the type and intensity of shoreland use. In addition, information is generally lacking, except for lakes with more recent hydrographic maps, concerning beach type, bottom type, and distribution of aquatic weeds. This information is needed for the purpose of designating water skiing areas, swimming areas, fish spawning grounds, etc.
- 261 These reports are being prepared as part of the lake and stream classification authorized by WIS. STAT. §23.06(7)(m) (1967). The plans are being prepared for the Southeastern Wisconsin Regional Planning Commission by the Department of Natural Resources, Division of Conservation. See for example, Lake Use Report No. FX-24 Potters Lake, Walworth County (1967).
- 262 WIS. STAT. §30.77(4) (1967) requires a filing of local ordinances but does not require computation.
- 263 Distribution should be to state and local agencies of all types which supply tourist information. These sheets could also be distributed to boat dealers, boating clubs, gas stations, motels, hotels, resorts, marinas, boat liveryes and all similar private and public facilities which cater to tourists.
- 264 WIS. STAT. §30.77 (1967).
- 265 WIS. STAT. §30.69 (1967).
- 266 WIS. STAT. §30.70 (1967).
- 267 WIS. STAT. §30.65 (1967).
- 268 WIS. STAT. §30.66 (1967).
- 269 WIS. STAT. §30.68(7) (1967).
- 270 REPORT OF THE INTERIM BOATING COMMITTEE TO THE 1959 WISCONSIN LEGISLATURE, 34 (1959).
- 271 Jefferson County v. Timmel, 261 Wis. 39, 51 N.W.2d 518 (1952); La Crosse Rendering Works v. La Crosse, 231 Wis. 438, 285 N.W. 393 (1939); Fox v. Racine, 225 Wis. 542, 275 N.W. 513 (1937). See also Miller v. Fabius Township Board, 366 Mich. 250, 114 N.W.2d 205 (1962).

- 272 Presently, all such units must have adopted identical regulations before regulations become effective. WIS. STAT. §30.77(3) (1967).
- 273 WIS. STAT. §59.971(2)(a) (1967).
- 274 See discussion accompanying notes 236-245, supra
- 275 In *Muench v. Public Service Comm'n*, 261 Wis. 492, 55 N.W.2d 40 (1952), the court invalidated the so-called "county board law" which authorized counties to override a disapproval by the Public Service Commission to issue a dam permit on grounds of interference with public rights in navigable waters. The court held that protection of these rights was a matter of state-wide concern which could not be delegated in this manner. But, the court noted that WIS. STAT. §30.02(1)

does vest powers in counties and other municipalities to establish shore and dock or pier lines in navigable waters, but a map showing the same must be filed with, and approved by the Public Service Commission before such lines are legally effective. Thus, the paramount interest of the state is safeguarded. Such a limited delegation of power consistent with the trust is very different in character from that attempted by the 'county board law,' particularly inasmuch as the state retains power to see that the trust is not violated. (emphasis added). Id., 55 N.W.2d at 46.

See also *State v. Public Service Commission*, 275 Wis. 112, 81 N.W.2d 71 (1957) in which the court upheld a statute authorizing the City of Madison to develop parks by filling of part of a lake bed. However, such filling was subject to review by the Public Service Commission. This review may have been important in preventing an unlawful delegation of powers over waters held in trust for the public.

- 276 WIS. STAT. §30.74(2) (1967). See WIS. ADMIN. CODE, WCD 5, §5.09 for rules concerning uniform aids to navigation.
- 277 Apparently, this is the case in California. See CAL. HARB. & NAV. CODE §660(a) (West Supp. 1968), which requires that local regulations be "submitted to the department prior to adoption and at least 30 days prior to the effective date thereof."
- 278 See CONN.GEN. STAT. REV. §15-136(a)-(c) (1958), which requires that town ordinances must be submitted to the state for approval and if not disapproved within 60 days they take effect (usually on the first day of April).

The commission may "disapprove any ordinance or part thereof which it finds to be arbitrary, unreasonable, unnecessarily restrictive, inimical to uniformity or inconsistent with the policy of this part." KAN. STAT. ANN. §82a-815 (1964), requires that local units submit regulations to a state agency for approval and, absent such approval, the regulations shall have no force. Ch. 275, §15(b) & (c), [1960] Mass. Acts & Resolves 165-66, provides that city and town regulations shall not be valid unless approved by the state agency. N.Y. TOWN LAW §130(17)(2) (McKinney Supp. 1969), provides that before town ordinances take effect, they must have been submitted to and approved in writing by the conservation commissioner. VA. CODE ANN. §62.1-182 (1968), requires state agency approval of city, county, or town ordinances regulating the operation of vessels.

279 CONN. GEN. STAT. REV., ch. 268, §§15.136(a), (c), 15-138 (1958).

280 See WIS. STAT. §30.66(2)(a) (1967), which establishes an eight miles per hour speed limit for the Brule river and its tributaries in Douglas county.

281 WIS. STAT. §30.90 (1967).

282 The North Dakota boating law [N.D. CENT. CODE §§61-27-11 (1960)] provides, in part:

61-27-11. Local regulation prohibited.—1. The provisions of this chapter, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder: Provided that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

2. Any subdivision of this state may, at any time, but only after public notice, make formal application to the department for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

3. The department is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

Similar provisions, which restrict or prohibit local regulations except those identical to state level regulations, authorize local units to petition a state agency to adopt special regulations for the local unit, and



authorize the state agency to adopt such regulations, are contained in the laws of at least eleven other states. E.g., DEL. CODE ANN. tit. 23, §§2126 (Supp. 1968); HAWAII REV. STAT. ANN. §266-15 (1968); IOWA CODE ANN. §106.17 (Supp. 1969); NEB. REV. STAT. §81-815.15 (1962); NEV. REV. STAT. §§488-345 (1967); N.M. STAT. ANN. §75-35-15 (1968); N.D. CENT. CODE §§61-27-11 (1960); R.I. GEN. LAWS ANN. §46-22-14 (Supp. 1968); S.C. CODE ANN. §70.295.2 (1962); S.D. COMP. LAWS ANN. §42-8-62-64 (1967); UTAH CODE ANN. §73-18-17 (1968); W. VA. CODE ANN. §20-7-23 (Supp. 1969).

283 Each of the statutes cited in note 36, supra, also authorizes such a petition.

284 MICH. STAT. ANN. §§18.1287 (12), (14), (16), & (17) (Supp. 1969).

285 See Rules and Regulations, Ohio Department of Natural Resources, Division of Watercraft.

286 WIS. STAT. §59.971(6) (1967).

287 See note 111, supra.

288 See ch. 1, [1967] Laws of Neb. 61.

289 Ch. 1, §3(2), [1967] Laws of Neb.

290 Id., §3(3).

SELECTED BIBLIOGRAPHY

The following books, reports, articles, and special materials have been selected as particularly relevant from among many consulted for this report. Most are cited in the report.

A. BOOKS

R. M. Anderson, AMERICAN LAW OF ZONING (4 vols.) (Lawyers Co-operative Publishing Company, Rochester, New York, 1968).

F. E. Cooper, STATE ADMINISTRATIVE LAW (2 vols.) (1st ed. Bobbs-Merrill Company, Inc., New York, 1965).

M. A. Gabrielson, B. Spears, and B. W. Gabrielson, AQUATICS HANDBOOK (Prentice-Hall, Inc., Englewood Cliffs, N. J., 1960).

G. T. Wilson, LAKE ZONING FOR RECREATION, Bull. 44 National Institute of Park Executives (Institute of Park Executives, 1964).

M. J. Norris, YOUR BOAT AND THE LAW, (Lawyers Co-operative Publishing Co., 1965).

B. SPECIAL REPORTS

American Society of Planning Officials, WATER FRONTS: PLANNING FOR RESORT AND RESIDENTIAL USES, Information Report No. 118 (American Society of Planning Officials, Chicago, Ill., 1959).

California Division of Small Craft Harbors, THE CALIFORNIA BOATING PLAN (Sacramento, Calif., 1964).

Economic Research Service, U. S. Department of Agriculture in cooperation with the Michigan Agricultural Experiment Station, Michigan State University, AN ECONOMIC SURVEY OF THE NORTHERN LAKE STATES REGION, Agricultural Economic Report No. 108 (U. S. Government Printing Office, Washington, D. C., 1967).

Governor's Committee on Water Safety, SAFER USE OF WATER FOR RECREATION IN NORTH CAROLINA (Raleigh, North Carolina, 1967).

C. R. Humphrys, C. Schafer, R. Schafer, KENT COUNTY, MICHIGAN LAKE PROPERTY VALUE STUDY (Department of Resource Development, Agricultural Experiment Station, Michigan State University, East Lansing, Michigan, 1967).

J. Kusler, ZONING FOR SHORELAND RESOURCE PROTECTION: USES AND LIMITATIONS, Ph.D. Dissertation (Unpublished, University of Wisconsin, January, 1970).

J. F. McCarthy, REGULATION OF PLEASURE BOATING AND AQUATIC SPORTS, 1959 Legislative Problems: No. 4 (Bureau of Public Administration, University of California, Berkeley, 1958).

ORRRC Study Report 4, SHORELINE RECREATION RESOURCES OF THE UNITED STATES, A Report to the Outdoor Recreation Resources Review Commission by the George Washington University (U.S. Government Printing Office, Washington, D. C., 1962).

Outboard Industry Associations, 1964 ENGINEERING MANUAL OF RECOMMENDED PRACTICES (Outboard Boating Club of America, Chicago, Illinois, 1963).

Outboard Motor Boating Club of America (miscellaneous publications) HANDBOOK OF BOATING LAWS - NORTHEASTERN STATES (1962); HANDBOOK OF BOATING LAWS - NORTH CENTRAL STATES (1962); HANDBOOK OF BOATING LAWS - SOUTHERN STATES (1963) (Chicago, Ill., 1962, 1963).

S. Plager and F. Maloney, CONTROLLING WATER FRONT DEVELOPMENT (Public Administration Clearing Service of the University of Florida, Studies in Public Administration No. 30, 1968).

REPORT OF THE INTERIM BOATING COMMITTEE TO THE 1959 WISCONSIN LEGISLATURE (Madison, Wis., 1959).

SMALL BOAT SAFETY, H. R. 15223, H. R. 16655, 90th Congress, 2nd Session, 1968.

STUDY OF RECREATIONAL BOATING SAFETY (3 parts) Hearings before the Committee on Merchant Marine and Fisheries, House of Representatives, 84th Congress, 2nd Session, 1956.

STUDY OF RECREATIONAL BOATING SAFETY, H.R. 378, 85 Congress, 1st Session 1967.

University of Minnesota, MINNESOTA'S LAKESHORE, Part I (Minneapolis, Minn., 1970).

University of Wisconsin, Experiment Station, College of Agriculture, CABIN RESORT INCOME IN NORTHERN WISCONSIN, Bull. 576 (Madison, Wis., 1965).

U. S. Coast Guard, Treasury Department, RECREATIONAL BOATING STATISTICS 1965 (U. S. Government Printing Office, Washington, D. C. 1966).

U. S. Department of Interior, Bureau of Outdoor Recreation, OUTDOOR RECREATION SPACE STANDARDS, (U. S. Government Printing Office, Washington, D. C., 1967).

Wisconsin Conservation Department, WISCONSIN LAKES, Pub. 218-64 (Madison, Wis., undated).

Wisconsin Department of Local Affairs and Development, Bureau of Recreation, A PROGRAM FOR OUR RECREATION WATERS (Madison, Wis., 1968).

Wisconsin Department of Natural Resources, WISCONSIN MOTORBOAT TRAILS, Publ. No. 119-67 (Madison, Wis., 1967).

Wisconsin Department of Natural Resources, WISCONSIN'S OUTDOOR RECREATION PLAN (1968).

Wisconsin Department of Resource Development, THE ECONOMIC IMPACT OF RECREATION (Madison, Wis., 1965).

Wisconsin Department of Resource Development, THE OUTDOOR RECREATION PLAN (1966).

Wisconsin Department of Resource Development, PLEASURE BOATING IN WISCONSIN (Madison, Wis., 1961).

Wisconsin Department of Resource Development, SMALL CRAFT HARBORS (Madison, Wisconsin, 1965).

Wisconsin Department of Resource Development, WISCONSIN'S LAKE SUPERIOR SHORELINE (Madison, Wis., 1964).

Wisconsin Department of Resource Development, WISCONSIN AND THE VACATIONER (Madison, Wis., 1966).

C. MATERIALS PART OF A LARGER PUBLISHED WORK

W. Scott, WATER POLICY EVOLUTION IN WISCONSIN, 54 (Part A) WISCONSIN ACADEMY TRANSACTIONS (Madison, Wis., 1965).

C. Threinen, An Analysis of Space Demands for Water and Shore, Transactions of the Twenty-Ninth North American Wildlife and Natural Resources Conference, March 9-11, 1964, at 353-372 (Wildlife Management Institute, Washington 5, D. C., 1964).

12 AMERICAN JURISPRUDENCE 2d series (a legal encyclopedia) Boats and Boating, 385-473 (Lawyers Co-operative Publishing Company, Rochester, N.Y. 1964).

Annot., Rights of Fishing, Boating, Bathing, or the Like in Inland Lakes, 57 AMERICAN LAW REPORTS 2d series 569-596 (1958).

Annot., Validity of Prohibition or Regulation of Bathing, Swimming, Boating, Fishing, or the Like, to Protect Public Water Supply, 56 AMERICAN LAW REPORTS 2d series 790-796 (1957).

D. PERIODICALS (Listed by Subject)

a. Boating Regulations

Cutler, Comment, Chaos or Uniformity in Boating Regulations? The State as Trustee of Navigable Waters, 1965 WISCONSIN LAW REVIEW 311-321.

Norris, The Land Lubber Takes to the Water, 37 TEMPLE LAW QUARTERLY 355-400 (1964).

Reis, Policy and Planning for Recreational Use of Inland Waters, 40 TEMPLE LAW QUARTERLY 155 (1967).

Waite, Pleasure Boating in a Federal Union, 10 BUFFALO LAW REVIEW 427-447 (1961).

Yancey, Liabilities of Pleasure Boat Operators on Inland Navigable Waters, 15 FEDERATION OF INSURANCE COUNSEL 83-95 (Summer Quarter 1965).

Comment, Admiralty Law and Pleasure Boating in Nebraska, 45 NEBRASKA LAW REVIEW 572-584 (1966).

Note, The Regulation of Pennsylvania's Pleasure Boating, 37 TEMPLE LAW QUARTERLY 496-505 (1964).

Note, Admiralty-Rivers and Harbors Act of 1899-Owners of Vessel Negligently Sunk in Navigable Waters Liable for Cost of Removal, 41 TULANE LAW REVIEW 459-464 (1967).

Case Comment, The Boating Boom: Admiralty Jurisdiction Inland, 23 WASHINGTON AND LEE LAW REVIEW 169-178 (1966).

b. Riparian and Public Rights

Johnson, Riparian and Public Rights to Lakes and Streams 35 WASHINGTON LAW REVIEW 580-616 (1960).

Waite, The Dilemma of Water Recreation and a Suggested Solution, 1958 WISCONSIN LAW REVIEW 542.

Waite, Public Rights to Use and Have Access to Navigable Waters, 1958 WISCONSIN LAW REVIEW 335-375.

Note, Property-Riparian Rights-Construction of Access Canal and Use Thereof Subject to Reasonable Use Rule, 46 JOURNAL OF URBAN LAW 687 (1969).

Note, The Tale of Two Lakes-A New Chapter in Washington Water Law, 43 WASHINGTON LAW REVIEW 475-483 (1967).

Note, The State v. The Riparian: A Problem of Water Use Control, 1961 WASHINGTON UNIVERSITY LAW QUARTERLY 257-272 (1961).

Note, The Right of Access to Navigable Waters by Riparian Owners, 3 WILLAMETTE LAW JOURNAL 63-66 (1963).

Note, Riparian Water Law-Lake Shore Developments 1966 WISCONSIN LAW REVIEW 172.

Note, Alteration of Beds of Public Lakes and the Trust Doctrine, 5 WISCONSIN LAW REVIEW 34 (1928).

c. Special Subjects

Tarlock, Preservation of Scenic Rivers, 55 KENTUCKY LAW JOURNAL 745-798 (1967).

Tippy, Preservation Values in River Basin Planning, 8 NATURAL RESOURCES JOURNAL 259-278 (1968).

Comment, Land-Use Regulation for the Protection of Public Parks and Recreation Areas, 45 TEXAS LAW REVIEW 96-131 (1966).

Comment, Role of Local Government in Water Law, 1959 WISCONSIN LAW REVIEW 117-41.

E. MISCELLANEOUS MATERIAL

Wisconsin Conservation Department, Madison, Wis.:

Inventory of Mapped Lakes (mimeo) (Dec. 1964).

Summary of the Waters Access Aid Program (mimeo)  
(1966).

Threinen, Fish Management Division, Some Spatial  
Aspects of Aquatic Recreation (mimeo) Misc. Report  
No. 6 (Dec. 1, 1961).

Lake Use Planning (mimeo) (1967).

Threinen & Poff, Notes On: Wisconsin Lakes  
(mimeo) (1967).

Outboard Boating Club of America, Chicago, Ill.:

1. Model State Boat Trailer Act.
2. Model State Boat Trailer Act.
3. Model State Boat Numbering Act.
4. Boater's Day in Court.

National Association of State Boating Law Administrators  
and Advisory Panel of State Officials:

1. MODEL STATE BOATING ACT (1968).
2. Report of the Pollution Study Committee (1965).

PROCEEDINGS, THIRD NATIONAL CONFERENCE ON ACCESS TO  
RECREATION WATERS, Co-sponsored by the Sport Fishing  
Institute and the Outboard Boating Club of America  
in Cooperation with the Tennessee Valley Authority  
(1963).

PROCEEDINGS, FIFTH NATIONAL CONFERENCE ON ACCESS TO  
RECREATIONAL WATERS, Co-sponsored by: Sport Fishing  
Institute, Outboard Boating Club of America (1967).

APPENDIX NOTE A

WATER RECREATION SPACE DEMANDS

Estimates of space requirements of each recreation use differ widely. The following summaries describe some of the standards proposed or adopted by agencies:

- (1) DEPARTMENT OF INTERIOR, BUREAU OF OUTDOOR RECREATION, OUTDOOR RECREATION SPACE STANDARDS, 24-36 (1967).
- (2) STATE OF WISCONSIN, DEPARTMENT OF RESOURCE DEVELOPMENT, THE OUTDOOR RECREATION PLAN, APPENDIX B, 151, 154, 158, 159, 160 (1966).



DEPARTMENT OF INTERIOR, BUREAU OF OUTDOOR RECREATION,  
OUTDOOR RECREATION SPACE STANDARDS, 24-36 (1967)

BOATING, CANOEING, AND WATER SKIING

Reference	Facility	Standard
(115) Sacramento County Planning Commission	boating	1 boat for every 30 persons.
(12) Baltimore County, <u>Waterfront Recreation Survey, p. 22</u>	boating	1 ramp on 1-1/2 acres for every 125 boat owners if boaters average 8 trips a year.  21,000 sq. ft. of parking space per ramp, assuming a parking lot capacity equal to maximum ramp capacity.
(21) <u>California Public Outdoor Recreation Plan, Vol. II, p. 84</u>	trailered boats	1 launch facility per 160 surface acres of boating water.  Parking space for 75 autos and boat trailers for each launching facility.
	non-trailered boats	Mooring or slippage space for 100 boats at one time. These boats need 160 acres of boating water.  Parking space to park 50 autos for each 100 moored boats.
	boat access unit	1 boat access unit capable of launching one boat at one time, serving 125 trailered boats or storage facilities berthing, mooring and the like for 100 non-trailered boats. 75 boats will operate from one access unit on the season's peak day and 50 boats on an optimum day.  Service radius of 25 miles for day- use boaters; 75 to 175 miles for weekend-users; 135 to 250 miles for vacation boaters.
(23) Carbon County, Pa. (Mauch Chunk Water- shed), table 5	boating	5 acres for each 2000 people. Minimum of 5 acres. Provide for 5 launching ramps, boat storage and rentals.

BOATING, CANOEING, AND WATER SKIING

Reference	Facility	Standard
(31) Corps of Engineers, <u>Grand Chariton and</u> <u>Little Chariton</u> <u>Report</u> , p. 1	boating and water skiing	1 acre of water per boat, 4 people per boat.
	boat ramp	40 boats per lane of launching ramps. Parking area for 40 cars.
(32) <u>Corps of Engineers</u> <u>Manual</u> , p. 3	boat ramp	Minimum of 1 ramp per project with 5000 to 40,000 annual visitors; or 1 per 40,000 annual visitors or at any one area with 40 boat launchings per peak-day; or the number of ramps required to prevent not more than 1 hour's delay in launching.
(110) Placer County, Calif. Recreation Com- mission, pp. 7-9	boat launching lane	5 acres of water surface per boat. One lane per 25 boats.
(119) Soil Conservation Service, <u>Recreation</u> <u>Memorandum-3</u> , <u>Supplement-3</u> , p. 1	anchored fishing boats	4 to 7 boats per acre of water area.
	trolling fishery boats	2 to 4 boats per acre of water area.
	power and sail boats	3 acres of water area per boat.*
	water skiing	5 acres of water area per boat.*  *(these figures exclude the 300-foot strip around the shores zoned against these uses except at access points)
(106) <u>Recreation and Open</u> <u>Space in the</u> <u>Onondaga-Syracuse</u> <u>Area</u>	boating	1/4 acre of water for every 1000 persons. Boating area located in a county park that allows 12 acres for every 1000 population.

BOATING, CANOEING, AND WATER SKIING

Reference	Facility	Standard
(134) <u>Recreation in Wisconsin</u> , p. 48	trip canoeing	Average number of canoes a day is 6, with 2 men per canoe. Average daily trip distance is 15 miles.  Streams must have an average flow of 100 cubic feet a second in order to be generally suitable for canoeing.
(132) <u>Outdoor Recreation Plan for the State of Vermont</u> , p. 93	boating	Access to a lake of 100 acres or more within 1/2 hour's drive of every family.
(10) <u>Statewide Comprehensive Outdoor Recreation Plan for Arkansas</u>	boating	One launching ramp for each 150 acres of water.
(88) National Recreation and Park Association, Bulletin no. 54, pp. 6-9	marinas	The main difference in marina designs will be governed by the size and design of boats using the area. The Outboard Boating Club of America states that optimum size for marina development ranges upward from 25 acres. Generally, the ideal land area required for marinas is the same as that for mooring boats or 1-1/4 times that size.
(16) BOR, <u>Water-Oriented Outdoor Recreation; Lake Erie</u> , p. D-9	boating	1633 sq. ft. parking per car and trailer including ramp facilities. Turnover factor of 2. Three people per car and boat.
(103) G. Nez, <u>Urban Land</u> , p. 4	major boating activities	100 acres for every 50,000 population. Ideal size of 100 acres and over. May be located within a district park, regional park or reservation.
	row boating and canoeing	1 lake or lagoon for every 25,000 people. Ideal size of 20 acres of water area. May be located in a community park or special regional reservations.

BOATING, CANOEING, AND WATER SKIING

Reference	Facility	Standard
(97) Nevada Department of Conservation and Natural Resources	trailered boats	Average party of 3 persons. 40 units accommodate 120 persons on one acre. Turnover rate is one. One 12 ft. wide ramp accommodates 40 boats per day.
	moors or slips	Average party of 3 persons. 40 units accommodate 120 persons on .5 acre.
(135) <u>Comprehensive Plan for Wisconsin, Outdoor Recreation</u> , pp. G-10, G-11	water skiing	One person per 13.3 acres of water. Estimate 3 persons per boat, 20 acres per boat may be adequate, but 40 acres per boat is more desirable.
	boating	One person per 8 acres of water surface. Estimating 2.5 persons per boat, or 20 acres per boat. Small lakes with restricted motor sizes could support more than one boat per 20 acres.
	canoeing	One person per 1/4 mile of stream. Estimating 2 persons per canoe or 1/2 mile of stream per canoe. Larger streams probably could handle one canoe per 1/4 mile of stream or more.
(28) Connecticut Department of Agriculture and Natural Resources, p. 41	boating	Instant capacity of 1% of state population at state or other public boating access areas and on available freshwater and saltwater bodies.
(45) Federal Power Commission, p. 2	boat launch ramp	At least one ramp is provided for federal power projects having 5000 to 40,000 annual visitors; or at any one area with 40 boat launchings projected per peak-day. Ramps have an optimum width of 12 ft. with the vertical limits from the elevation of the 5-year flood frequency elevation or 3 ft. above the normal operating pool, whichever is higher, to at least 4 ft. below the permanent pool.

BOATING, CANOEING, AND WATER SKIING

Reference	Facility	Standard
		Ramps generally service 160 surface acres of water available for boating. Each ramp has at least one 75-foot vehicular turn-around.
(15) Bureau of Reclamation, p. 27	boat access	Two dual launching ramps per 40 boats, 40 boat trailers, auto parking spaces and buffer strip.
(63) Louisiana Parks and Recreation Commission, p. 3.0.15	boat ramp	A boat ramp occupies one acre of ground space and can accommodate launching and retrieving of about 40 boats per day per launching lane. 60 cars with boat trailers can be parked in area.
	motor boat area	It takes 20 acres of water to support one power boat. 13 boats in the water would require 260 surface acres of open water to support a ramp. With 2.5 persons per boat, an optimum day with 40 launchings would produce 100 user days per ramp or 100 user days per acre of land and .385 user days per acre of water. This amounts to .01 acre of land and 2.6 acres of water per user day.
	canoe area	Estimating 2 persons per canoe per 1/2 mile of stream. Larger streams could probably handle one canoe per 1/4 mile of stream.
	water skiing area	One ski boat requires 40 acres of water, therefore, 13 ski boats would require 520 acres of water to support one ski boat ramp. With an average of three persons per ski boat, a ramp would produce 120 activity days during an optimum day use, or 120 user days per acre of land and .23 user days per acre of water. This amounts to .0083 acres of land and 4.33 acres of water per user day.

FISHING

Reference	Facility	Standard
(31)*Corps of Engineers Report on Grand <u>Chariton and Little</u> <u>Chariton Rivers</u>	boat fishing	2.5 persons per boat and boat trailer. .1 acre of water surface for every 50 fisherman. 1 lb. of fish per fisherman day. Fish production should be 50 lbs. an acre each year.
(110) Placer County, Calif. Recreation Commission pp. 1-9	stream fishing	1 mile of stream for every 10 persons.
(127) Tennessee State Planning Commission, Part II, Vol. II, p. 24	fishing	Public fishing access area of 10 to 40 acres averaging at least 15 acres with 750 feet of water frontage. One per 300 acres of water surface.
(134) Wisconsin Department of Resource Develop- ment, p. 41	fishing	Nationwide average in 1958 of fish caught was 2.2 lbs. per day.
(108) ORRRC Report No. 7, pp. 78, 83, 84	fresh water fishing	Location should be within 60 to 69 miles or 2 hour's drive from urban coastal areas.  Average catch in 1960 was 1 lb. of fish per angler per day from inland waters.
(118) Soil Conservation Service, <u>Book of</u> <u>Recreation Resources</u> , pp. 1, 6	fishing	Minimum of 3 surface acres per lake. Lake should be located within an hour's drive or approximately 50 miles of a city of 20,000 persons or the equivalent in smaller communities, and should be within 5 to 10 miles of a good highway with an all-weather road to property.
	fishing in anchored boats	4 to 7 boats per acre.
	fishing in trolling boats	2 to 4 boats per acre.

\*(See footnote on page one)

FISHING

Reference	Facility	Standard
(16) BOR, <u>Water-Oriented Outdoor Recreation: Lake Erie Basin</u> , p. D-9	fishing	1633 sq. ft. of parking area per car and trailer including ramp facilities. Turnover factor of 1.5. An average of 2 persons per car and boat.
(103) G. Nez, <u>Urban Land</u> , p. 4	fishing, rowing, and canoeing	1 lake or lagoon for every 25,000 people.
(135) <u>Comprehensive Plan for Wisconsin, Outdoor Recreation</u> , p. G-10, G-11	fishing area	One person per 3.6 acres of surface water. Estimating 2.2 persons per boat and 8 acres per boat.
	stream fishing	One fisherman per mile of stream.
	river fishing	One fisherman per 1/4 mile, approximately 3 acres per fisherman.
(63) Louisiana Parks and Recreation Commission, p. 3.0.16	boat fishing	A fishing boat requires 8 acres of water. 13 fishing boats require 104 acres of water to support one boat ramp. An average of 2.2 persons per boat would produce 88 optimum user days per 40 fishing boats during one day, or 88 persons per acre of land and 846 user days per acre of water. This would be .0114 acres of land and 1.182 acres of water per user day.
(28) Connecticut Department of Agriculture and Natural Resources, p. 41	fishing	Instant capacity of 5% of state population at state or other public fishing areas.

SWIMMING

Reference	Facility	Standard
(21)* <u>California Public Outdoor Recreation Plan, Part II, pp. 48, 84</u>	neighborhood pool	One pool for each 3200 people. Pool with 1800 sq. ft. of water surface serves 150 persons at a time.
	community pool	One pool for each 25,000 people. Pool with 4500 sq. ft. of water surface serves 150 persons at a time.
	shoreline--ocean, lake, reservoir, or stream	<p>25 effective feet of shoreline for each 1000 population, accommodates 150 persons per day, and 50 persons at one time. 25 effective feet include:</p> <ul style="list-style-type: none"> <li>a) 5000 sq. ft. for sunbathing.</li> <li>b) 2500 sq. ft. for buffer and picnic area.</li> <li>c) 1000 sq. ft. for water area for swimming.</li> </ul> <p>An effective foot consists of one lineal foot of shore with 100 foot-wide band of water suitable for swimming; 200 foot-wide strip of beach for sunbathing; 100 foot-wide buffer zone for utilities and picnicking.</p>
(69) <u>Meyer and Brightbill, Community Recreation, p. 404</u>	pool	<p>Minimum of 27 sq. ft. of water surface for each swimmer with a ratio of 2 square feet of deck area per square foot of water area.</p> <p>Total number of pools should serve between 3 to 5% of the total population at one time.</p>
(126) <u>Municipal and County Recreation in Tennessee, p. 41</u>	pool	20 sq. ft. of pool and deck area for each 10,000 people in major metropolitan areas.

\*(See footnote on page one)



SWIMMING

Reference	Facility	Standard
		<p>One pool for each 10,000 people in major metropolitan areas with over 10,000 population. One pool for each 7500 people in cities with between 10,000 and 35,000 population. One pool for each 5000 to 7500 people in cities with 5000 to 10,000 population.</p>
<p>(22) California Committee on Planning for Recreation Park Areas and Facilities, p. 57</p>	<p>regulation pool</p>	<p>A pool in a community recreation park adjoining a junior or senior high school requires:</p> <ul style="list-style-type: none"> <li>a) 1/2 acre site in a coastal and mountain region.</li> <li>b) 1 acre site in a valley or desert region.</li> </ul> <p>A pool located in a separate community recreation park requires:</p> <ul style="list-style-type: none"> <li>a) 1 acre site in a coastal and mountain region.</li> <li>b) 2 acre sites in a valley or desert region.</li> </ul> <p>Space surrounding a pool must be larger in a valley and desert region to accommodate users who remain there several hours for sunbathing and general relaxation.</p>
<p>(11) Athletic Institute, pp. 102-113</p>	<p>pool</p>	<p>A minimum of 27 sq. ft. of water per swimmer for recreational swimming; 45 sq. ft. per person for teaching purposes.</p> <p>Amount of water area per bather depends on size and shape of pool, ages of the bathers, width of deck and extent of sunning area, and nature of activity in which participants are engaged.</p>

SWIMMING

Reference	Facility	Standard
(50) Gabrielsen and Miles, <u>Sports and Recreation Facilities for School and Community</u> , p. 177	pool	<p>15 sq. ft. of water surface for each bather; 30 sq. ft. of water surface for each swimmer. A bather is a person who does not go into water over 5 feet in depth.</p> <p>Deck area should always equal or exceed square footage of water area since not more than 1/4 of the swimmers will be in the water at any one time.</p> <p>For cities under 30,000 in population, the maximum daily attendance expected at pools is 5% to 10% of total population.</p>
(86) National Recreation and Park Association, Bulletin No. 50, p. 38	pool	8000 to 5250 sq. ft. of water surface per pool. There should be from 2 to 3-1/2 times more paved deck surface than water.
(128) <u>Texas Comprehensive Outdoor Recreation Plan</u> , Vol. 5, Section 14.4	pool	30 sq. ft. of water for each swimmer in the water. 2 to 1 proportion of deck area to water area.
	beaches	150 sq. ft. of water for each swimmer in the water. 300 sq. ft. of land for each swimmer not in the water.
(42) FHA Bulletin: <u>Facts and Suggestions on Swimming Facilities</u> , pp. 1-6	pool	Minimum of 20 sq. ft. of combined pool and deck area for each person using the pool. Standard recommended by The National Swimming Institute.
(30) Corps of Engineers, <u>Delaware River Basin Report</u> , p. W-33	beach	50 sq. ft. a person

SWIMMING

Reference	Facility	Standard
(119) Soil Conservation Service, <u>Recreation Memorandum-3</u> , p. 3	beach	100 to 200 sq. ft. of swimmable water per swimmer. 50 to 100 sq. ft. of beach per swimmer.  Between 15% to 30% of swimmers are in the water at one time.
(87) National Recreation and Park Association, Bull. no. 51, pp. 6-8	beach	Most of the time there are more persons on the beach sunning than in the water. Since the amount of usable water space per person ranges from 50 to 100 sq. ft. the available site will determine the capacity of a particular bathing beach.
(16) BOR, <u>Water-Oriented Outdoor Recreation: Lake Erie Basin</u> , p. D-9	beach	75 sq. ft. of beach per person. Turnover factor is 1.5.
(132) <u>Outdoor Recreation Plan for the State of Vermont</u> , p. 93	public beaches or pools	Enough public beaches or pools to serve one tenth of the population at any one time. 2 linear feet of beach per user. Public swimming to be available within 10 miles of every family.
(99) <u>The Comprehensive Outdoor Recreation Plan for New Jersey</u> , p. 9	swimming and boating areas	1.25 acres for each 1000 population.
(45) Federal Power Commission, p. 3	beach and swimming areas	Beach and swimming areas usually have a minimum shoreline length of 100 feet and a sand bottom. Larger areas have about one foot of shoreline and a strip of beach extending 200 feet from the edge of the water for each five swimmers per day. Two single bath-change houses (or one house partitioned for men and women) are usually provided at each swimming area that attracts 50 or more peak-day swimmers.

SWIMMING

Reference	Facility	Standard
(135) <u>Comprehensive Plan for Wisconsin, Outdoor Recreation,</u> p. G-8	beach, rural area	3 supporting areas for each acre of beach. The acre of beach accommodates 185 swimmers, over 12 years old, at any given time. This provides 200 sq. ft. of beach per swimmer. With an average daily turnover of 3, the acre of beach and its 3 supporting acres accommodate 555 swimmers per day.
	beach, urban area	4 supporting acres for each acre of beach. The acre of beach accommodates 370 swimmers at a time. This provides 100 sq. ft. of beach per swimmer. With an average daily turnover rate of 3, the beach area accommodates 1110 swimmers per day.
(15) Bureau of Reclamation, p. 27	beach	One unit consists of 40 ft. of shoreline extending back approximately 550 ft. with space for related activities, parking and buffer strip.
(63) Louisiana Parks and Recreation Commission, p. 3.0.14	beach	<p>A shoreline swimming unit should have a length of 600 ft. and a width of 665 ft. (565 ft. of width is land and 100 ft. is water). Maximum shoreline length should not exceed 3600 ft.</p> <p>A minimum unit of 9.2 acres (1.4 acres of water and 7.8 acres of land) has a 200 foot wide beach or play area and a 100 foot wide buffer zone for installation of utilities, tables, etc. The balance, 265 ft., accommodates 300 cars at a time. Minimum facilities are a change house, and sanitary facilities.</p> <p>At any one time an optimum capacity of 1200 persons may use the minimum shoreline facility. A turnover rate of 3 is expected. This allows 3600 persons to use the area on an average summer Sunday or 461.5 user days per</p>

SWIMMING

Reference	Facility	Standard
		acre of land and 2571 user days per acre of water. This would be .0022 acres of land and .0004 acres of water per user day or 110 square feet per person per user day.
	pool	<p>A minimum pool unit is one acre. It has space for a pool 75 ft. by 36 ft. or 2700 sq. ft. Facilities include bath house, filters, safety and sanitary equipment, and parking space for 90 autos.</p> <p>The pool provides space for 203 persons at one time with a turnover rate of 3; daily capacity would be 609 persons. This amounts to .0002 acres per person or 4.4 sq. ft. of water per person per user day.</p>
(97) Nevada Department of Conservation and Natural Resources	shoreline	Average party is 4 persons, with 20 parties per acre. 40 persons are accommodated on .5 acre. One linear foot of shoreline per swimmer. Turnover rate is 2.
	neighborhood pool	60 persons are accommodated on .5 acre.
	community pool	150 persons are accommodated on 2.5 acres.
(28) Connecticut Department of Agriculture and Natural Resources, p. 41	swimming	Instant capacity of 3% of state population at state saltwater facilities and 3% at state fresh-water facilities.

STATE OF WISCONSIN, DEPARTMENT OF RESOURCE DEVELOPMENT,  
THE OUTDOOR RECREATION PLAN, APPENDIX B, 151, 154, 158,  
159, 160 (1966)

APPENDIX B

STANDARDS OF OTHER AGENCIES

BOATING

<u>Water area per person or per boat</u>	<u>Agency</u>
<u>20 acres</u> (less than) per boat	Wisconsin Conservation Department C. W. Threinen, "Summary and Analysis of Observations on Boating" - 1961.
<u>970 sq. ft.</u> per boat (slip mooring)	Wisconsin Department of Resource Development, "Waterfront Renewal Technical Supplement," p. 28.
<u>80 ft. radius</u> (sailboat anchorage)	Wisconsin Conservation Department, C. W. Threinen, "Supply and Demand Surface Water Resources for South- east Wisconsin."
<u>200 ft. separation</u> around each boat or swimmer (5 mph boat speed)	Wisconsin Conservation Department, C. W. Threinen, Administration Memo #473 - 1963."
<u>150 feet</u> - minimum turning <u>radii</u> (powered boats)	Wisconsin Conservation Department, "Surface Water Resources of Kenosha County" - 1961, p. 27.
<u>one and one-half acres</u> - 360 degree turning radii (high powered boat)	WCD, "Surface Water Resources of Washington County - 1963," p. 54.
<u>1.6 acres</u> per non-trailerred boat (for one access unit hand- ling 100 non-trailerred boats)	California Public Outdoor Rec Plan, Part I.
20 mph - 67 ft to stop 40 mph - 193 ft to stop 60 mph - 432 ft to stop	WCD, Threinen, "An Analysis of Space Demands for Water and Shore, 1964," pp. 358 - 360.
5' x 20' (parking requirement for average small boat)	" " " " " "
6 x depth of anchor line (anchored boat swing circle - approx width of aver lake shore lot)	" " " " " "
peak activity period is 10% of the boats present	" " " " " "
(4 persons per boat - turnover factor 2 to 3)	State of Illinois, Dept. of Cons., Div. of Rec. Planning, Springfield, Ill.

FISHING

Water area per person or per boat

one boat per eight acres

WCD, Threinen, "An Analysis of Space  
Demands for Water and Shore," 1964,

one person per 3.6 acres

" " " " "

75' distance and an area of .4  
acres (casting)

" " " " "

## SWIMMING

### Beach Area Per Person

### Agency

290.4 sq. ft. (area needed for development only-based on max. use)

National Park Service - in connection with work on the Delaware River Comprehensive Study - (for large reservoirs).

335 sq. ft.

Indiana - Recreation Report

20 sq. ft. (plus 9 sq. ft. of boardwalk per person)\*

New York City Parks Dept. (Used in test formulas for determining present beach capacity of Coney Island, Manhattan and Rockaway Beaches), 1962.

71 sq. ft.\*

Cleveland and Cuyahoga County, 1962 (present use of beaches). (Figures Used for planning purposes).

75-100 sq. ft.\*

75 sq. ft.\*

U. S. Army Corps of Engineers

200 sq. ft.\*

San Diego City Planning Commission (Mission Bay Project), 1958.

100 sq. ft.\*

Los Angeles City Planning Dept. (Master Plan of Shoreline Development), 1955.

150 sq. ft.\*

Shoreline Development Plan, Oakland, 1951.

100 sq. ft.\*

Baltimore County Recreation Plan, 1960

100 sq. ft.\*

California Outdoor Recreation Plan, 1960.

100 sq. ft.

ORCC report (1963) WCD, Threinen, "An Analysis of Space Demands for Water and Shore," p. 356.

### Turnover rate

Three times per day

California Public Outdoor Recreation Plan, Part II.

\*"Waterfront Renewal," technical supplement, Wisconsin Department of Resource Development, p. 34.



SWIMMING

Beach or Water Area Per Person

Agency

150 sq. ft. beach (25 sq. ft. water in pool) 10 acre min. pool or beach site.\*

Westchester County Planning Dept., (from "Recreation Facilities in Westchester," 1956.)

12 sq. ft. of water per user\*

Federal Security Agency, (From "Planning for Recreation Areas and Facilities in Small Towns or Cities," 1955)

15 sq. ft. of water per user\*

National Recreation Ass'n., (From "Know Your Community," 1955 and other publications)

(3 acre minimum site for pool)\*

Baltimore County Board of Recreation (From "Recreation Survey Report," 1953.)

100 to 200 sq. ft. of swimmable water per swimmer

SCS, U. S. Dept. of Agriculture, Madison (1965 workshop, handout material)

50 to 100 sq. ft. beach per swimmer

" "

(swimmers in water 15% to 30%; on beach - 70% to 85%)

" "

(6 persons per foot or 60 persons per 10 feet of shoreline - turn over rate of 3)

California Outdoor Recreation Plan, 1960.

WATER SKIING

Water area per person or per boat

Agency

13.3 acres per person

WCD, Threinen, "Supply and Demand,  
Surface Water Resources," p. 35.

20 to 40 acres per boat

" " " " "

(peak activity period is 10% of  
those waterskiing)

" " " " "

90 feet (total length of ski rig -  
75' for rope)

WCD, Threinen, "An Analysis of  
Space Demands for Water and Shore,"  
1964, p. 358.

APPENDIX NOTE B  
LIST OF SELECTED CASES

The following selected cases dealing with regulations for surface water uses or water-related uses have been assembled according to subject:

Ambiguity

People v. Cummings, 36 Misc. 2d 800, 233 N.Y.2d 724, 726 (1962) (the court noted that language that required operation "at such rate of speed as not to unreasonably interfere . . . or unreasonably endanger . . . " established a standard of ordinary care).

People v. Bogner, 20 Misc. 2d 465, 189 N.Y.S.2d 777 (1959) (invalidated navigation statute as unconstitutional for lack of definiteness and certainty in failing to provide a reasonably definite standard of conduct).

Boat Houses

Miami v. du Pont, 181 So. 2d 599 (Fla. D. Ct. App. 1966) (invalidated, as applied to plaintiff's property, an inflexible zoning ordinance provision restricting maximum boathouse size on residential property).

Delegation of Power to Agency

State v. Cale, 19 N.J. Super. 397, 88 A.2d 529 (1952) (held that penal statute authorizing the Board of Commerce and Navigation to establish rules does not, standing alone, require compliance with statute).

State v. Pairan, 80 Ohio L. Abs. 484, 159 N.E.2d 829 (1958) (held that statute authorizing Division of Parks to establish watercraft rules set no standards and was an unconstitutional delegation of power).

### Docking & Wharves

Nelson v. De Long, 213 Minn. 425, 7 N.W.2d 342 (1942)  
(upheld a municipal regulation which required  
the docking of boats on a lake at a public dock).

### Fill

Hixon v. Public Service Commission, 32 Wis. 2d 608,  
146 N.W.2d 577 (1966) (upheld the denial of a permit  
to place fill in a lake).

### Houseboats

Harris v. State, 207 Okla. 589, 251 P.2d 799 (1952)  
(upheld injunction against operation of houseboat  
on state owned lake without a permit and in violation  
of the rules and regulations of the Planning and  
Resources Board).

Port of Portland v. Reeder, 203 Oreg. 369, 280 P.2d  
324 (1955) (upheld an ordinance requiring removal  
of houseboats and moorage facilities, but held that  
owners were entitled, under a special statute, to  
reasonable compensation for cost of removal).

### Jurisdiction

State v. Brennan, 3 Conn. Cir. 413, 216 A.2d 294  
(1965) (held that town had no authority to regulate  
hunting on navigable waters where regulation conflicted  
with state statute regulating hunting).

State v. Zetterberg, 109 N.H. 126, 224 A.2d 188  
(1968) (court held that town had power to regulate  
surfing areas in the Atlantic ocean because the state  
had full power to control the area and this power  
had been sufficiently delegated to the town by a  
generalized grant of power).

Shreveport v. Case, 198 La. 702, 4 So. 2d 801 (1941)  
(held that ordinance prohibiting operation of motors  
without a muffler was ultra vires since municipality  
could regulate lake use only to control pollution).

Rose v. Board of Appeals of Wrentham, 352 Mass. 301,  
225 N.E.2d 63 (1967) (held that town had jurisdiction  
over Great Pond).

Wynn v. Margate City, 9 N.J. Misc. 1324, 157 A. 565 (1931) (zoning ordinance applies to land under water).

Rye v. Boardman, 11 Misc. 2d 293, 171 N.Y.S.2d 885 (Westchester County Sup. Ct. 1958) (held that where zoning map fixed district boundary at shore line, land under water was not zoned and no permit was required for use of systems of floats and piles for mooring boats).

People v. Bianchi, 3 Misc. 2d 696, 155 N.Y.S.2d 703 (Nassau County D. Ct. 1956) (upheld town ordinance against attack that navigable tide waters were within the exclusive jurisdiction of the Federal government).

People v. Hart, 206 Misc. 490, 133 N.Y.S.2d 98 (Wayne County Ct. 1954) (held that court did not have jurisdiction under the Navigation Law where offense occurred on Lake Ontario, an international water, and the Navigation Law applied only to inland waters).

#### Licensing or Fees

Witke v. State Conservation Commission, 244 Iowa 261, 56 N.W.2d 582 (1953) (invalidated statute requiring fees for operation of concessions on state waters as depriving citizens of property).

State v. Akron, 173 Ohio St. 189, 181 N.E.2d 26 (1962), appeal dismissed 371 U.S. 35 (1962) (upheld section of Watercraft Act which prohibited political subdivisions of State from imposing license fees or other charges for privilege of operating watercraft).

Brielle v. Zeigler, 73 N.J. Super. 352, 179 A.2d 789 (1892) (held that fee for a municipal license to operate a boat for hire was unreasonable).

Brooklyn Center v. Rippen, 255 Minn. 334, 96 N.W.2d 585 (1959) (held that village could not license boats since the village had no express or implied powers to do so).

Stamford v. Ballard, 162 Tex. 22, 344 S.W.2d 861 (1961) (upheld inspection fee for rental boats as not in conflict with statute providing for the numbering and registration of boats).

Madison v. Tolzmann, 7 Wis. 2d 570, 97 N.W.2d 513 (1959) (held that municipality had no power either under broad enabling statutes or home rule powers to impose a license fee on boats).

#### Limitations on Motor Use

Shreveport v. Wilkinson, 182 La. 783, 162 So. 621 (1935) (upheld ordinance restricting use of out-board motors at night to control pollution but held enforcement against the plaintiff who owned a recreation home on an island was unconstitutional).

Springfield v. Mecum, 320 S.W.2d 742 (Mo. 1959) (upheld a maximum 6 hp. classification for an intensely used reservoir).

Long v. Division of Watercraft, Dept. of Nat. Res., 118 Ohio App. 369, 195 N.E.2d 128 (1963) (upheld a maximum 6 horsepower limitation).

#### Marinas, boat liveries, boat yards

Dennis v. Tonka Bay, 64 F. Supp. 214 (D. Minn. 1946), aff'd, 156 F.2d 672 (1946) (upheld a zoning ordinance which restricted a shoreland site to residential uses in spite of claims that the ordinance rendered the property less valuable for residential use than for boat livery use and that the property had a different character because of the riparian rights involved).

Poneleit v. Dudas, 141 Conn. 413, 106 A.2d 479 (1954) (upheld provisions of zoning ordinance which provided that filled in lands were to bear zoning classification of adjacent zoned land, residential classification, in spite of claims of riparian owner who wished to use property as a boat livery that the residential classification deprived him of his riparian rights).

Milling v. Berg, 104 So. 2d 658 (Fla. D. Ct. App. 1958) (boatyard held to be a valid nonconforming use).

Crawford v. Building Inspector, --- Mass. ---, 248 N.E.2d 488 (1969) (held that construction of pier designed to attract and accommodate boating public, on water side of a nonconforming hotel where no pier had been previously located, constituted construction of commercial structure in contravention of zoning bylaws).

Brady v. Board of Appeals, 248 Mass. 515, 204 N.E.2d 513 (1965) (held that a non-conforming use consisting of four or five boats and a pier at time of adoption of zoning bylaw had been unlawfully expanded [i.e., changed in character and area] to include a large lighter, a barge used as dock facility, two more piers, a repair service, a gasoline pump, a marine crane, a marine railway, and a house for business invitees to enjoy refreshments and meals).

Todd v. Board of Appeals, 337 Mass. 162, 148 N.E.2d 380 (1958) (held that use of premises for boat rentals, sales, and service of boats and motors and fishing equipment could not be authorized by a permit from a zoning board of appeals under a bylaw providing that in a residential district no premises should be used for such purposes except for boat building and storage).

Maki v. Yarmouth, 340 Mass. 207, 163 N.E.2d 633 (1960) (held that variance to individual for use of property as a boat livery was no longer in force after conveyance of property).

Skipjack Cove Marina, Inc. v. County Commissioners, 252 Md. 349, 250 A.2d 260 (1969) (held that refusal of board of zoning appeals to modify conditions on which special exception for use of property for a marina was predicated was not arbitrary, capricious, or unreasonable).

Board of County Commissioners v. Snyder, 186 Md. 342, 46 A.2d 689 (1946) (upheld a residential and farming classification for a section of river shoreland where appellants sought to construct a showroom, office, lounge, and storeroom for sale of factory-built motorboats).

Penning v. Ownens, 340 Mich. 355, 65 N.W.2d 831 (1954) (held that rezoning of lakeshore area so as to create a two lot commercial district in which a boat livery was permissible was arbitrary and unreasonable in that the two lot area was almost entirely surrounded by a residential area and was not in keeping with zoning plan which anticipated gradual elimination of non-conforming commercial uses in the area).

#### Noise Control

Steudel v. Troberg, 76 Ohio App. 136, 63 N.E.2d 241 (1945) (court refused to impute noise of motorboats using boat rental to rental activity itself).

Operation Near a Dam

Lovern v. Brown, 390 S.W.2d 448 (Ky. Ct. App. 1965) (upheld regulation that no vessel was to operate, moor or to be used within 100 feet of designated dam generator exhaust chutes).

Posting of Lookout

Parkor v. Price, 241 Ark. 940, 411 S.W.2d 12 (1967) (held that statute requiring posted lookout on a boat towing water skier is not invalid on the basis that Congress has preempted the field of navigation in navigable waters).

Speed Restrictions

Dickey v. Thornburgh, 187 P.2d 132 (Cal. D. Ct. App. 1947) (upheld 12 m.p.h. speed limit for night boating).

Surfing

State v. Zetterberg, 109 N.H. 126, 224 A.2d 188 (1968) (upheld a town ordinance which designated an area and specified hours for use of surfboards).

Water Skiing

Miller v. Fabius Township Board, 366 Mich. 250, 114 N.W.2d 205 (1962) (upheld an ordinance limiting hours of water skiing against an attack that a state statute which also restricted water skiing preempted the field).



APPENDIX NOTE C

WISCONSIN WATERCRAFT STATUTES  
AND ADMINISTRATIVE REGULATIONS

- (1) WISCONSIN BOAT SAFETY AND REGISTRATION LAWS OF 1968.
- (2) WISCONSIN ADMINISTRATIVE CODE, WCD 5, Boat Regulations and Registration, 1968.
- (3) WISCONSIN ADMINISTRATIVE CODE, H80, Boat and On-Shore Sewage Facilities, 1966.

# **Wisconsin BOAT SAFETY AND REGISTRATION LAWS of 1968**

PUBLICATION 715-69

WISCONSIN  
DEPT. OF NATURAL RESOURCES  
BOX 450  
MADISON, WISCONSIN 53701



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REGULATION OF BOATING

**30.50 Definitions.** In ss. 30.50 to 30.80:

(1) "Boat" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) "Motorboat" means any boat propelled by machinery, whether or not such machinery is the principal source of propulsion, but does not include a boat which has a valid marine document issued by the bureau of customs of the U. S. government or any federal agency successor thereto.

(3) "Owner" means the person who has lawful possession of a boat by virtue of legal title or equitable interest therein which entitles him to such possession.

(4) "Waters of this state" means any waters within the territorial limits of this state, including the Wisconsin portion of boundary waters.

(5) "Operate" when used with reference to a motorboat or boat means to navigate, steer, sail, row or otherwise to move or exercise physical control over the movement of such motorboat or boat.

(6) "Commission" means the state conservation commission, acting directly or through its duly authorized officers or agents.

**30.501 Capacity plates on boats.** (1) Every vessel less than 26 feet in length designed to carry 2 or more persons and to be propelled by machinery as its principal source of power or designed to be propelled by oars shall, if manufactured or offered for sale in this state, have affixed permanently thereto by the manufacturer a capacity plate as required by this section. As used in this section "manufacture" means to construct or assemble a vessel or alter a vessel so as to change its weight capacity.

(2) A capacity plate shall bear the following information permanently marked thereon so as to be clearly visible and legible from the position designed or normally intended to be occupied by the operator of the vessel when under way:

(a) For all vessels designed for or represented by the manufacturer as being suitable for use with outboard motor:

1. The total weight of persons, motor, gear and other articles placed aboard which the vessel is capable of carrying with safety under normal conditions.

2. The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall such presumed weight per person be less than 150 pounds.

3. Clear notice that the information appearing on the capacity plate is applicable under normal conditions and that the weight of the outboard motor and associated equipment is considered to be part of total weight capacity.

4. The maximum horsepower of the motor the vessel is designed or intended to accommodate.

(b) For all other vessels to which this section applies:

1. The total weight of persons, gear and other articles placed aboard which the vessel is capable of carrying with safety under normal conditions.

2. The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall such presumed weight per person be less than 150 pounds.

3. Clear notice that the information appearing on the capacity plate is applicable under normal conditions.

(3) The information relating to maximum capacity required to appear on capacity plates by sub. (2) shall be determined in accordance with such methods and formulas as are prescribed by rule adopted by the conservation department. In prescribing such methods and formulas, the conservation department shall be guided by and give due regard to the necessity for uniformity in methods and formulas lawful for use in determining small vessel capacity in the several states and to any methods and formulas which may be recognized or recommended by the U. S. coast guard.

(4) Any vessel to which this section applies not having a capacity plate, meeting the requirements of law, affixed thereto by the manufacturer thereof may have such affixed by any other person in accordance with such rules as the conservation department prescribes, and may thereafter be offered for sale in this state, but no action taken pursuant to this subsection, or as described herein, shall relieve any manufacturer from

**30.501 NAVIGABLE WATERS, HARBORS AND NAVIGATION**

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liability for failure to comply with this section.

(5) The information appearing on a capacity plate shall be deemed to warrant that the manufacturer, or the person affixing the capacity plate as permitted by sub. (4), has correctly and faithfully employed a method and formula for the calculation of maximum weight capacity prescribed by the conservation department and that the information appearing on the capacity plate with respect to maximum weight capacity and recommended number of persons is the result of the application of such method and formula, and with respect to information concerning horsepower limitations that such information is not a deliberate or negligent misrepresentation.

(6) If any vessel required by this section to have a capacity plate affixed thereto is of such design or construction as to make it impracticable or undesirable to affix such plate, the manufacturer, or other person having the responsibility for affixing the plate, may represent such impracticability or undesirability to the conservation department in writing. Upon determination by the conservation department that such representation has merit and that a proper and effective substitute for the capacity plate which will serve the same purpose is feasible, the conservation department may authorize such alternative compliance and such alternative compliance shall thereafter be deemed compliance with the capacity plate requirements of this section.

(7) The conservation department may by rule exempt from the requirements of this section vessels which it finds to be of such unconventional design or construction that the information required on capacity plates would not assist in promoting safety or is not reasonably obtainable.

(8) The conservation department may issue rules to carry out the purposes of this section.

(9) This section applies to vessels manufactured after January 1, 1966.

History: 1965 c. 212, 433.

**30.51 Operation of unnumbered motorboats prohibited; exemptions.** (1) CERTIFICATE OF NUMBER REQUIRED. After March 31, 1960, no person shall operate, and no owner shall give permission for the operation of, any motorboat or any sailboat over 12 feet in length on the waters of this state unless the motorboat or sailboat either is covered by a valid certificate of number issued pursuant to this chapter or is exempt from the

numbering requirements of this chapter.

(2) EXEMPTIONS. A motorboat or sailboat is exempt from the numbering requirements of this chapter if it is:

(a) Covered by a valid certificate of number issued pursuant to federal law or a federally-approved numbering system of another state, with the identification number properly displayed on each side of the bow, but this exemption does not apply if the boat has been within this state for a period in excess of 90 consecutive days or if this state is the state of principal use of such motorboat; or

(b) Operated within a period of 15 days after application for certificate of number has been made and the required fee has been paid; or

(c) A motorboat from a country other than the United States temporarily using the waters of this state; or

(d) A motorboat whose owner is the United States, a state or a local governmental unit; or

(e) A ship's lifeboat; or

(f) A motorboat belonging to a class of boats which the commission by rule has exempted from numbering in accordance with sub. (3).

(g) Present in this state, for a period of not to exceed 10 days, for the express purpose of competing in a race conducted pursuant to a permit from a town, village, city or an authorized agency of the U. S. government.

(3) COMMISSION AUTHORIZED TO EXEMPT CERTAIN CLASSES OF MOTORBOATS. The commission may, by rule, exempt any class of motorboats from the numbering requirements of this chapter if it finds that the numbering of motorboats of such class will not materially aid in their identification and if it further finds that such class of motorboats has been exempted from numbering by the officer or agency charged with administration of the federal law pertaining to numbering of motorboats, but no exemption may be based on horsepower alone, nor may sailboats be exempt.

History: 1961 c. 87, 133.

**30.52 Certificates of number; applications; issuance; renewals; fees.** (1) WHAT BOATS TO BE NUMBERED IN THIS STATE. A motorboat principally used in this state shall be numbered in this state. Whenever a motorboat covered by a valid certificate of number issued pursuant to federal law or the federally-approved numbering system of another state is used in this state in excess of 90 con-

secutive days or to the extent that this state becomes the state of principal use, the owner of such motorboat shall forthwith apply for a certificate of number under this section.

(2) **NUMBERING PERIODS.** Numbering periods shall run for 3 years, commencing April 1, 1960. Unless sooner terminated or discontinued in accordance with this chapter, certificates of number issued for the period commencing April 1, 1960 are valid until April 1, 1963 and shall then expire and subsequent certificates shall expire on March 31 of every 3rd year thereafter.

(3) **FEES.** A fee of \$3.25 shall be paid to the commission for the issuance of a certificate of number or renewal thereof valid for the whole or any part of a numbering period, subject to the following exceptions:

(a) If the boat has not previously been numbered in this state or was last previously numbered pursuant to federal law or a federally approved numbering system of another state, the fee shall be \$2.25 if 2 years or less, but more than one year, remains of the numbering period at the time application is received and \$1.25 if one year or less remains of the numbering period.

(b) For issuance of a certificate of number to the new owner upon transfer of ownership of a boat numbered in this state, the fee shall be \$1.25 if the certificate is issued for the remainder of the numbering period for which the previous certificate was issued.

(c) A person owning or otherwise holding 3 or more boats ready for hire generally or ready to let in connection with the operation of resort facilities or guide services may, at his option, pay a flat fee of \$5 plus 75 cents per boat for obtaining or renewing certificates of number for such boats in lieu of the fee which otherwise would be payable.

(4) **ISSUANCE OF CERTIFICATE OF NUMBERS.** Upon receipt of a proper application accompanied by the required fee, the commission shall issue to the applicant a certificate of number stating the number awarded, the name and address of the owner and such other information as the commission deems necessary. The certificate of number shall be pocket size and of durable water resistant material. A number shall be awarded to a particular boat unless the owner is a manufacturer of or dealer in boats, motors or trailers, and desires to use the number on his boats only while being tested or demonstrated or while being used for the purpose of testing or demonstrating a motor or trailer.

(5) **NUMBERING SYSTEM TO CONFORM TO FEDERAL SYSTEM.** The numbering system employed by the commission shall be in conformity with the over-all system of identification numbering for motorboats established by the U. S. government. The commission shall adopt such rules as are necessary to bring the state numbering system into conformity with such federal system.

(6) **DUPLICATE CERTIFICATES.** If a certificate of number is lost or destroyed the owner may apply for a duplicate. Such application shall be made upon a form designated by the commission and shall be accompanied by a fee of \$1.25. Upon receipt of a proper application and the required fee, the commission shall issue a duplicate certificate to the owner.

(7) **COMMISSION TO DISTRIBUTE SAFETY PAMPHLETS.** The commission shall furnish to each person obtaining a certificate of number a copy of the state laws pertaining to operation of boats or informational material based on such laws.

**History:** 1965 c. 387.

A different fee for boats depending upon their size would be unconstitutional. 54 Atty. Gen. 1.

**30.53 Identification number to be displayed on boat; certificate to be carried. (1)**

**DISPLAY OF IDENTIFICATION NUMBER.** Upon being issued a certificate of number, the owner of the motorboat shall paint on or attach to each side of the bow thereof the identification number in such manner as may be prescribed by the rules of the commission in order that it may be clearly visible and shall maintain such number in legible condition at all times. The commission shall furnish the owner with instructions relative to painting or attaching the awarded number to the motorboat. A manufacturer or dealer in boats, motors or trailers may have the awarded number printed upon or attached to removable signs to be temporarily but firmly mounted upon or attached to the boat while being tested or demonstrated or while being used in connection with the testing or demonstrating of a motor or trailer. No number other than the number awarded by the commission or granted reciprocity under this chapter shall be painted, attached, or otherwise displayed on either side of the bow of a motorboat. The commission shall determine in the case of sailboats, however, where such identification number shall be shown.

(2) **CERTIFICATE OF NUMBER OR FACSIMILE TO BE AVAILABLE FOR INSPECTION.** The certificate of number shall be available at all

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times for inspection on the boat for which issued, whenever such boat is in use, unless the commission determines the boat is of such size or type as to make the retention of same on the boat impractical.

**History:** 1961 c. 590; 1965 c. 387.

**30.54 Transfer of ownership of numbered boat.** (1) **DUTY OF SELLER.** Whenever the owner of a motorboat or sailboat covered by a valid or expired certificate of number issued by this state transfers all or any part of his interest in such motorboat or sailboat, other than by the creation of a security interest, he shall notify the commission of such transfer and shall at the same time return the certificate of registration to the commission.

(2) **DUTY OF PURCHASER.** Transfer of the ownership of a motorboat terminates the certificate of number for such motorboat, except in the case of a transfer of a part interest which does not affect the transferor's right to operate such motorboat. The transferee shall make application for a new certificate of number as prescribed by the commission. Upon receipt of such application accompanied by the required fee, the commission shall issue a new certificate for the boat but shall not assign a new number to the boat unless compliance with federal numbering regulations require otherwise.

**History:** 1961 c. 87.

**30.55 Notice of abandonment or destruction of boat or change of address.** (1) **DESTRUCTION OR ABANDONMENT.** If a boat covered by a certificate of number issued by this state is destroyed or abandoned, the owner shall notify the commission of such fact within 15 days after the destruction or abandonment and shall at the same time return the certificate of number to the commission for cancellation.

(2) **CHANGE OF ADDRESS.** Whenever any person, after applying for or receiving a certificate of number, moves from the address given in such application or certificate, he shall within 15 days thereafter notify the commission in writing of both his old and new address and of the numbers awarded by any certificates held by him. At the same time he shall indorse his new address on his certificates.

**30.60 Classification of motorboats.** For the purposes of ss. 30.61 and 30.62, motorboats are divided on the basis of their length into 4 classes as follows:

(1) Class A—those less than 16 feet.

(2) Class 1—those 16 feet or over but less than 26 feet.

(3) Class 2—those 26 feet or over but less than 40 feet.

(4) Class 3—those 40 feet or over.

**30.61 Lighting equipment.** (1) **WHEN LIGHTS REQUIRED; PROHIBITED LIGHTS.** (a) No person shall operate any motorboat at any time from sunset to sunrise unless such motorboat carries the lighting equipment required by this section and unless such equipment is lighted when and as required by this section.

(b) No owner shall give permission for the operation of a motorboat at any time from sunset to sunrise unless such motorboat is equipped as required by this section.

(c) No person shall exhibit from or on any motorboat when under way at any time from sunset to sunrise any light which may be mistaken for those required by this section.

(2) **LIGHTS FOR MOTORBOATS OF CLASSES A AND 1.** All motorboats of classes A and 1 when under way at any time from sunset to sunrise shall carry and have lighted the following lamps:

(a) One lamp aft showing a bright white light all around the horizon.

(b) One combined lamp in the fore part of the motorboat and lower than the white light aft, showing green to starboard and red to port and so fixed that each side of the combined lamp throws a light from directly ahead to 2 points abaft the beam on its respective side.

(3) **LIGHTS FOR MOTORBOATS OF CLASSES 2 AND 3.** All motorboats of classes 2 and 3 when under way at any time from sunset to sunrise shall carry and have lighted the following lamps:

(a) One lamp in the fore part of the boat as near the stem as practicable, so constructed as to show an unbroken bright white light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light from directly ahead to 2 points abaft the beam on either side.

(b) One lamp aft showing a bright white light all around the horizon and higher than the white light forward.

(c) On the starboard side, one lamp showing a green light, and on the port side, one lamp showing a red light, both fitted with inboard screens of sufficient height and so set as to prevent these lights from being seen across the bow. Each such side lamp shall be so constructed as to show an unbroken light over an arc of the horizon of 10 points

of the compass and shall be so fixed as to throw the light from directly ahead to 2 points abaft the beam on its respective side.

(4) **SAILBOATS WITH MOTORS.** Sailboats equipped with motors and being propelled in whole or in part by such motor must comply with sub. (2) or (3), whichever is applicable. Whenever such a sailboat is being propelled entirely by sail at any time from sunset to sunrise, it shall have lighted the lamps showing the colored lights specified in sub. (2) or (3), but not the lamps showing the white lights, and shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(5) **SAILBOATS WITHOUT MOTORS AND ROW-BOATS.** Every boat propelled by muscular power and every sailboat not equipped with a motor, when under way at any time from sunset to sunrise, shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(6) **PERFORMANCE SPECIFICATIONS FOR LAMPS.** Every white light prescribed by this section shall be of such character as to be visible at a distance of at least 2 miles on a dark night with clear atmosphere. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile on a dark night with clear atmosphere.

(7) **OPTIONAL LIGHTING REQUIREMENTS.** Any boat may carry and exhibit the lights required by the federal regulations for preventing collisions at sea, 1948, federal act of October 11, 1951, (33 USC 143-147d) as amended, in lieu of the lights required by subs. (2) and (3).

**30.62 Other equipment.** (1) **WHEN EQUIPMENT REQUIRED.** No person shall operate any boat on the waters of this state unless such boat is equipped as required by this section and the rules of the commission issued pursuant thereto. No owner of a boat shall rent such boat to any other person for use upon the waters of this state unless such boat is equipped at the time of rental as required by this section and the rules of the commission issued pursuant thereto. If such boat is properly equipped at the time of rental for conditions then existing, the responsibility of the owner under this section is met, notwithstanding a subsequent change in the number of passengers or a change in time from daylight to dark.

(2) **MUFFLERS.** The engine of every motorboat propelled by an internal combustion engine shall be equipped with a muffler which is so constructed and kept in constant operation that it prevents excessive or unusual noise at all times while the engine is in operation.

(3) **LIFE PRESERVERS.** Every boat shall carry at least one life preserver, life belt, ring buoy, buoyant cushion or other device of the sort prescribed by the regulations of the commandant of the U. S. coast guard, for each person on board, so placed as to be readily accessible, except that the commission may make such rules as it deems desirable with respect to sailboats without motors.

(4) **FIRE EXTINGUISHERS.** Every motorboat, except outboards of open construction, shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectively extinguishing burning gasoline, as prescribed by rules of the commission. Such fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

(5) **CARBURETOR FLAME ARRESTORS.** Every motorboat equipped with an inboard motor using gasoline as a fuel shall have the carburetors of every such motor fitted with an efficient device for arresting backfire. Such device shall meet the specifications prescribed by rules of the commission.

(6) **BILGE VENTILATORS.** Every motorboat, except open boats, using as fuel any liquid of a volatile nature, shall be provided with an efficient natural or mechanical ventilation system which is capable of removing resulting inflammable or explosive gases.

(7) **EXCEPTIONS.** Subsections (2) and (4) do not apply to a motorboat while competing in a race conducted pursuant to a permit from a town, village or city or from an authorized agency of the U. S. government, nor does it apply to a boat designed and intended solely for racing, while such boat is operated incidentally to the tuning up of the boat and engine for the race.

(8) **BATTERY COVER.** Every motorboat equipped with storage batteries shall be provided with suitable supports and secured against shifting with the motion of the boat. Such storage batteries shall be equipped with a nonconductive shielding means to prevent accidental shorting of battery terminals.

(9) **COMMISSION TO ADOPT RULES.** The commission shall adopt such rules modifying or supplementing the equipment requirements



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of this section as are necessary to keep those requirements in conformity with the equipment rules adopted by the U. S. coast guard.

**History:** 1961 c. 87, 590; 1967 c. 163.

**30.64 Patrol boats exempt from certain traffic regulations.** The operator of a duly authorized patrol boat, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law, need not comply with state or local regulations fixing maximum speed limits and, if a siren is being sounded, need not comply with state or local boat traffic regulations governing meeting, passing or right of way.

**30.65 Traffic rules. (1) MEETING; OVERTAKING; RIGHT OF WAY.** Every person operating a boat shall comply with the following traffic rules, except when deviation therefrom is necessary to comply with federal pilot rules while operating on the navigable waters of the United States:

(a) When 2 motorboats are approaching each other "head and head," or so nearly so as to involve risk of collision, each boat shall bear to the right and pass the other boat on its left side.

(b) When 2 motorboats are approaching each other obliquely or at right angles, the boat which has the other on her right shall yield the right of way to the other. "Right" means from dead ahead, clockwise to 2 points abaft the starboard beam.

(d) When a motorboat and a boat propelled entirely by sail or muscular power are proceeding in such a direction as to involve risk of collision, the motorboat shall yield the right of way to the other boat.

(e) A boat may overtake and pass another boat on either side if it can be done with safety but the boat doing the overtaking shall yield the right of way to the boat being overtaken, notwithstanding any other rule in this section to the contrary.

(f) A boat granted the right of way by this section shall maintain her course and speed, unless to do so would probably result in a collision.

(2) **ADDITIONAL TRAFFIC RULES.** The conservation commission may adopt such additional traffic rules as it deems necessary in the interest of public safety. Such rules shall conform as nearly as possible to the federal pilot rules.

**30.66 Speed restrictions. (1) SPEED TO BE REASONABLE AND PRUDENT.** No person shall operate a motorboat at a speed greater than

is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a motorboat shall be so controlled as to avoid colliding with any object lawfully in or on the water or with any person, boat or other conveyance in or on the water in compliance with legal requirements and exercising due care.

(2) **FIXED LIMITS.** In addition to complying with sub. (1), no person shall operate a motorboat at a speed in excess of the following:

(a) Eight miles per hour on the Brule river or any of its tributaries in Douglas county.

### 30.67 Accidents and accident reports.

(1) **DUTY TO RENDER AID.** Insofar as he can do so without serious danger to his own boat or to persons on board, the operator of a boat involved in a boating accident shall stop his boat and shall render to other persons affected thereby such assistance as may be practicable and necessary to save them from or minimize any danger caused by the accident and shall give his name and address and identification of his boat to any person injured and to the owner of any property damaged in the accident.

(2) **DUTY TO REPORT.** (a) If the boating accident results in death or injury to any person or total property damage in excess of \$100, every operator of a boat involved in such accident shall, as soon as possible, give notice of the accident to a conservation warden or local law enforcement officer and shall within 10 days after the accident, file a written report thereof with the commission on the form prescribed by it.

(b) If the operator of a boat is physically incapable of making the report required by this subsection and there was another occupant in the boat at the time of the accident capable of making the report he shall make such report.

(3) **TERMS DEFINED.** In this section:

(a) "Boating accident" means a collision, accident or other casualty involving a boat.

(b) "Injury" means any injury of a physical nature resulting in the need of first aid or attention by a physician or surgeon, whether or not such aid or attention was received.

(c) "Total property damage" means the sum total cost of putting the property damaged in the condition it was in before the accident, if repair thereof is practical, and if not practical, the sum total cost of replacing the property.

(4) **REPORTS CONFIDENTIAL.** No report required by this section to be filed with the commission shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the commission shall furnish upon demand of any person who has or claims to have made such a report, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the commission solely to prove a compliance or a failure to comply with the requirement that such a report be made.

(5) **TRANSMITTAL OF INFORMATION TO FEDERAL AUTHORITIES.** If any request for information available on the basis of reports filed pursuant to this section is duly made by an authorized official or agency of the U. S. government, the commission shall compile and furnish such information in accordance with such request.

**30.675 Distress signal flag.** The display on a boat or by a person of an orange flag approximately 18 by 30 inches in size shall indicate that such boat or person is in need of help.

(1) Insofar as is possible without serious danger to his own boat or persons on board, the operator of a boat observing such distress signal shall render to the boat or person displaying the signal such assistance as may be practicable and necessary to save the boat or person or to minimize any danger to them.

(2) No person shall display a flag like that described in sub. (1) unless such person is in need of assistance to prevent bodily injury or destruction of property.

**History:** 1963 c. 538.

**30.68 Prohibited operation.** (1) **INTOXICATED OPERATION.** No person shall operate a boat upon the waters of this state while under the influence of an intoxicant or a narcotic drug or while under the influence of any dangerous drug as defined in s. 151.07 (1) (a).

(2) **NEGLIGENT OPERATION.** No person shall operate or use any boat upon the waters of this state in a careless, negligent or reckless manner so as to endanger the life, property or person of another.

(3) **OPERATION BY INCAPACITATED PERSON.** No person in charge or control of a boat shall authorize or knowingly permit the boat to be operated by any person who by reason of physical or mental disability is incapable of operating such boat under the prevailing circumstances.

(4) **CREATING HAZARDOUS WAKE OR WASH.**

(a) 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.

(b) 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.

(5) **OPERATING IN CIRCULAR COURSE.** No person shall operate a motorboat repeatedly in a circular course around any other boat, or around any person who is swimming, if such circular course is within 200 feet of such boat or swimmer.

(6) **RIDING ON DECKS AND GUNWALES.** Except for the purpose of anchoring, mooring or casting off or for other necessary purpose, no person shall ride or sit on the gunwales or bow of any motorboat while underway.

(7) **RESTRICTED AREAS.** No person shall operate a boat within a water area which has been clearly marked by buoys or some other distinguishing device as a bathing or swimming area; nor operate a boat in restricted use areas contrary to regulatory notice pursuant to s. 30.74 (2). This subsection does not apply in the case of an emergency, or to patrol or rescue craft.

(8) **ANCHORING IN TRAFFIC LANES.** No person shall anchor any boat in the traveled portion of any river or channel or in any traffic lane established and legally marked, so as to prevent, impede or interfere with the safe passage of any other boat through the same.

(9) **OVERLOADING.** No boat shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other existing operating conditions.

(10) **OVERPOWERING.** No boat shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

(11) **UNNECESSARILY SOUNDING WHISTLES.** No person shall unnecessarily sound a horn, whistle or other sound-producing device on any boat while at anchor or under way. The use of a siren on any except duly authorized patrol boats on patrol or rescue duty is prohibited.

(12) **MOLESTING OR DESTROYING AIDS TO NAVIGATION AND REGULATORY MARKERS.** No

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unauthorized person shall move, remove, molest, tamper with, destroy or attempt to destroy, or moor or fasten a boat (except to mooring buoys) to any navigation aids or regulatory markers, signs or other devices established and maintained to aid boaters.

**History:** 1961 c. 87, 590; 1965 c. 116, 249.

**30.69 Water skiing.** (1) PROHIBITED AT CERTAIN TIMES; EXCEPTIONS. (a) Except as provided in par. (b), no person shall operate a motorboat towing a person on water skis, aquaplane or similar device, nor shall any person engage in water skiing, aquaplaning or similar activity, at any time from sunset to sunrise, but this restriction of the hours of water skiing does not prevent restrictions of the hours of water skiing between sunrise and sunset by local ordinances enacted pursuant to s. 30.77 (3).

(b) Paragraph (a) does not apply to duly authorized water ski tournaments, competitions, exhibitions or trials therefor, where adequate lighting is provided.

(2) CAREFUL AND PRUDENT OPERATION. A person operating a motorboat having in tow a person on water skis, aquaplane or similar device shall operate such boat in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

**30.70 Skin diving.** No person shall engage in underwater diving or swimming with the use of self-contained underwater breathing apparatus unless the approximate location of such diving or swimming is distinctly marked by a flag designed so as to have one diagonal white stripe on a red background, and be of a size and height above the water so as to be clearly apparent at a distance of 100 yards under normal conditions. Except in the case of emergency anyone engaging in such diving or swimming shall not rise near or to the surface of the water except within a radius of 50 feet from such flag. No person engaged in such diving or swimming shall interfere with the operations of anyone fishing in the immediate area. This statute shall not apply to the Great Lakes or the waters of Green Bay.

**History:** 1963 c. 330.

**30.71 Boats equipped with toilets.** (1) No person shall operate any boat equipped with toilets on inland waters of this state, except the Mississippi river, unless the toilet wastes are retained for shore disposal by means of facilities constructed and operated

in accordance with rules adopted by the state board of health. "Inland waters" means the waters defined as inland waters by s. 29.01 (4).

(2) Until October 31, 1967, sub. (1) shall not apply to the St. Croix river below Houlton-Stillwater.

**History:** 1963 c. 576; 1965 c. 565.

**30.74 Additional functions of conservation commission.** In addition to other powers and duties conferred upon the commission relative to boating safety and the regulation of boating, the commission shall:

(1) BOATING SAFETY EDUCATION. Carry on a comprehensive educational program designed to advance boating safety. Such program shall include the preparation and dissemination of water safety information to the public, including the informational pamphlets specified in s. 30.52 (7). The commission shall co-operate with organizations working in the field of boating safety to establish training courses whereby interested persons may receive instruction in the safe and proper operation of boats.

(2) UNIFORM NAVIGATION AIDS. (a) By rule establish uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers. Such rules shall establish a marking system compatible with the system of aids to navigation prescribed by the U. S. coast guard and shall give due regard to the system of uniform waterway markers approved by the advisory panel of state officials to the merchant marine council, U. S. coast guard. After January 1, 1968, no municipality or person shall mark the waters of this state in any manner in conflict with the marking system prescribed by the conservation commission. Any marker which does not comply with such marking system by January 1, 1968, is deemed an unlawful obstruction to navigable waters and may be removed in accordance with law.

(b) For purposes of this section "aids to navigation" means buoys, beacons and other fixed objects in the water which are used to mark obstructions to navigation or to direct navigation through safe channels; "regulatory markers" means any anchored or fixed marker in the water or anchored platform on the surface of the water, other than aids to navigation, and shall include but not be limited to bathing beach markers, speed zone markers, information markers, mooring buoys, fishing buoys and restricted activity area markers.

(3) **ENFORCEMENT.** Assist in the enforcement of ss. 30.50 to 30.80 and in connection therewith maintain patrol boats and operate such patrol boats at such times and places as the commission deems necessary in the interest of boating safety and the effective enforcement of boating laws.

**History:** 1965 c. 116.

**30.75 Service of process on nonresident.**

(1) **HOW SERVED.** Service of process upon a nonresident defendant in any action claiming injury to person or property arising out of the operation of a boat in this state may be either by personal service within or without this state or by registered mail as provided in sub. (2).

(2) **SERVICE BY REGISTERED MAIL.** If service of process is to be by registered mail, the original and necessary copies of the summons shall be left with the clerk of the court in which the action is to be brought, together with a sum of 75 cents to cover the cost of mailing. The clerk shall mail a copy to the defendant at his last address as known to the plaintiff or clerk, with the return receipt signed by the addressee requested. Service of such summons is deemed completed when it is mailed. The clerk shall enter upon the docket the date when the summons is mailed and the name of the person to whom mailed.

**30.76 Deposit of money to obtain release from arrest.**

(1) **HOW DEPOSIT IS MADE.** A person arrested without a warrant for a violation of ss. 30.50 to 30.80 or any rule or local regulation enacted pursuant thereto, who is not released at the time of arrest or without unnecessary delay brought before a magistrate or a court, shall be allowed to make a deposit of money by mailing the deposit as directed by the arresting officer, at the nearest mail box, to the office of the sheriff, area conservation headquarters, city or village police headquarters or precinct stations or to the office of the clerk of court or municipal justice before whom he is summoned to appear, or by going in the custody of the arresting officer to any of those places to make the deposit.

(2) **AMOUNT OF DEPOSIT.** The amount of the deposit shall be based on a predetermined schedule set by the court or justice before whom the alleged violator is summoned to appear, and shall not exceed the maximum fine or forfeiture fixed by statute or ordinance for the offense. The arresting officer or the person accepting the deposit may in his discretion accept a personal bank check as the equivalent of money.

(3) **RECEIPT.** The person receiving the deposit shall prepare a receipt in triplicate on a serially numbered form, showing the purpose for which the deposit is made and stating that the alleged violator may inquire at the office of the clerk of court or justice regarding the disposition of the deposit, and shall deliver the original to the alleged violator or, if the deposit is made by mail, shall mail it by return mail.

(4) **RELEASE FROM CUSTODY.** If the alleged violator is in custody he shall be released after he has made the deposit as specified in this section, except that if the charge is operating a boat while under the influence of an intoxicant or narcotic or dangerous drug, he shall not be released until in the opinion of the officer having his custody, he is in fit condition to care for his own safety or is accompanied by a person who is able to care for his safety and prevent further violations of the law.

(5) **DELIVERY TO COURT OR JUSTICE.** Any person other than the clerk of court or the justice before whom the defendant is summoned to appear, who accepts the deposit shall, before the time fixed for the appearance of the defendant, deliver the deposit and a copy of the receipt to the clerk of the court or the justice. The clerk or justice shall give a receipt therefor, specifying the serial number of the officer's receipt accompanying the deposit.

(6) **PROCEEDINGS IN COURT.** (a) If the defendant appears in court at the time directed, the case shall be tried as provided by law and any fine or forfeiture and costs shall be taken out of the deposit and the balance, if any, returned to the defendant. If the fine or forfeiture and costs exceed the deposit the court or justice shall proceed as prescribed by s. 288.09 or 959.055, as the case may be.

(b) If the defendant fails to appear in court at the time he is directed to appear, he is deemed to have tendered a plea of nolo contendere and submitted to a fine or forfeiture plus costs, not exceeding the amount of the deposit. The court may either accept the plea of nolo contendere and enter judgment accordingly or reject the plea and issue a warrant or summons under s. 954.02. If the court accepts the plea of nolo contendere, the defendant may move within 20 days to withdraw it and enter a plea of not guilty if he shows to the satisfaction of the court that his failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If

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on reopening, the defendant is found not guilty the court shall return the deposit to him. If the defendant is found guilty, whether on the plea of nolo contendere or after trial, any fine or forfeiture and costs imposed shall be taken out of the deposit and the balance, if any, returned to the defendant.

**History:** 1961 c. 495; 1965 c. 617; 1967 c. 276 s. 39.

#### 30.77 Local regulation of boating. (1)

LOCAL REGULATION PROHIBITED; EXCEPTIONS. Sections 30.50 to 30.71 shall be uniform in operation throughout the state. No municipality may:

(a) Enact any local regulation requiring local numbering, registration or licensing of boats or any local regulation charging fees for inspection, except as provided in sub. (3) (b); or

(b) Except as provided in subs. (2) and (3), enact any local regulation which in any manner excludes any boat from the free use of the waters of this state or which pertains to the use, operation or equipment of boats or which governs any activity regulated by ss. 30.50 to 30.71.

(2) ORDINANCES CONFORMING TO STATE LAW. Any municipality may enact ordinances which are in strict conformity with ss. 30.50 to 30.71 or rules of the commission enacted pursuant thereto.

(3) LOCAL REGULATIONS. (a) Any town, village or city may, in the interest of public health or safety, adopt local regulations not contrary to or inconsistent with this chapter, relative to the equipment, use or operation of boats or relative to any activity regulated by ss. 30.60 to 30.71, but no such local regulation which in any manner pertains to the equipment, use or operation of a boat on an inland lake is valid unless all towns, cities and villages having jurisdiction on the waters of the lake have enacted an identical local regulation. If any county operates any marina development adjacent to any waters or lake, the authority heretofore conferred upon any town, village or city shall exclusively vest in said county in respect to adoption of such local regulations insofar as they relate to the development, operation and use of said facility and its adjoining waters.

(b) Notwithstanding the prohibition in sub. (1) against local regulations which exclude any boat from the free use of the waters of the state, any municipality may charge reasonable fees for the use of public boatlaunching facilities owned or operated by it and any town, village or city may regulate the operation, equipment, use and inspection

of those boats carrying passengers for hire which operate from a base within its jurisdiction and charge reasonable fees for such inspection.

(4) PUBLICIZING LOCAL REGULATIONS. All local regulations adopted under sub. (3) shall be prominently posted by the local authority which enacted them at all public access points within the local authority's jurisdiction and also shall be filed with the commission.

**History:** 1961 c. 87.

#### 30.78 Municipal regulation of seaplanes.

(1) REGULATION AUTHORIZED. Any city, village or town adjoining or surrounding any waters may, after public hearing, by ordinance:

(a) Prescribe reasonable safety regulations relating to the operation on the surface of such waters of any aircraft capable of landing on water.

(b) Prescribe the areas which may be used as a landing and take-off strip for such aircraft or prohibit such use of the waters altogether.

(c) Provide proper and reasonable penalties for the violation of any such ordinance.

(2) MARKING OF REGULATED OR RESTRICTED AREAS. Every such ordinance shall direct that the regulated or prohibited areas be designated by standard marking devices.

(3) CONFLICT OF JURISDICTION. Any conflict in jurisdiction arising from the enactment of ordinances by 2 or more municipalities shall be resolved under s. 66.32.

#### 30.79 Municipal water safety patrols; state aids. (1) DEFINITIONS. In this section:

(a) "State aid" means payment by the state to a municipality for or toward the cost of the operation or maintenance of a water safety patrol unit.

(b) "Water safety patrol unit" means a unit within an existing municipal law enforcement agency or a separate municipal agency, created by a municipality or by a number of municipalities riparian to a single body of water for the purpose of enforcing ss. 30.50 to 30.80 and any rules and ordinances enacted pursuant thereto.

(2) STATE AID. In order to protect public rights in navigable waters and to promote public health, safety and welfare and the prudent and equitable use of the navigable waters of the state, a system of state aids for local enforcement of ss. 30.50 to 30.80 and ordinances enacted pursuant thereto is hereby established. Such aid shall be granted under

this section to those municipalities which establish, maintain and operate water safety patrol units.

(3) **ENFORCEMENT POWERS.** Officers patrolling the waters as part of a water safety patrol unit may stop and board any boat for the purpose of enforcing ss. 30.50 to 30.80 or any rules or ordinances enacted pursuant thereto, if he has reasonable cause to believe there is a violation of such sections, rules or ordinances.

(4) **JURISDICTION.** Upon petition by any municipality or group of municipalities operating or intending to operate a water safety patrol unit, the commission shall, if it finds that it is in the interest of efficient and effective enforcement to do so, by rule define the waters which may be patrolled by such unit, including waters lying within the territorial jurisdiction of some other town, village or city if such town, village or city consents thereto. Such consent is not required if the petitioner is a municipality containing a population of 5,000 or more, bordering upon the waters to be affected by such rule in counties having a population of less than 500,000. Officers patrolling the waters as part of such water safety patrol unit shall have the powers of sheriff in enforcing ss. 30.50 to 30.80, or rules or ordinances enacted pursuant thereto, on any of the waters so defined, whether or not such waters are within the municipality's jurisdiction for other purposes.

(5) **PAYMENT OF AIDS.** On or before December 1 of the year in which a municipality operated a water safety patrol unit, it shall file with the commission on the forms prescribed by it a detailed statement of the costs incurred by the municipality in the operation of the water safety patrol unit during the past fiscal year and of the receipts resulting from fines or forfeitures imposed upon persons convicted of violations of ordinances enacted pursuant to s. 30.77. The commission shall audit the statement and determine the net costs (after deduction of any fines or forfeitures imposed upon persons convicted of violations of ordinances enacted pursuant to s. 30.77) which are directly attributable to the operation and maintenance of the water safety patrol unit, including a reasonable amount for depreciation of equipment. The commission shall compute the state aids on the basis of 75% of such net costs directly attributable to the operation and maintenance of the water safety patrol unit and shall cause such aids to be paid on or before March 1 of the year fol-

lowing the filing of the statements under this subsection. If the state aids payable to municipalities exceed the moneys available for such purpose, the commission shall prorate the payments.

**History:** 1961 c. 455.

**30.80 Penalties.** (1) Any person violating any provision of ss. 30.50 to 30.80 for which a penalty is not provided by sub. (2) shall be fined not more than \$50 or imprisoned not more than 30 days, or both, for the 1st offense and fined not more than \$100 or imprisoned not more than 90 days, or both, upon conviction of the same offense a 2nd or subsequent time within one year.

(2) Any person violating s. 30.67 (1) or 30.68 (1) shall be fined not more than \$200 or imprisoned not more than 6 months or both.

**30.81 Local regulations on icebound inland waters.** (1) **LOCAL ORDINANCES.** Any town, village or city may by ordinance, in the interest of public health or safety, adopt local regulations not inconsistent with this chapter, relative to the use or operation of boats and other craft, including motor vehicles, on icebound inland lakes, but no such local regulation is valid unless each town, village and city having jurisdiction over any portion of the lake has enacted an identical local regulation. When such identical local regulations have been enacted, the regulation of any individual town, village or city is in effect on the entire lake, and any law enforcement officer of any such town, village or city shall have the powers of sheriff in enforcing such regulation on any portion of the lake, whether or not such portion of the lake is within the municipality's jurisdiction for other purposes.

(2) **COUNTY ORDINANCES.** Any county may by ordinance, in the interest of public health or safety, adopt local regulations not inconsistent with this chapter, relative to the use or operation of boats and other craft, including motor vehicles, on any of the icebound inland waters over which it has jurisdiction, except inland icebound lakes which are regulated by valid local ordinances enacted pursuant to sub. (1).

(3) **LIABILITY OF LOCAL GOVERNMENT.** All traffic on icebound, inland waters shall be at the risk of the traveler. An ordinance by any municipality or county enacted under this section permitting traffic on icebound inland waters subject to regulations which may be imposed in accordance with this section shall not render the municipality or county adopt-

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ing such ordinance liable for any accident to those engaged in permitted traffic while said ordinance is in effect.

**History:** 1961 c. 8.

**30.90 Public access to Lake Lions.** Neither the county or town may provide, nor shall any subdivider be required or permitted to provide, public access to Lions lake in the town of Alban, Portage county, if such public access will in any way interfere with the use of the lake as a recreational area for

the physically handicapped as long as such use is continued. The conservation commission may stock said lake with fish as long as such use is continued, any provision in ch. 29 to the contrary notwithstanding. The town board of the town of Alban shall have jurisdiction over Lake Lions, and may enact and enforce such ordinances necessary to prevent any deterioration of the said waters or any nuisances which would adversely affect the health or safety of the people.

**History:** 1961 c. 66.

## Chapter WCD 5

## BOAT REGULATIONS AND REGISTRATION

WCD 5.01	Application for boat certificate of number	WCD 5.08	Accident report
WCD 5.02	Application for transfer	WCD 5.09	Uniform aids to navigation
WCD 5.03	Application for duplicate	WCD 5.10	Carburetor flame arrestors
WCD 5.04	Certificate of number	WCD 5.11	Fire extinguishers
WCD 5.05	Numbering pattern to be used	WCD 5.12	Specifications for determination of weight capacity and recommended number of persons
WCD 5.06	Display of number on boat		
WCD 5.07	Transfer of ownership of numbered boat		

**WCD 5.01 Application for boat certificate of number.** (1) The application for a boat certificate of number shall include the following:

- (a) Name and address of boat owner.
- (b) Boat type—motorboat, sailboat, other.
- (c) Boat description—make, length, year, serial number (if any).
- (d) Type of use—pleasure, livery, dealer, manufacturer, commercial, other.
- (e) Type of propulsion—inboard, outboard, other.
- (f) Type of fuel—gasoline, diesel, other.
- (g) Hull material—wood, aluminum, steel, plastic, other.
- (h) Mooring address—city, village, township, county.
- (i) Coast guard registration number (if any).
- (j) A statement of ownership by applicant.
- (k) Signature of owner.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.02 Application for transfer.** An application for a transfer certificate of number in addition to furnishing the information required by WCD 5.01 shall include a statement by the applicant listing the name and address of the previous owner, his certificate number, and the date on which the boat was acquired by the applicant. The applicant shall also sign the statement.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.03 Application for duplicate.** An applicant for a duplicate certificate of number in addition to furnishing the information required by section WCD 5.01 shall complete and sign a statement that the original certificate has been either destroyed or lost and that the application being made is for a duplicate.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.04 Certificate of number.** (1) The boat certificate of number issued in accordance with section 30.52, Wis. Stats., shall include the following:

- (a) Name and address of boat owner.
- (b) Number issued.
- (c) Expiration date.
- (d) Make and length of boat.
- (e) Hull material.
- (f) Type.

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(2) The certificate of number shall be available at all times for inspection on the boat when in use. The federal boating act does not authorize any exemption from this requirement.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.05 Numbering pattern to be used.** The boat certificate of number issued pursuant to section 30.52, Wis. Stats., shall be in accordance with the pattern described as follows:

(1) The number shall be divided into parts. The first part of the number shall be an abbreviation in capital letters of the state of Wisconsin. This abbreviation shall be WS. The remainder of the number shall consist of not more nor less than 4 arabic numerals and 2 capital letters.

(2) The group of numerals appearing between the abbreviation and the 2 letters shall be separated therefrom by hyphens or equivalent spaces as indicated by the following samples: WS-9999-AB, WS 9999 AB.

(3) Since the letters "I", "O", and "Q" may be mistaken for arabic numerals, all letter sequences using "I", "O", and "Q" shall be omitted.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60; am. (2), Register, March, 1966, No. 123, eff. 4-1-66.

**WCD 5.06 Display of number on boat.** (1) The assigned number shall be painted on, or attached, to each side of the bow of the boat for which it was issued. The numbers shall be placed in such position as to provide clear legibility for identification. The numbers shall read from left to right and shall be in block characters of good proportion not less than 3 inches in height and shall be spaced as provided in section WCD 5.05 (2). The numbers shall be of a color which will contrast with the color of the background and so maintained as to be clearly visible and legible; i.e., dark numbers on a light background, or light numbers on a dark background.

(2) The assigned number for sailboats shall be painted on, or attached to that portion of the stern which rides above the water line.

(3) It shall be unlawful for any person to display on either side of the bow of any boat or on the stern of any sailboat any number other than the registration number issued covering such boat.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.07 Transfer of ownership of numbered boat.** Whenever the owner of a boat covered by a valid or expired certificate of number issued by this state transfers all or any part of his interest in such boat, other than by the creation of a security interest, he shall notify the commission of such transfer within 15 days.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.08 Accident report.** Written reports of boating accidents required by section 30.67, Wis. Stats., shall be addressed to Wisconsin Conservation Department, Madison, Wisconsin, and shall supply the following information:

- (1) The registration numbers and names of the boats involved.
- (2) The date and time of the accident.
- (3) The location of the accident.
- (4) The name, address, age, and experience of the operator of the reporting boat.

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- (5) The type of boat, length, hull construction, propulsion power, and type of fuel of the reporting boat.
- (6) The weather and sea conditions.
- (7) The type, nature, and opinion as to the cause of the accident.
- (8) A description of the damage to any property, including boats, and estimated cost of repairs.
- (9) The names and addresses of the operators of the other boats involved.
- (10) The names and addresses of the owners of boats or other property involved.
- (11) The names and addresses of all persons killed or injured.
- (12) The nature and extent of injury to any person.
- (13) Names and addresses of all known witnesses.
- (14) The names of the law enforcement, fire, or rescue squad that furnished assistance.
- (15) The physical condition, swimming ability, dress, and contributing cause of drowning of each victim.
- (16) The type of activity of victim.
- (17) The kind and type of life saving or fire fighting equipment employed in connection with the accident.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.09 Uniform aids to navigation.** (1) **DEFINITIONS.** (a) "Waterway marker" is any device designed to be placed in, on or near the water to convey an official message to a boat operator on matters which may affect health, safety, or well being, except that such devices of the United States or an agency of the United States are excluded from the meaning of this definition.

(b) "Regulatory marker" is a waterway marker which has no equivalent in the U. S. Coast Guard aid to navigation.

(c) "State aid to navigation" is a waterway marker which is the equivalent of a U. S. Coast Guard aid to navigation.

(d) "Buoy" is any device designed to float which is anchored in the water and which is used to convey a message.

(e) "Sign" is any device for carrying a message which is attached to another object such as a piling, buoy, structure or the land itself.

(f) "Display area" is the area on a sign or buoy needed for display of a waterway marker symbol.

(g) "Symbols" are geometric figures such as diamond, circle, rectangle, used to convey a basic message.

(2) **WATERWAY MARKERS USED ON THE WATERS OF THIS STATE.** (a) *State aids to navigation.*

1. A red buoy or sign shall indicate that side of a channel to be kept to the right of a vessel when entering the channel from the main water body or when proceeding upstream.

2. A black buoy or sign shall indicate that side of a channel to be kept to the left of a vessel when entering the channel from the main water body or when proceeding upstream.

3. Buoys or signs in 1 and 2 above shall normally be used in pairs and only for the purpose of marking a clearly defined channel.

4. A black and white vertically striped buoy or sign shall indicate the center of a navigable waterway.

5. Aids to navigation shall be numbered or lettered for identification. Red buoys and signs marking channels shall be identified with

even numbers, and black buoys and signs marking channels shall be identified with odd numbers, the numbers increasing from the main body or proceeding upstream. Buoys and signs indicating the center of a waterway will be identified by letters of the alphabet. All numbers and letters used to identify state aids to navigation shall be preceded by the letters "WS", as indicated by the following samples: WS-1, WS-A.

6. Letters and numerals used with aids to navigation shall be white, in block characters of good proportion and spaced in a manner which will provide maximum legibility. Such letters and numerals shall be at least 3 inches in height.

7. The shapes of aids to navigation shall be compatible with the shapes established by coast guard regulations for the equivalent coast guard aids to navigation.

8. Where reflectorized materials are used, a red reflector will be used on a red buoy, and a green reflector on a black buoy.

(b) *Regulatory markers.* 1. A diamond shape of international orange with white center shall indicate danger. The nature of the danger may be indicated by words or well-known abbreviations in black letters inside the diamond shape, or above and/or below it on white background.

2. A diamond shape of international orange with a cross of the same color within it against a white center without qualifying explanation shall indicate a zone from which all vessels are excluded.

3. A circle of international orange with white center will indicate a control or restriction. The nature of the control or restriction shall be indicated by words, numerals, and/or well-known abbreviations in black letters inside the circle. Additional explanations may be given above and/or below it in black letters on white background.

4. A rectangular shape of international orange with white center will indicate information, other than a danger, control or restriction, which may contribute to health, safety or well-being. The message will be presented within the rectangle in black letters.

5. Letters or numerals used with regulatory markers shall be black, in block characters of good proportion, spaced in a manner which will provide maximum legibility, and of a size which will provide the necessary degree of visibility.

(3) **AUTHORITY TO PLACE MARKERS.** (a) No waterway marker shall be placed on, in, or near the waters of the state unless such placement is authorized by an agency or political subdivision of the state having power to give such authorization, except that the provisions of this section shall not apply to private aids to navigation under the jurisdiction of the U. S. Coast Guard.

(b) Such agency or political subdivision of the state will, prior to authorizing placement, obtain the necessary clearances of any federal and state agencies concerned.

(c) The agency or political subdivision of the state authorizing the placement of a waterway marker will inform the commission of the following:

1. Exact location of the marker, expressed in latitude and longitude, or in distance and direction from one or more fixed objects whose precise location is known.

2. The description and purpose of the marker, including its identifying number, if any, as required by subsection (2) (a) 5. above.

(4) **MAINTENANCE OF WATERWAY MARKERS.** Waterway markers shall be maintained in proper condition, or be replaced or removed.

(5) **DISPLAY OF WATERWAY MARKERS.** (a) A waterway marker may be displayed as a sign on a fixed support, as a buoy bearing a symbol on its surface, or as a sign mounted on a buoy.

(b) When a buoy is used to carry a symbol on its surface, it will be white, with a band of international orange at the top and a band of international orange above the waterline at the bottom.

(c) A buoy whose sole purpose is to carry a sign above it will be marked with three bands of international orange alternating with two bands of white, each band occupying approximately one-fifth of the total area of the buoy above the waterline, except where the sign itself carries orange bands; however nothing in these regulations will be construed to prohibit the mounting of a sign on a buoy which has been placed for a purpose other than that of carrying a sign.

(d) When symbols are placed on signs, a suitable white background may be used outside the symbol.

(6) **SPECIFICATIONS FOR WATERWAY MARKERS.** (a) The minimum size of buoys shall be 36 inches riding above the waterline with a 7-inch diameter. The size of the display area shall be as required by circumstances, except that no display area shall be smaller than one foot in height. Display symbol markers shall be shown on 2 sides of buoys.

(b) The thickness of the symbol outline shall be not less than 2 inches in width.

(c) The outside width of the diamond, the inner diameter of the circle, and the average of the inside and outside widths of a square shall be two-thirds of the display area height.

(d) The sides of the diamond shall slope at a 35° angle from the vertical on a plane surface. Appropriate adjustments for curvature may be made when applied to a cylindrical surface.

(e) Waterway markers shall be made of materials which will retain, despite weather and other exposures, the characteristics essential to their basic significance, such as color, shape, legibility and position. Reflectorized materials may be used.

(f) All unlighted aids to navigation shall be equipped with a reflector material of at least 2 inches all around the uppermost part.

(7) **OTHER WATERWAY MARKING DEVICES.** (a) *Mooring buoys.* In order that mooring buoys shall not be mistaken for aids to navigation or regulatory markers, they shall extend 18 inches above the waterline, be white in color with a blue band clearly visible above the waterline, and they should be spherical or ovate in shape.

(b) *Placement.* Placement of markers such as mooring buoys and permanent race course markers will be processed in the same manner as waterway markers.

(c) *Color, shape etc.* Such markers shall not be of a color, shape, configuration or marking which would result in their confusion with any federal or state aid to navigation or any state regulatory marker, and shall not be placed where they will obstruct navigation, cause confusion, or constitute a hazard.

(d) *Exemptions.* Exemptions as to size, shape and color may be made by local authorities, pursuant to section 30.77, Wis. Stats., for

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the temporary (not to exceed 14 days) placement of mooring buoys, race course markers, water ski course markers for special events.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60; r. and recr., Register, March, 1966, No. 123, eff. 4-1-66.

**WCD 5.10 Carburetor flame arrestors.** Every motorboat equipped with an inboard motor using gasoline as a fuel shall have the carburetors of every such motor fitted with an efficient device for arresting backfire of a type approved by the U. S. Coast Guard.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.11 Fire extinguishers.** (1) Fire extinguishers required by s. 30.62 (4), Wis. Stats., shall comply with the following minimum specifications:

(a) *Type*—Capable of promptly and effectively extinguishing burning gasoline (carbon tetrachloride not approved).

(b) *Size*—A. Foam (minimum gallons 1½) or carbon dioxide (minimum pounds 4) or dry chemical (minimum pounds 2).

B. Foam (minimum gallons 2½) or carbon dioxide (minimum pounds 15) or dry chemical (minimum pounds 10).

(2) The fire extinguishers required on each class of motorboat shall be as follows:

<i>Class of Motorboat</i>	<i>Size and Number of Extinguishers Required</i>
(a) Class A (less than 16 feet)	1 size A
(b) Class 1 (16 feet to 26 feet)	1 size A
(c) Class 2 (26 feet to 40 feet)	2 size A or 1 size B
(d) Class 3 (40 feet or over)	3 size A or 1 size B and 1 size A

(e) When the engine compartment of the motorboat is equipped with a fixed (built-in) extinguishing system of an approved Coast Guard type, the number of Size A extinguishers required may be reduced by one.

**History:** Cr. Register, March, 1960, No. 51, eff. 4-1-60.

**WCD 5.12 Specifications for determination of weight capacity and recommended number of persons.** (1) **DETERMINATION OF WEIGHT CAPACITY OF THOSE VESSELS COVERED BY SECTION 30.501, WIS. STATS., DESIGNED FOR OR REPRESENTED BY THE MANUFACTURER AS BEING SUITABLE FOR USE WITH OUTBOARD MOTOR OR DESIGNED TO BE PROPELLED BY OARS, EXCEPT THOSE VESSELS DEPENDENT SOLELY UPON THE BUOYANCY OF PONTOONS OR SIMILAR FLOTATION DEVICES.**

(a) *Step 1:* The cubic volume of the hull shall be determined up to a reference plane (static float line) which passes through the lowest point of major leakage, such as the low point of the gunwale, transom cut-out or top of motor well, and is parallel with a line connecting the intersections of the sheer with the forward face of the stem and the sheer with the after-face of the transom. "Sheer" is defined as the intersection of the hull with deck, gunwale or super-structure.

(b) *Step 2:* The weight capacity shall be determined by converting the hull cubic volume (Step 1) to the weight of water displaced by this volume as follows: multiply the product of Step 1 by 62.5, then subtract the weight of the vessel, and divide the remainder by a safety factor of five.

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(c) *Work sheet.* The following work sheet (Table I) can be used in determining the weight capacity of the hull. The figures to be inserted are taken from the boat dimension drawings (Table II) to

TABLE I CAPACITY FORMULA WORK SHEET

## Step 1.

Compute Areas of Sections

$$\text{Formula: Area} = \frac{H}{12} (a + 4b + 2c + 4d + e)$$

Note: For maximum allowable height (H) in any section, check inside this form.

Area A - Section Quarter Length Forward:

$$A = \frac{1}{12} \left[ \frac{a}{a} + 4\left(\frac{b}{b}\right) + 2\left(\frac{c}{c}\right) + 4\left(\frac{d}{d}\right) + \frac{e}{e} \right]$$

A = \_\_\_\_\_ square feet (two decimal places)

Area B - Section Amidships:

$$B = \frac{1}{12} \left[ \frac{a}{a} + 4\left(\frac{b}{b}\right) + 2\left(\frac{c}{c}\right) + 4\left(\frac{d}{d}\right) + \frac{e}{e} \right]$$

B = \_\_\_\_\_ square feet (two decimal places)

Area C - Section Quarter Length Aft:

$$C = \frac{1}{12} \left[ \frac{a}{a} + 4\left(\frac{b}{b}\right) + 2\left(\frac{c}{c}\right) + 4\left(\frac{d}{d}\right) + \frac{e}{e} \right]$$

C = \_\_\_\_\_ square feet (two decimal places)

Area D - Section Aft:

$$D = \frac{1}{12} \left[ \frac{a}{a} + 4\left(\frac{b}{b}\right) + 2\left(\frac{c}{c}\right) + 4\left(\frac{d}{d}\right) + \frac{e}{e} \right]$$

D = \_\_\_\_\_ square feet (two decimal places)

Compute Cubic Capacity

$$\text{Formula: Cubic Capacity of Hull} = \frac{L}{12} (4A + 2B + 4C + D) + \text{Note 1.}$$

$$\text{Cubic Capacity} = \frac{1}{12} \left[ 4\left(\frac{A}{A}\right) + 2\left(\frac{B}{B}\right) + 4\left(\frac{C}{C}\right) + \frac{D}{D} \right] + \text{_____}$$

Cubic Capacity = \_\_\_\_\_ cubic feet (one decimal place)

## Step 2.

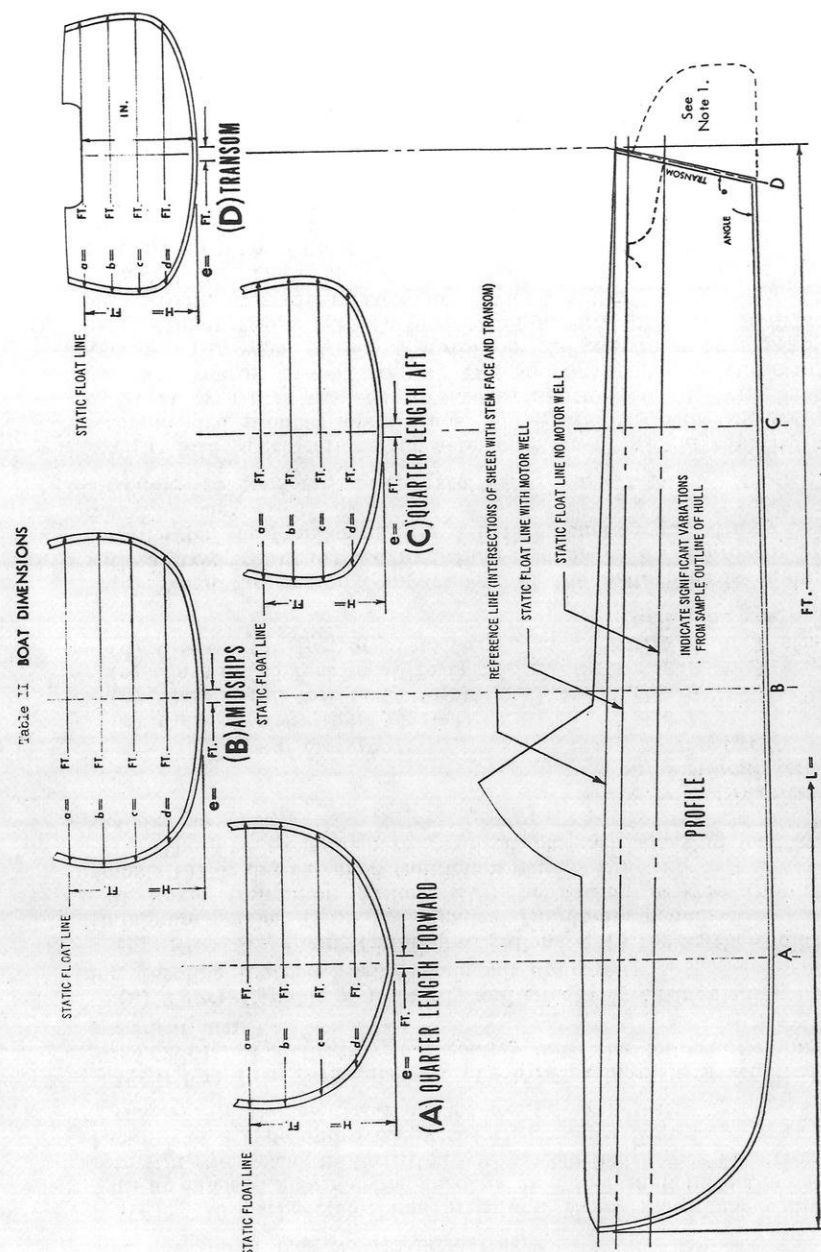
Compute Maximum Weight Capacity

$$\text{Formula: Capacity} = \left[ (\text{Cubic Capacity} \times 62.5) - \text{Boat Weight} \right] \div 5$$

$$\text{Capacity} = \left[ \left( \frac{\text{_____}}{\text{_____}} \times 62.5 \right) - \text{_____} \right] \div 5$$

Capacity = \_\_\_\_\_ pounds (nearest whole number)

Note 1: The volume of integral structure aft of the transom below the static float line may be added to the calculated cubic capacity.



STATIC FLOAT LINE passes through the point of major leakage and is parallel with a line connecting the intersections of the sheer with the forward face of the stem and life sheer with the transom.

TRANSVERSE SECTIONS (A, B and C) are taken at three points obtained by dividing length (L) into four equal parts. HORIZONTAL BREADTHS (a, b, c, d, and e) are secured by measuring at upper and lower points of the height (H) and at three points selected by dividing (H) into four equal parts below the static float line. MEASUREMENTS are taken outside planking or plating and recorded in feet with decimal equivalents for inches and eighths.



which the letters under the blank spaces refer. All dimensions should be converted to decimal numbers before insertion in the formula. Table III converts inches and eighths of inches to the decimal equivalents in feet.

(2) DETERMINATION OF WEIGHT CAPACITY OF THOSE VESSELS COVERED BY SECTION 30.501, WIS. STATS., WHICH HAVE PERMANENTLY INSTALLED ENGINES, EXCEPT THOSE VESSELS DEPENDENT SOLELY UPON THE BUOYANCY OF PONTOONS OR SIMILAR FLOTATION DEVICES.

(a) Weight capacity shall be determined in the same manner as for vessels represented as being suitable for use with outboard motor except that the weight of all machinery and associated operating gear including battery, fuel and fuel system shall be subtracted.

(3) DETERMINATION OF WEIGHT CAPACITY OF THOSE VESSELS COVERED BY SECTION 30.501, WIS. STATS., WHICH ARE DEPENDENT SOLELY UPON THE BUOYANCY OF PONTOONS OR SIMILAR FLOTATION DEVICES.

(a) Weight capacity shall be determined by the following tests or by the substitute method provided if the conditions stated therein are met. The tests shall be conducted with the maximum horsepower motor for which the boat is recommended and with full fuel tanks and operating equipment in normal position.

1. The transverse stability shall be tested by adding weight on the lower deck in the extreme outboard position which the arrangement permits (i.e., within one foot of the edge) until the top of the pontoon on the loaded side becomes awash.

2. The longitudinal stability shall be tested by adding weight on the lower deck evenly about a point  $\frac{1}{4}$  of the length of the deck from forward until the edge of the lower deck becomes immersed. This test shall be repeated at the after end of the craft by adding weight evenly about a point  $\frac{1}{4}$  of the length of the deck from aft until the edge of the lower deck or the top of the motor mounting bracket becomes immersed, whichever occurs first.

3. In a design having more than one deck intended to support passengers (i.e., having railings and means of access), the tests in pars. 1 and 2 shall also be conducted by adding weight in the specified locations on the upper deck until the conditions specified in 1 and 2 above respectively are attained.

4. Ninety percent (90%) of the least of the weights attained by the tests in paragraphs 1 and 2 shall be the weight for passengers.

5. The weight capacity for the craft shall then be the sum of the weight for passengers plus the weight for the maximum horsepower motor for which the boat is recommended, full fuel tanks and operating equipment.

(b) A substitute method for determining the weight capacity of pontoon boats may be applied to pontoon boats having only one deck. The deck must be within the width of the pontoons, must be no more than 6 inches above the pontoons, its length within the railings must be no more than 80% of the pontoon length, must not overhang the pontoon, and must be capable of draining overboard freely. If the boat complies with these conditions, the weight capacity shall not exceed one half of the reserve buoyancy of the boat which shall be determined by subtracting the weight of the vessel including the weight of the maximum horsepower motor for which the boat is

recommended, full fuel tanks and normal operating equipment from the buoyant force of the boat's pontoons or similar flotation devices.

(4) PASSENGER CAPACITY. The recommended passenger capacity of those vessels covered by section 30.501, Wis. Stats., shall be determined by the following equations, using whichever is less:

$$(a) \quad P = WC - \frac{(M + G)}{w}$$

(a)  $P$  = passengers

$WC$  = weight carrying capacity

$M$  = maximum motor weight (not applicable to boats which have permanently installed engines)

$G$  = gear weight (not applicable to boats which have permanently installed engines)

$w$  = average weight of one passenger, but not less than 150 pounds

$$(b) \quad P = \frac{L \times B}{15}$$

$P$  = passengers

$L$  = boat length

$B$  = maximum boat beam

(5) LINEAR MEASUREMENTS. In the preceding paragraphs of this section all linear measurements are taken outside planking or plating and recorded in feet with decimal equivalents for inches and eighths, all volume measurements in cubic feet and all weight measurements are in pounds.

History: Cr. Register, March, 1966, No. 123, eff. 4-1-66.

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## Chapter H 80

## BOAT AND ON-SHORE SEWAGE FACILITIES

H 80.01	Applicability	H 80.07	Piping and fittings
H 80.02	Definitions	H 80.08	Alternate waste discharges
H 80.03	Approved comparable construction	H 80.09	On-shore disposal facilities
H 80.04	Contract applicability	H 80.10	Alternate facilities
H 80.05	Reduction in solid size	H 80.11	Operation and maintenance
H 80.06	Holding tank and appurtenances		

**H 80.01 Applicability.** This regulation for the abatement of water pollution through control of the discharge of sewage from boats maintained or operated at any time upon the inland waters of the state, defined in section 29.01(4), Wis. Stats., shall be applicable to any boat which is equipped with a toilet that is not sealed.

*Note:* 29.01(4), Wis. Stats., provides: "All waters within the jurisdiction of the state are classified as follows: Lakes Superior and Michigan, Green Bay, Sturgeon Bay, Sawyer's harbor, and the Fox river from its mouth up to the dam at De Pere are 'outlying waters.' All other waters, including the bays, bayous and sloughs of the Mississippi river bottoms, are 'inland waters.'"

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.02 Definitions.** The following definitions shall apply in the interpretation and enforcement of this chapter.

- (1) **APPROVED.** Written approval from the board.
- (2) **BOARD.** The state board of health.
- (3) **BOAT.** Every description of watercraft, other than a seaplane, on the water, used or capable of being used as a means of transportation on water.
- (4) **HEAD.** Any toilet facility installed on a boat, including incineration and chemical type toilets.
- (5) **HOLDING TANK.** A permanently installed container which receives the discharge from one head or more and retains the sewage for shore disposal.
- (6) **MAINTAIN AND OPERATE.** To moor and occupy and to navigate, steer, sail, row or otherwise to exercise physical control over the use or movement of a boat.
- (7) **OWNER.** The person who has lawful possession of a boat by virtue of legal title or equitable interest therein which entitles him to such possession.

- (8) **SEALED.** Making a head incapable of discharging sewage into the waters upon which a boat is operated or moored.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.03 Approved comparable construction.** When compliance with this regulation, without modification, appears impracticable, the board shall be so informed in writing, giving reason therefor and any suggested modifications that would reasonably comply with the intent of

the law and this regulation, and be requested to approve suggested modifications or to give advice as to acceptable alternate installations or devices.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66

**H 80.04 Contract applicability.** Applicable provisions of this regulation shall be construed to be a part of any order or agreement, written or verbal, for the installation of a holding tank or shore disposal facility or appurtenances thereto.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.05 Reduction in solid size.** The sewage discharged from a head shall pass through an integral or separate macerating, grinding or homogenizing device prior to discharge to a holding tank. The device shall be automatically operated each time a head is flushed and shall be capable of reducing the particle size of solids so that the greatest dimension is less than the size of the head trap.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.06 Holding tank and appurtenances.** (1) **TANK MATERIAL AND STRENGTH.** Each holding tank shall be constructed of a plastic which is resistant to acid, alkali and water; stainless steel with comparable resistance, or other approved material. A holding tank, with all openings sealed, shall show no signs of deformation, cracking or leakage when subjected to a combined suction and external pressure head equivalent to a 50-foot head of water. It shall be designed and installed so as not to become permanently distorted with a static top load of 200 pounds.

(2) **MOUNTING.** The holding tank shall be mounted sufficiently below the head so that the tank inlet is below the fixture trap, excepting that on boats equipped with pump type marine heads the holding tank may be located above such head. The minimum support for a tank shall be that recommended by the manufacturer which shall be sufficient to rigidly secure the tank in place.

(3) **CAPACITY.** The tank capacity for a boat shall be sufficient to receive the waste from the maximum number of persons that may be on board during a 16-hour period. The passenger rating shall be that indicated on the boat's capacity plate, or that of a boat of similar size should the plate be illegible or missing. Minimum tank capacity in gallons for boats having a marine type head shall be 2.5 times the rating or 20 gallons, whichever is the greater. An owner of a commercial boat carrying more than 8 persons per 16-hour period, or of any boat equipped with standard type water flush toilets, shall request information from the board as to required tank capacity, submitting information as to type of boat usage and passenger rating with such request.

(4) **CONTROLS AND MAINTENANCE.** Each holding tank shall have installed therein a sewage level device which actuates a warning light when the tank becomes three-fourths full. The light shall be located so that it can be readily observed. The level indicator and light device shall be in operable condition at any time the boat is used. Such water level indicator shall be installed on a removable plate or cap of such design and of such size as to make a watertight seal with a tank opening that is sufficiently large to accommodate the light actuating device and to permit any necessary cleaning of the tank or rodding

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(9) **TOILET.** A toilet is any device, facility or installation designed or constructed for use as a place for human defecation or urination.

of the piping should no other provisions be made for such latter purposes in the tank design. The plate or cap shall be readily removable for maintenance purposes.

(5) **OPENINGS FOR PIPING.** Openings shall be provided in each holding tank for inlet, outlet and vent piping. The openings and pipe fittings shall be so designed as to provide watertight joints between the tank and the piping. Inlet openings should preferably be such that they could accommodate fittings that would be connected to piping ranging from 1½ inches to 2½ inches in nominal inside diameter (I.D.). Outlet openings shall be such as to accommodate 1½-inch I.D. piping. Vent pipe openings shall be able to accommodate fittings for one-inch I.D. pipe, and should preferably be located at the top of a conical frustum or cylindrical vertical extension of the tank which is at least two inches in diameter at the base and two inches or more in height.

(6) **ELECTRICAL SYSTEM.** The electrical system associated with a boat holding tank system shall conform to accepted practice.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.07 Piping and fittings.** (1) **SIZE.** The piping from the head to the holding tank shall be at least as large as the trap of the head fixture. The piping from the tank to the pump-out connection shall have a nominal inside diameter of at least 1½ inches.

(2) **MATERIAL.** All waste and vent piping shall be made of galvanized steel, wrought iron or yaloy pipe; lead; brass; type M copper; or flexible or rigid plastic pipe. Assembly shall be made with threaded fittings in the case of ferrous or brass pipe; lead or solder type fittings in the case of lead and copper pipe; and with threaded fittings, invertible clamp type fittings or weldable fittings in the case of plastic pipe. Clamps, usable only with plastic pipe, shall be made of stainless steel. All piping materials and fittings shall be capable of withstanding a pressure of at least 75 pounds per square inch and a combined maximum suction and external pressure head equivalent to 50 feet of water.

(3) **LOCATION.** No piping, other than that for venting, associated with the boat sewage system shall pass through the hull. The vent pipe may pass through the upper part of the boat transom and shall terminate with an inverted U-bend the opening of which shall be above the maximum water level in the head or sewage holding tank. When any storage tank receives discharge from a pump type head the tank vent pipe shall be provided with a combined air and vacuum float valve of a design to prevent discharge of liquid waste. The terminal of the outlet pipe shall be located above the holding tank in a manner that makes impractical gravity discharge of the contents. It shall have an airtight capping device marked "WASTE" or such word shall be provided on the boat surface immediately adjoining the outlet pipe.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.08 Alternate waste discharges.** No boat equipped with a means of discharging sewage directly from the head or holding tank into the water upon which the boat is moored or is moved shall enter inland waters of the state until such means of discharge are inactivated through removal of pumping devices when so equipped or through

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plugging of the outlet when discharge by gravity is possible. An owner or operator of a boat equipped with an alternate disposal system shall contact the area game warden or a local police department with respect to inactivation before entering inland waters. The owner or operator shall give information as to the inland waters he plans to navigate and as to the time of stay on such waters.

**Note:** Discharge of wastes from boats in any form would be contrary to section 29.29(3), Wis. Stats.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.09 On-shore disposal facilities.** (1) **PUMP.** A self-priming pump shall be provided for the on-shore removal of sewage from boat holding tanks. The pump shall be powered by an explosion-proof electric motor. Head characteristics and capacity shall be based on installation needs for the site. The pump may be either fixed in position or portably mounted.

(2) **SUCTION HOSE.** The suction hose shall be of fire suction hose quality. A quick-connect dripproof sewer coupling of bronze or brass shall be fitted to the end of the hose that is to be attached to the boat piping outlet.

(3) **DISCHARGE HOSE:** Flexible hose used as a pump discharge shall be of fire hose quality. All fixed piping or sewers shall conform with requirements of the state plumbing regulations, Wis. Adm. Code, Ch. H 62.

(4) **SEWAGE DISPOSAL REQUIREMENTS.** (a) *Public facilities.* When public sanitary sewers are available within a reasonable distance from the marina or pump-out dock, the disposal piping shall be designed to discharge thereto. See Wis. Adm. Code section H 62.04.

(b) *Private facilities.* When the marina or dock is remote from a public sewer, a private sewage disposal system installed in compliance with applicable state plumbing regulations shall be provided unless adequate private treatment and disposal facilities are already available. See sections H 62.04 and H 62.20.

(5) **PLAN APPROVAL.** Every owner, personally or through his representative, shall obtain written approval from the board prior to award of any new or modified construction of shore disposal facilities set forth in this section. Three sets of plans and specifications of such new or modified shore disposal facilities to be constructed for the purpose of pumping out boat holding tanks and disposing of the sewage shall be submitted to the board for review as to acceptability. Plans and specifications shall cover in detail the materials to be used, the capacity of the pump, and when applicable, the size and construction of septic tank, results of soil percolation tests and layout of the soil absorption system. Location of all wells within 150 feet of the absorption system and the general topography of the area shall be shown on a location plan.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.10 Alternate facilities.** (1) **CHEMICAL TYPE TOILETS.** Chemical toilets of adequate capacity and of proper design may be used in lieu of a head flushed by water provided the container is not portable and use of on-shore pump and disposal facilities is provided for in the design of the unit. The design of the toilet and on-shore disposal adaptation shall be approved.

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(2) **INCINERATION TYPE TOILETS.** An approved incinerator type toilet may also be used in lieu of a head flushed by water provided it is of adequate capacity to handle the passenger load. Equipment for removal of resulting ash shall be kept on board.

*Note:* If U. S. Coast Guard inspection certificate of the boat is needed, the owner should make inquiry of said agency as to the acceptability of such fixture.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.11 Operation and maintenance.** All facilities controlled by this chapter shall be maintained in good operating condition at all times. All necessary tools for repair and maintenance shall be kept on board or on dock, as the case may be, and shall be properly stored when not in use. Extra fuses for electrical equipment and extra indicator lights shall be on hand. Pump-out suction hoses should be adequately drained through the pump before disconnection and then be properly stored or sealed. Pumping equipment shall be shut off before the hose is disengaged from the boat outlet pipe. Ashes removed from incineration type toilets shall be retained for shore disposal.

**History:** Cr. Register, February, 1966, No. 122, eff. 3-1-66.

**H 80.12 Prohibited Facilities.** No person shall use or permit to be used as a holding facility for human defecation or urination, a pail, plastic bag or any other type of portable, semiportable or disposable receptacle aboard boats not specifically permitted by the provisions of this chapter.

APPENDIX NOTE D

BOATING ORDINANCES IN WISCONSIN

1. Illustration of a Comprehensive Ordinance for Regulation of Watercraft
2. Synopsis of Local Boating Ordinances in Wisconsin -- Files of the Wisconsin Division of Conservation (1967).
3. Frequency of Provisions Contained in Local Boating Ordinances -- Files of the Division of Conservation.
4. Examples of Provisions Extracted from Ordinances Contained in Files of Division of Conservation.



1. Illustration of a Comprehensive Ordinance for Regulation of Watercraft

Town, city and village ordinances in Wisconsin regulating watercraft vary from single to several paragraph ordinances pertaining to selected activities to comprehensive ordinances controlling many aspects of water recreation. The Lake Pewaukee ordinance incorporates many provisions commonly found in other ordinances. This ordinance and an outline are produced to illustrate the content and language of a comprehensive approach:

1. Intent
2. Applicability and enforcement
3. State Boating Laws Incorporated by Reference
4. Definitions
  - (a) Shore Zone
  - (b) Swimming Zone
  - (c) Anchorage, Moorage
  - (d) Houseboat
  - (e) Public Landing
5. Speed Restrictions
  - (a) General Limits
  - (b) Special Limits
6. Operation by Minors
7. Capacity Restrictions
8. Additional Traffic Rules
  - (a) Right of Way at Docks, Piers and Wharves
  - (b) Right of Way of Sailboats
  - (c) Houseboats
9. Intoxication and Intoxicating Liquors
10. Anchorages and Stationary Objects

- (a) Rafts and Buoys
- (b) Designation of Anchorage
- (c) Public Landings
- (d) Mooring Lights Required
- (e) Buoys Marking Race Courses
- 11. Safe Operation Required
- 12. Swimming Regulations
  - (a) Swimming from unanchored boat
  - (b) Distance from shore
  - (c) Hours limited
- 13. Water Skiing
  - (a) Persons in a boat
  - (b) Hours
  - (c) Distance from shore, landings, and beaches
  - (d) Life preserver or belt
  - (e) Length of tow
  - (f) Exceptions
- 14. Littering Waters Prohibited
- 15. Races, Regattas, Sporting Events and Exhibitions
  - (a) Permit required
  - (b) Permit
  - (c) Right of Way of participants
- 16. Markers and Navigation Aids: Posting Ordinance
  - (a) Duty of Chief
  - (b) Standard markers
  - (c) Interference with markers prohibited
- 17. Driving Automobiles or Other Motor Driven Vehicles on the Ice

- (a) Safe operation
  - (b) Speed
  - (c) Propellor-driven surface craft prohibited
  - (d) Hours
  - (e) Definitions
  - (f) Risk and liability
18. Penalties and Deposits
- (a) Violations - major
  - (b) Violations - minor
  - (c) Money deposits
19. Wisconsin Statutes Defined
20. Repeal of Conflicting Ordinances
21. Severability
22. Effective Date: Clerk's Duty

## ORDINANCE

An ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake and prescribing penalties for violation thereof.

The Town Board of the Towns of Delafield, the Town of Pewaukee and the Village Board of the Village of Pewaukee, Wisconsin, do ordain as follows:

SECTION 1. INTENT. The intent of this ordinance is to provide safe and healthful conditions for the enjoyment of aquatic recreation consistent with public needs and the capability of the water resource.

SECTION 2. APPLICABILITY AND ENFORCEMENT: The provisions of this ordinance shall apply to the waters of Pewaukee Lake, within the jurisdiction of the Town of Delafield, the Town of Pewaukee, and the Village of Pewaukee.

The provisions of this ordinance shall be enforced by the officers of the Water Safety Patrol Unit of the joint jurisdiction of the Town of Delafield, the Town of Pewaukee, and the Village of Pewaukee.

### SECTION 3. STATE BOATING AND WATER SAFETY LAWS ADOPTED

The statutory provisions describing and defining regulations with respect to water traffic, boats, boating and related water activities in the following enumerated sections of the Wisconsin statutes, exclusive of any provisions therein relating to the penalties to be imposed or the punishment for violation of said statutes, are hereby adopted and by reference made a part of this ordinance as if fully set forth herein. Any act required to be performed or prohibited by the provisions of any statute incorporated by reference herein is required or prohibited by this ordinance.

- 30.50 (Definitions)
- 30.51 (Operation of Unnumbered Boats Prohibited)
- 30.52 (Certificate of Number)
- 30.53 (Identification Number to be Displayed on Boat; Certificate to be carried)
- 30.54 (Transfer of Ownership of Numbered Boat)
- 30.55 (Notice of Abandonment or Destruction of Boat or Change of Address)
- 30.60 (Classification of Motorboats)
- 30.61 (Lighting Equipment)
- 30.62 (Other Equipment)
- 30.64 (Patrol Boats Exempt from Certain Traffic Regulations)
- 30.65 (Traffic Rules)
- 30.66 (Speed Restrictions, paragraph 1)
- 30.67 (Accidents and Accident Reports)
- 30.68 (Prohibited Operation)
- 30.69 (Water Skiing)
- 30.70 (Skin Diving)
- 30.71 (Boats Equipped with Toilets)

30.79 (Municipal Water Safety Patrols)

SECTION 4. DEFINITIONS:

- (a) SHORE ZONE: The water area within 200 feet of any shore.
- (b) SWIMMING ZONE: An authorized area marked by official buoys to designate a swimming area.
- (c) ANCHORAGE, MOORAGE: An area where continuous anchoring or mooring of boats for more than 24 hours is permitted.
- (d) HOUSEBOAT: A boat on which a toilet or food preparation facilities exist or on which persons are living, sleeping or camping.
- (e) PUBLIC LANDING: A marina or landing facility and the adjoining public shore line under the jurisdiction of the state, county or municipality.

SECTION 5. SPEED RESTRICTIONS:

- (a) GENERAL LIMITS: No person shall operate a motor boat at a speed in excess of 10 mph between the hours of one-half hour after sunset and one-half hour before sunrise on all waters; provided that this provision shall not apply to boats participating in duly authorized races over a course laid out and plainly marked and adequately patrolled.
- (b) SPECIAL LIMITS: No person shall at any time operate a motor boat in excess of 5 mph within 200 feet of any shore, swimmer not in a designated swimming area, marked public, swimming area, diving flag, canoe, rowboat, sailboat, non-operating motor boat, bridge or public landing or anchorage.

SECTION 6. OPERATION BY MINORS: No person under 12 years of age shall operate or be permitted to operate a motor boat of more than 10 horsepower unless there is present in the boat a person 16 years of age or older. No person under 10 years of age shall operate or be permitted to operate a motorboat unless there is present in the boat a person 16 years of age or older. The owner of the boat shall be held to have violated this section if he knowingly permits or suffers any such operation.

SECTION 7. CAPACITY RESTRICTIONS: No person shall operate or loan, rent or permit a boat to leave the place where it is customarily kept for operation on the waters covered by this ordinance with more passengers or cargo than a safe load.

SECTION 8. ADDITIONAL TRAFFIC RULES: In addition to the traffic rules in s.30.65 of the Wisconsin Statutes adopted in Section 1 of this ordinance, the following rules shall apply to boats using the waters covered by this ordinance:

- (a) RIGHT OF WAY AT DOCKS, PIERS AND WHARVES: Boats leaving or departing from pier, dock or wharf shall have the right of way over all other watercraft approaching such dock, pier or wharf.

- (b) **RIGHT OF WAY OF SAILBOATS:** Boats propelled entirely by muscular power shall yield the right of way to sailboats when necessary to avoid risk of collision.
- (c) **HOUSEBOATS:** Anchoring, drifting or mooring of houseboats is prohibited from 12:00 midnight to sunrise: However, unoccupied houseboats may be anchored in designated anchorages or moored to shore during this period with written permission of the property owner. An exception may be granted by the Chief of the Water Safety Patrol for a period not to exceed twenty-four hours provided such houseboat is moored to shore with written permission of the property owner and where suitable shore sanitary facilities are available for use.

**SECTION 9. INTOXICATION AND INTOXICATING LIQUORS:**

- (a) **INTOXICATED PERSONS NOT TO RIDE IN BOATS:** No person shall permit any person who is so intoxicated as to be unable to provide for his own safety or the safety of others to ride as a passenger in any boat operated by him.

**SECTION 10. ANCHORAGES AND STATIONARY OBJECTS:**

- (a) **RAFTS AND BUOYS:** No person shall erect or maintain any raft ski jump, stationary platform or any other obstacle to navigation more than 200 feet from the shore at any time unless a permit is obtained from the Chief of the Water Safety Patrol and unless it is so constructed or anchored that it has at least 6 inches of free board above the water line.
- (b) **DESIGNATION OF ANCHORAGES:** The shore zone is designated an anchorage or moorage except in areas of heavy traffic where anchoring or mooring may be prohibited by order of the Chief of the Water Safety Patrol. Anchoring or mooring of a boat other than an emergency craft is prohibited in swimming zones. Anchoring or mooring for more than 24 hours is prohibited elsewhere on the lake.
- (c) **PUBLIC LANDINGS:** Mooring or anchoring of boats at public landings other than at piers as designated by the controlling governmental agency is prohibited.
- (d) **MOORING LIGHTS REQUIRED:** No person shall moor or anchor any unoccupied boat, raft, buoy or other floating object more than 200 feet from the shoreline between sunset and sunrise unless a permit has been obtained from the Chief of the Water Safety Patrol and there is prominently displayed thereon a white light of sufficient size and brightness to be visible from any direction for a distance 1500 feet on a dark night with clear atmosphere except as provided in Section (e). This provision shall not apply to the shore zone or objects moored or anchored in designated anchorages.
- (e) **BUOYS MARKING RACE COURSES:** Such buoys may be set without lighting provided that a permit has been obtained from the Chief of the Water Safety Patrol that they are a

bright color and that they are made of materials which will not damage a boat if struck.

SECTION 11. SAFE OPERATION REQUIRED: No person shall operate direct or handle a boat in such manner as to unreasonably annoy, unnecessarily frighten or endanger the occupants of his or other boats.

SECTION 12. SWIMMING REGULATIONS:

- (a) No person shall swim from any unmanned boat unless such boat is anchored.
- (b) DISTANCE FROM SHORE: No person shall swim more than 200 feet from the shore unless in a designated swimming zone or when accompanied by a competent person in a boat.
- (c) HOURS LIMITED: No person shall swim more than 200 feet from the shoreline between sunset and sunrise.

SECTION 13. WATER SKIING:

- (a) PERSONS IN A BOAT: No person shall operate a boat for the purpose of towing a person on water skis, aquaplane or similar device or permit himself to be towed for such purpose unless there are two or more competent persons 12 years of age or over in such boat.
- (b) HOURS: No person shall operate a boat for the purpose of towing a water skier, aquaplane or similar device or engage in water skiing between the hours of sunset and 10:00 a.m.
- (c) DISTANCE FROM SHORE, LANDINGS, AND BEACHES: No person shall operate a boat for the purpose of towing a water skier or no water skier shall ski within 200 feet of the shore line or the outside limits of any swimming zone, any other watercraft, and any swimmer not in a designated swimming area, any diving flag or within 200 feet of any public boat landing.
- (d) LIFE PRESERVER OR BELT: No person shall engage in water skiing, aquaplaning or similar activity unless they are wearing a life belt or preserver.
- (e) LENGTH OF TOW: The maximum length of any tow rope for towing a person water skiing, aquaplaning or similar activity shall be 75 feet.
- (f) EXCEPTIONS: The limitations of this section shall not apply to participants in ski meets or exhibitions authorized and conducted as provided in Section 15.

SECTION 14. LITTERING WATERS PROHIBITED. No person shall deposit, place or throw from any boat, raft, pier, platform or similar structure, any cans, paper, debris, refuse, garbage, solid or liquid waste into the water.

SECTION 15. RACES, REGATTAS, SPORTING EVENTS AND EXHIBITIONS

- (a) **PERMIT REQUIRED:** No person shall direct or participate in any boat race, regatta, water ski meet or other water sporting event or exhibition unless such event has been authorized and a permit issued therefor by the Chief of the Water Safety Patrol.
- (b) **PERMIT:** A permit issued under this section shall specify the course or area of water to be used by participants in such event and the permittee shall be required to place markers, flags or buoys approved by the Chief of Water Safety Patrol designating the specified area. Permits shall be issued only if in the opinion of the Chief the proposed use of the water can be carried out safely and without danger to or substantial obstruction of other watercraft or persons using the lake. Permits shall be valid only for the hours and areas specified thereon.
- (c) **RIGHT OF WAY OF PARTICIPANTS:** Boats and participants in any such permitted event shall have the right of way on the marked area and no other person shall obstruct such area during the race or event or interfere therewith.

**SECTION 16. MARKER AND NAVIGATION AIDS: POSTING ORDINANCE:**

- (a) **DUTY OF CHIEF:** The Chief of the Water Safety Patrol unit is authorized and directed to place authorized markers, navigation aids and signs in such water areas as shall be appropriate to advise the public of the provisions of this ordinance and to post and maintain a copy of this ordinance at all public access points within the jurisdiction of the Village of Pewaukee, the Towns of Delafield and Pewaukee and the County of Waukesha.
- (b) **STANDARD MARKERS:** All markers placed by the Chief of the Water Safety Patrol or any other person upon the waters of the lake shall comply with the regulations of the Wisconsin Conservation Commission.
- (c) **INTERFERENCE WITH MARKERS PROHIBITED:** No person shall without authority remove, damage or destroy or moor or attach any watercraft to any buoy, beacon or marker placed in the waters of the lake by the authority of the United States, state, county or town, village or by any private person pursuant to the provisions of this ordinance.

**SECTION 17. DRIVING AUTOMOBILES OR OTHER MOTOR DRIVEN VEHICLES ON THE ICE:**

- (a) **SAFE OPERATION:** No person shall use or operate any automobile or other motor driven vehicle in any manner so as to endanger persons engaged in skating or in any other winter sport or recreational activity being engaged in upon the ice and no person shall, while using or operating any automobile or motor driven vehicle, tow, pull, or push any person or persons on skates, sleds, skis, toboggan or device or thing of any



kind designated or utilized to carry or support one or more persons.

- (b) SPEED: No person shall use or operate any automobile or other motor driven vehicle at a speed in excess of ten (10) miles per hour.
- (c) PROPELLOR DRIVEN SURFACE CRAFT PROHIBITED: No person shall operate any propeller driven surface vehicle, device or thing, whether or not designed for the transporting of a person or persons.
- (d) HOURS: No person shall use or operate any automobile or motor driven vehicle on the ice after 8:30 p.m. in the evening.
- (e) DEFINITIONS: The word "automobile" as used in this ordinance shall be construed to mean all motor vehicles of the type and kind permitted to be operated on the Highways in the State of Wisconsin.  
"Motor Driven Vehicle" as used in this ordinance shall be construed to mean any kind of device or thing designed or utilized for propulsion or movement upon the ice using a motor, whether of internal combustion design or not.
- (f) RISK AND LIABILITY: All traffic on the icebound water of Pewaukee Lake shall be at the risk of the traveler as set forth in Section 30.81 (3) of the Wisconsin Statutes and nothing in this ordinance shall be construed as rendering the enacting authority liable for any accident to those engaged in permitted traffic while this ordinance is in effect.

#### SECTION 18. PENALTIES AND DEPOSITS:

- (a) VIOLATIONS: — MAJOR: Any person violating the provisions of Section 30.67 (1) or 30.68 (1) as incorporated by Section 3 of this Ordinance shall be fined not more than \$200. Any person violating any other provision of this Ordinance shall be fined not more than \$50 for the first offense and not more than \$100 for conviction of the same offense a second time within one year. Upon default in payment of such fine such person shall be imprisoned in the County Jail until full payment is made but not exceeding sixty (60) days.
- (b) VIOLATIONS: — MINOR: Any person who shall violate any provision of this ordinance except as specified in sub. (a) of this section shall upon conviction thereof forfeit not less than \$1.00 nor more than \$100 together with the costs of prosecution and in default of payment thereof shall be imprisoned in the County Jail until full payment thereof is made, but not exceeding sixty (60) days.
- (c) MONEY DEPOSITS: Any officer arresting a person for violation of a provision of this Ordinance who is unable to bring the person arrested before the (Police) Justice of the Peace or (County) Court without unnecessary delay shall permit such person to make a money deposit as provided in Sec. 30.76 of the Wisconsin Statutes. Such deposit shall be made to the Vil-

lage of Pewaukee Police Headquarters or other offices designated for collections.

SECTION 19. WISCONSIN STATUTES DEFINED: Wherever used in this Ordinance the term "Wisconsin Statutes" shall mean the Wisconsin Statutes of 1959 and subsequent amendments.

SECTION 20. REPEAL OF CONFLICTING ORDINANCES: All Ordinances regulating water traffic, boats, boating or water sports upon the waters covered by this Ordinance heretofore enacted by the town or village boards of the Town of Delafield, Town of Pewaukee and village of Pewaukee are hereby repealed.

SECTION 21. SEVERABILITY: The provisions of this Ordinance shall be deemed severable and it is expressly declared that the town or village boards would have passed the other provisions of this Ordinance irrespective of whether or not one or more provisions may be declared invalid and if any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

SECTION 22. EFFECTIVE DATE: CLERK'S DUTY:

- (a) This Ordinance shall take effect and be in force from and after its passage and publication (posting) as provided by law.
- (b) The Town or Village Clerk is directed to file a copy of this Ordinance with the Wisconsin Conservation Commission in Madison, Wisconsin.

SECTION 23. As provided in Section 30.77 of the Wisconsin Statutes posting of this Ordinance at public access points is required

## RESOLUTION

BE IT RESOLVED by the Town Board of Delafield, the Town Board of Pewaukee and the Village Board of Pewaukee the following Enforcement Structure be and hereby is adopted:

In order to uniformly enforce "an ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake" there be appointed by the respective boards . . . a water safety patrol unit made up of one representative of each governmental agency on the lake: Town of Delafield (1); Town of Pewaukee (1); Village of Pewaukee (1); Waukesha County (1). The Water Safety Patrol Chief shall be an ex-officio member of the unit. The unit would be charged with enforcement of the Ordinance, recommended equipment needed, maintain such equipment, post signs, carry on an educational program to acquaint lake users with the Ordinance, issue permits under the Ordinance, establish a schedule of fines and forfeiture in consultation with the courts, and such other duties as will be necessary to properly enforce the Ordinance. The unit will also develop a formula for sharing of the costs by the governmental jurisdiction involved.

**2. SYNOPSIS**

**LOCAL BOATING ORDINANCES**

**IN**

**WISCONSIN**

**(As contained in files of the  
Dept. of Natural Resources)**

**Lake Classification  
Southern Area  
July, 1967**

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### INTRODUCTION

The general conclusions on the following pages are derived from a review of the 108 village, town, and city ordinances and the two county ordinances on file with the Law Enforcement Division in July, 1967.

Every area which has a lake or stream used by the public has problems which must be solved. It is all but impossible to attempt to note the many differences which exist between the many ordinances. Each village or county has its own problems which the ordinance is meant to correct.

The 16 areas designated for capsule synopsis were arbitrarily selected. They are not meant to be all-inclusive of all the areas which might be selected.

## 1. General Operating Requirements

Of the ordinances reviewed, over 15 established minimum age requirements for boat operators. The most prevalent minimum age was 12 years of age; with 10, 14, 16, and 18 also being mentioned. Exceptions were included in all but a few of the minimum age ordinances. Generally, a minimum age was required only where the motor size was 5 h.p. or more. The other major exception allowed anyone to operate a boat providing an adult was also in the boat. An adult is generally accepted as a 16-year-old.

Restrictions on intoxicated operators and passengers were included in almost every ordinance. Generally, no operator is to be intoxicated or under the influence of any drug. Also, no person can be transported who is so intoxicated that he cannot be responsible for his own safety. Individuals with physical or mental handicaps which might prevent safe boat operation are also restricted by most ordinances from operating a motor boat.

Most ordinances also include general wording about non-negligent and prudent driving habits. A majority also prohibit anyone from sitting on the gunwales except when executing a docking. Several ordinances expressly forbid anyone from standing in a boat.

Finally, several ordinances require that every child under 12 must be wearing a fastened life preserver. Ten ordinances prohibit the consumption of any liquor while in a boat.

## 2. Zone Restrictions

### a. Swim Zones

Almost every ordinance expressly or impliedly establishes a swim zone. These zones vary from 50 feet to 500 feet. A major portion of the ordinances specifically label the first 50 feet from shore as the swim zone and prohibit all boats from this area except when docking. Where the swim zone extends beyond 50 feet, the ordinance usually included a speed limit within the zone from 5 to 8 m.p.h.

Most ordinances also establish "no swimming" restrictions beyond 150 and 200 feet from shore. Any swimmers beyond the established limit must be accompanied by a boat, and must stay within 50 feet of the boat. Various ordinances include additional restrictions such as: sufficient preservers in the boat for each swimmer, one boat per swimmer, a minimum age of 12 or 14 for the person in the boat, and complete prohibition of swimming beyond the "limit" from sunset to sunrise.

### b. Shore Zones

Again a majority of the ordinances expressly or impliedly establish a shore zone in which special restrictions are to be observed.

In a majority of the ordinances the established shore zone includes all water from the shore out 150 to 200 feet or out 75 feet from any piers or extensions, whichever is further. Generally, boat speed is restricted in the shore zone. These restricted speeds are covered in section five (5).

3. Passing and Right-of-Way

Most ordinances have specific regulations concerning both passing and right-of-way. In general, the right-of-way priority is: sail, row, and motor. Also, the boat to the right and the boat leaving a pier have the preference. Those ordinances which mention passing allow such passing on either side. When two boats meet head-on, each are usually obligated to steer to the right and allow the other boat to pass to the left. When passing within 100 to 300 feet of stationary boats, swimmers, piers, the shoreline, etc., many ordinances set a maximum speed of 6 to 10 m.p.h. Several ordinances include provisions requiring a "no wake" or idle speed when passing close to other objects.

4. Motor Size Limitations or Prohibition

Six ordinances expressly prohibit the use of any motor-driven boats. Another ten ordinances generally state that overpowering a boat is prohibited. Of those ordinances establishing a maximum motor size, the majority have restrictions of 7-1/2 to 10 h.p. Several ordinances set maximum limitations of 1-1/2, 5, and 35 h.p. Several of the restrictive ordinances establish maximum motor size only during certain parts of the day - usually during prime fishing hours. Approximately one-fourth the ordinances reviewed had sections dealing with motor size limitations.

5. Established Speed Limits

Every ordinance attempts to deal with boat speed limits. The majority include the words "reasonable and prudent" as a means of controlling excessive speed. A high majority of ordinances also establish maximum speed limits during some portion of the day or night. There is little agreement in the ordinances as to when slower speeds should be required. Over 20 different time spans existed within the ordinances. Sunset to sunrise was commonly used as the restrictive time for cutting boat speed. Specific time limitations from 4 p.m. to 10 a.m., and from 5 p.m. to 9 a.m. were also common. Some ordinances attempt to cut down boat speed in the morning, while others attempt to limit boat speed in the early evening. Those ordinances dealing with small, heavily-used bodies of water favored time limitations on speed from late afternoon to mid-morning.

Not only did time limitations differ between ordinances - the maximum speed limit allowed during specified times also differed from ordinance to ordinance. Ten m.p.h. seemed to be the preferred limit during those hours when speed was to be reduced. Also, 5 and 8 m.p.h. were used in many ordinances. Approximately one-fourth the ordinances establish a maximum speed limit no matter what time of day. These limits ran from 4 m.p.h. to 30 m.p.h. Channel speed limits of 4 and 5 m.p.h. were common in those ordinances passed to regulate lakes with connecting channels. Only two ordinances attempted to establish maximum speed limits according to the acreage of the body of water.

Almost all of the ordinances require that a boat must cut speed when nearing a swimmer, nearing the shoreline or pier, nearing a swimming beach, or passing within a certain number of feet of a stationary boat or sailing craft. Again there is a broad spectrum of maximum speeds. However, the most common restriction which is found in the majority of ordinances requires a reduction of boat speed to 5 m.p.h. when passing within 200 feet of another boat, person, pier, etc. Only seven ordinances use idle speed or "no wake" speed limits when moving within a specified distance of another object. Approximately 20 ordinances require no cut in boat speed until within 100 feet of another object.

6. Boat Parking, Rafts, etc.

Most of the ordinances which are concerned with rafts, boat parking, and houseboats are meant to deal with three major problems - keeping anchored objects in a close proximity with the shore, preventing the obstruction of traffic zones or channels, and the visibility of anchored objects at night.

Those ordinances which specifically regulate the anchoring distance from shore varied from 75 to 300 feet from shore. The distance probably depended on the lake size and configuration.

Ordinances which dealt with channels generally prohibited rafts, boats, etc., from anchoring anywhere where traffic might be impeded.

The problem of visibility of anchored objects was regulated in the majority of ordinances. In general, most rafts must be painted white, have six inches exposed above the water, and have red reflectors three inches in diameter located on the corners of the raft. Where the raft was anchored beyond the restricted limit, the ordinances required a white light. The power or visibility of the light varied from ordinance to ordinance from a minimum of 300 feet to a minimum of two miles.

Several ordinances prohibit overnight anchoring of houseboats. Other ordinances don't prohibit the anchoring, but do require the operator of the houseboat to get written permission from the landowner before mooring the boat to the shore.

Other ordinances have more specific regulations such as: requiring reflectors on the ends of all piers, ten inches of freeboard for rafts, and all rafts must be anchored in such a manner that the raft cannot drift more than ten feet in any direction from directly above the anchor.

7. Water Skiing

Forty-seven of the ordinances require two people to be in the tow boat when water skiing. At least half of those ordinances also require each person in the boat to be at least 12 years of age. The remaining half either sets no limit on minimum age, or the age required varies between operator and attendant. Other ordinances vary the age required between 14 and 18 years of age.

Ten ordinances establish a 75-foot maximum on the tow rope length. Also, only two skiers are allowed up behind the same boat. Several of the more active lake area ordinances restrict skiing to one skier per boat on weekends, but allow two per boat during the week.

While most ordinances require the skier to wear a jacket or belt, several require the skier to wear a Coast Guard Approved flotation device. Several ordinances allow an exception to the two people in the two-boat rule by allowing the use of a wide angle mirror.



Most ordinances also restrict skiing as to its proximity to shore, closeness to boats, swimmers, and channels and complete restriction from some areas of lakes. On the average, skiers must stay 100 to 200 feet away from all canoes, boats, swimmers, etc. Several ordinances prevent skiers from skiing above weed beds and spawning areas. Five ordinances require skiers to move in a counterclockwise motion around lakes. Several ordinances require ski boats to leave and approach the shore at a ninety degree angle or as near to ninety as possible.

Every ordinance which mentions water skiing attempts to establish time restrictions when lake users can and cannot water ski. Where lakes are small or are heavily used, the skier is usually limited to skiing during the middle of the day. If an average was computed, skiing would be allowed from 10 a.m. to 5:30 p.m. Where skiing has presented no problem or conflict of lake use, sunrise to sunset is the general rule.

8. Racing, Regattas, Special

Approximately one-fourth the ordinances call for an actual permit to be issued before holding a race or regatta. Some such permits require actual written description of the race course, etc. All ordinances requiring a permit, grant the complete right-of-way to all participants so long as the course is properly marked. Additional ordinances require only that permission or authorization be granted by the sheriff, safety patrol, town board, etc. Several ordinances require permits for the erection of ski jumps.

9. Skin Diving

Fourteen ordinances make an attempt to regulate or restrict skin diving. Only one ordinance prohibited all skin diving. Two ordinances prohibit snorkling. Three ordinances establish a minimum age of 16 for divers. All ordinances require a flag to be erected above the area in which an individual is diving, and most ordinances require that the flag be visible at least 100 yards. The diver is also required to surface within 50 to 100 feet of his flag. Five ordinances dealing with two specific lakes, prohibit skin diving from June 15th to September 15th. Such ordinances are intended to keep traffic lanes open during peak boating seasons. Several ordinances prohibit diving in spawning areas. Finally, all ordinances dealing with skin diving require other boats to stay 100 feet or more away from the diver's flag.

10. Airplanes

Only five ordinances dealt specifically with lake use by airplanes. All five prohibited the use of the lakes except in emergencies. One ordinance also prohibited the use of "airboats" on the lakes subject to the ordinance regulations.

11. Vehicles on Ice

Three of the four ordinances which dealt with gas powered vehicles on ice expressly prohibited such use. The fourth ordinance established a maximum speed of 10 m.p.h. and placed the risk of loss or injury on the owner-operator of the vehicle.

12. Weed Preservation

Four ordinances dealt with the preservation of weed beds. All four expressly prohibited skiers. Several of the same ordinances also prohibited skin divers from spawning areas.

13. Waste Disposal

Virtually every ordinance includes a provision prohibiting the disposal of waste or scrap into any body of water. A few ordinances required that boats with toilets must have the toilets sealed from the outside before putting the boat into the water. Several ordinances strictly prohibited any boat with a toilet, whether it be sealed or unsealed.

14. Commercial Craft - Rental and Passenger

The use or rental of commercial craft is regulated by several ordinances. Two ordinances establish specific minimum insurance requirements where passengers are transported. All ordinances governing transportation of passengers require adequate fire extinguishers and carburetor fire arrestors. Several ordinances require boats for rent to have the seating capacity stenciled on the stern seat. One ordinance establishes a minimum age for anyone renting a boat.

15. Canoes

Five ordinances specifically limit the number of people who can be in a canoe. The limitations are identical - 16 feet and under (two people), 18 feet and under (three people), 20 feet and under (four people).

16. Miscellaneous Restrictions

- a. Mufflers - Many ordinances require motor mufflers to reduce noise.
- b. Sirens - Several ordinances included flat prohibitions against the use of sirens and others merely restricted excessive use and noise.
- c. Searchlights - A few ordinances prohibited the shining of spotlights on cottages, piers, or people except where necessary to land or avoid collision.
- d. Wake and Wash - Many ordinances make the operator of a boat liable for any damage or injury caused by his boat's wake or wash.
- e. Amphibious Craft - Several ordinances completely prohibit amphibious craft.
- f. Sale of Goods - Two ordinances prohibit the sale of liquor or other goods from any water craft.
- g. Abusive Language - One ordinance makes it a misdemeanor to use loud or abusive language in a boat on the waterways.

3. Frequency of Provisions Contained in Local Boating Ordinances

The following list was prepared by Mr. Harold D. Hettrick in 1967. The frequency with which each of these provisions is contained in local boating ordinances is indicated after the provisions. These frequencies were obtained from a graph prepared by Mr. Hettrick as part of his study.

1. Create water safety patrol -- 59
2. Incorporate state boat law (§§ 30.50-.80 and WCD 5). -- 75
3. Aircraft not to take off, land or anchor on water except in emergency -- 9
4. Permit required for races, regattas, sporting events and exhibitions -- 28
5. Fee for public boat launching facilities -- 5
6. Amphibian trailers prohibited -- 6
7. Create office of marine inspector -- 5
8. Bridge opening and passage regulations -- 3
9. Steam powered craft using fuel other than coal prohibited -- 1
10. Power boats to be registered by town -- 1
11. 4-inch identification numbers corresponding to number of cottage required on boats -- 1
12. Boat launching restrictions -- 1
13. Airboats prohibited -- 1
14. Establish bulkhead line -- 2
15. Establish harbor line -- 4
16. Permits for underage operators -- 2
17. Boats may not enter swimming areas -- 23
18. Operation prohibited within \_\_\_ feet of shore or beach -- 16
19. Motorboats to travel in counter clockwise direction -- 1
20. Prohibit towing vessel dragging anchor -- 2
21. Prohibit running into piers, cribs, docks or bridges -- 2
22. Boats to pass through draw bridge bow first -- 1
23. Motorboats and sailboats prohibited at night -- 1
24. Motorboats prohibited -- 8
25. Speed restrictions -- 76
26. Racing or racing boats prohibited -- 9
27. Number of persons in canoe regulated -- 12
28. Persons to sit or kneel while underway -- 1
29. Vessels leaving piers have right of way -- 30
30. Boats prohibited within (50-200) feet of diver's flag -- 1
31. Horsepower restrictions -- 11
32. Motorboats/skiing (water) prohibited within \_\_\_ feet of shore, anchorage, swimmer, canoe, anchored fishing boat, public landing -- 35

33. Permit to use motorboat/water ski certain days for special occasions -- 4
34. Swimming, skin diving, motorboats prohibited in fishing zones -- 1
35. Age restrictions -- 36
36. Drivers' license required to operate motorboat over 10 h.p. unless accompanied by adult -- 5
37. Underwater craft not to surface or submerge in traffic lane -- 6
38. Downed skiers or dropped skis to be picked up immediately -- 1
39. Two persons on board when towing skier -- 63
40. Hour regulations - water skiing -- 43
41. Skiing prohibited in marked weed bed areas -- 5
42. Restrict number of skiers to be towed -- 13
43. Skiers to wear USCG approved safety device -- 8
44. Boats towing skiers to travel counter clockwise -- 8
45. Water skiing prohibited -- 12
46. Skiers and tow boats to leave and approach shore at 90° angle -- 1
47. Maximum length of tow rope 75 feet -- 6
48. Rearview mirror required on boat towing skier -- 1
49. Ski jumping prohibited on lakes less than 200 acres -- 2
50. No skiing or skin diving in marked fish spawning areas -- 5
51. Wake surfing prohibited -- 1
52. Persons under 16 swimming with snorkel prohibited -- 12
53. Swimming with snorkel prohibited -- 6
54. Underwater swimming and diving prohibited -- 6
55. Permit required for SCUBA diving and swimming -- 6
56. Underwater swimming and diving prohibited unless assisted by SCUBA diver -- 6
57. SCUBA diver to be accompanied by boat and red flag with white diagonal stripe -- 6
58. SCUBA diving prohibited at public beaches or in swimming zones -- 8
59. SCUBA diving prohibited under 16 unless accompanied by registered SCUBA diver -- 6
60. Articles of value recovered by SCUBA divers to be turned over to water safety patrol -- 6
61. Diving prohibited unless 2 or more divers present -- 1
62. Divers prohibited within 300 feet of public beaches or landings -- 1
63. Diver required to have emergency self-inflatable life preserver -- 2
64. Loaded spear guns prohibited unless diver is in water -- 2
65. Spear guns, spear fishing or underwater fishing prohibited -- 11

66. No swimming in traffic lane unless accompanied by one manned boat per swimmer -- 35
67. Swimming from unanchored boat prohibited -- 18
68. No swimming in traffic lane from sunset to sunrise -- 17
69. Swimming from unmanned boat prohibited unless anchored -- 3
70. Hour restrictions - swimming at public beaches -- 4
71. Swimmers over 300 feet from shore to be accompanied by boat with ring buoy and person trained in life saving techniques -- 8
72. Swimming areas to be marked -- 8
73. Fee to use public swimming facilities -- 1
74. Lights required at night -- 14
75. Mooring lights required-- 32
76. Boats accompanying swimmer in traffic lane at night to be lighted -- 9
77. Toilets to be plugged from outside of hull so can't be removed from inside boat -- 5
78. Search lights prohibited except in landing or emergency -- 2
79. Underwater exhaust required -- 1
80. Lighting requirements (special) -- 5
81. Fire extinguishers required on all motorboats for hire and all inboards -- 3
82. Emergency electric lights required -- 1
83. Oil lamps or lanterns prohibited on boats -- 1
84. Steam whistles prohibited except to signal to open bridges -- 3
85. Children under (11-12) to wear jacket type preserver -- 2
86. Toilets capable of discharging wastes into waters - sealed or unsealed - prohibited -- 1
87. Interference with markers prohibited -- 39
88. Reflectors required on rafts, piers or moored crafts -- 18
89. Color of rafts designated -- 17
90. Rafts to have (8"-10") freeboard above water line -- 27
91. Permit required for raft of jump (75'-200') or more from shore -- 7
92. Mooring or anchoring boat in swimming area or public landings prohibited -- 5
93. Anchoring or mooring boat on lake for more than (12-24) hours prohibited -- 5
94. Rafts or platforms prohibited more than 50 feet from shore -- 1
95. Buoys to be white and numbered by Police Dep't -- 1
96. Permits required for ski ramps and jumps -- 1
97. Craft and floats not to be anchored so as to obstruct passage of craft -- 7
98. Mooring boats on bridges, piers or piles prohibited -- 1
99. Certificate of seaworthiness required on commercial boats -- 8

- 100. Maximum capacity to be shown on boats for hire -- 7
- 101. Owner of boat for hire responsible  
for seaworthiness -- 10
- 102. No intoxicated person to be accepted  
as passenger on commercial boat -- 10
- 103. Commercial boats to be berthed from  
11 p.m. to one hour after sunrise -- 6
- 104. Commercial passenger boats to be licensed -- 1
- 105. Hour restrictions - commercial boats -- 1
- 106. Renting boats to children under 18 prohibited -- 1
- 107. Permit required for houseboat -- 2
- 108. Houseboats to be inspected for seaworthiness -- 2
- 109. Houseboats to be launched at public landing -- 2
- 110. Anchoring, drifting or mooring of houseboats  
prohibited (12 to sunrise - all day - 1 a.m.  
to sunrise) -- 7
- 111. Houseboats prohibited -- 5
- 112. Sale or consumption of malt beverages or intoxi-  
cating liquors on houseboats prohibited -- 1
- 113. Use or operation of houseboat within 2000 feet  
of shore prohibited -- 1
- 114. Motor vehicles and ice boats prohibited -- 1
- 115. Use of motor vehicle to tow, push tobaggan,  
sled, skier, etc., on ice prohibited -- 3
- 116. 10 mph speed limit for motor vehicles on ice -- 3
- 117. Propeller driven surface craft prohibited on ice -- 3
- 118. Hour restrictions - motor vehicles on ice -- 3
- 119. Motor vehicles prohibited on ice bound lakes -- 3
- 120. Winter markers to be removed -- 1
- 121. Intoxicated persons prohibited on board -- 25
- 122. Littering prohibited on ice, water shores -- 54
- 123. Intoxicating liquors not to be consumed on board -- 9
- 124. Prohibit deposit of debris -- 2
- 125. Prohibit selling from craft -- 2

4. Examples of Provisions

1. Create water safety patrol

Towns of Delafield & Pewaukee and Village of Pewaukee,  
Resolution:

"In order to uniformly enforce 'an ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake' there [shall] be appointed by the respective boards . . . a water safety patrol unit made up of one representative of each governmental agency on the lake . . . ."

2. Incorporate state boat law (§§ 30.50-.80 and WCD 5)

City of Rice Lake, Barron County, Ordinance No. 409, §2, June 28, 1960:

"The statutory provisions describing and defining regulations with respect to water traffic, boats, boating and related water activities in the following enumerated sections of the Wisconsin Statutes exclusive of any provisions therein relating to the penalties . . . are hereby adopted and by reference made a part of this ordinance as if fully set forth herein."

WIS. STAT. §§30.50-30.71 were enumerated.

3. Aircraft not to take off, land or anchor on water except in emergency

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §IV D, April 24, 1963:

"It shall be unlawful for sea planes or other aircraft capable of landing on water to use any part of the waters of Fox Lake as a landing or take off strip, unless a permit is obtained to do so."



4. Permit required for races, regattas, sporting events and exhibitions

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to Regulate water traffic, boating and water sports upon the waters of Pewaukee and prescribing penalties for violation thereof, §15, June 17, 1963:

"(a) Permit Required: No person shall direct or participate in any boat race, regatta, water ski meet or other water sporting event or exhibition unless such event has been authorized and a permit issued therefor by the chief of the water safety patrol.

(b) Permit: A permit issued under this section shall specify the course or area of water to be used by participants in such event and the permittee shall be required to place markers, flags or buoys approved by the chief of water safety patrol designating the specified area. Permits shall be issued only if in the opinion of the chief the proposed use of the water can be carried out safely and without danger to or substantial obstruction of other watercraft or persons using the lake. Permits shall be valid only for the hours and areas specified thereon."

5. Fee for public boat launching facilities

City of Oconomowoc, Waukesha County, Ordinance Creating Fee Schedule for Public Boat Launching Facilities, §1, June 20, 1963:

"Under the statutory power of Section 30.77 (3)(b) reasonable fees shall henceforth be charged by the City of Oconomowoc . . . for the use of public boat launching facilities . . . ."

The original fee schedule is as follows:

- |    |                             |        |
|----|-----------------------------|--------|
| 1) | Up to 10 horsepower --      | \$ .50 |
| 2) | 10 - 15 horsepower ---      | 2.00   |
| 3) | Over 50 [sic] horsepower -- | 3.00   |

This schedule is subject to change.

6. Amphibian trailers prohibited

Village of Elkhart Lake, Sheboygan County, An Ordinance Regulating Boating and Related Activities in the Village of Elkhart Lake, Wisconsin, §3(5), June 15, 1964:

"No amphibian trailers shall be allowed on Village waters."

7. Create office of marine inspector

Town of Linn, Walworth County, Ordinance No. 21, §8(b), June 10, 1960:

"The Office of Marine Inspector is hereby created. He shall be appointed by the President of the Geneva Lake Water Safety Committee, Inc., and may be removed by him."

8. Bridge opening and passage regulations

City of Marinette, Marinette County, Ordinances, ch. 6, §§6.04, 6.05, December 31, 1962:

§6.04 "BRIDGE PASSING. All craft navigating the Menominee River, or other navigable waters within the city when passing any bridge shall move and be moved past the same as expeditiously as is consistent with a proper movement in the river but in no case shall obstruct the passage across a bridge more than five minutes. No craft shall be so anchored or fastened as to prevent any bridge from a free and speedy opening."

§6.05 "BRIDGE OPENINGS. When a person having charge of any craft shall wish to move it past any bridges reasonable time shall be allowed for the bridge opening and no person shall move any craft against the bridge or the center or protection pier thereof before the bridge is opened."

9. Steam powered craft using fuel other than coal prohibited

City of Marinette, Marinette County, Ordinances, ch. 6, §6.14, December 31, 1962:

"No person shall sail or move any craft using steam power and using fuel for steam purposes other than coal in any of the waters of the Menominee Harbor within the city."

10. Power boats to be registered by town

Town of Geneva, Walworth County, Marine Ordinance, §VII, Aug. 6, 1956:

"[A]ll power boats shall be registered with the town and numbered by the Town . . . ."

This ordinance has been superceded by Ordinance No. 4, New Marine Ordinance, July 5, 1961, and the above provision has been excluded.

11. Four-inch identification numbers corresponding to number of cottage required on boats

Town of La Grange, Walworth County, Pleasant Lake Boat Regulations, §IX, Jan. 10, 1949:

"All motor boats operating on the waters of Pleasant Lake must be numbered with numbers measuring at least four inches high and clearly visible for 200 feet, said numbers corresponding to the number of the cottage owned, rented or leased by owner or operator of the boat."

12. Boat launching restrictions

Village of Oconomowoc Lake, Waukesha County, Ordinance No. 32, §16.15, Aug. 20, 1962:

"No person shall launch any boat into the waters subject to this ordinance except: (a) from a public boat-launching facility . . .; (b) from a commercial boat-launching facility; or (c) from private property by the owner thereof or with his express permission."

City of Oconomowoc, Waukesha County, Ordinance Creating Fee Schedule for Public Boat Launching Facilities, §5, June 20, 1963:

"The City of Oconomowoc further reserves the right to adopt and administer certain rules and regulations with respect to the usage and operation of the public access launching facilities . . . ."

13. Airboats prohibited

Town of Osceola, Fond du Lac County, An Ordinance to Regulate Water Traffic and Boating and Water Sports upon the Waters of all Lakes Within the Town of Osceola, Fond du Lac County, Wisconsin, §12, May 8, 1967:

"The operation of any boat or other device propelled by an airplane type propellor commonly known as 'air boats' is prohibited."

14. Establish bulkhead line

City of Marinette, Marinette County, Ordinances, ch. 6, §6.16(a), Dec. 31, 1962:

"The bulkhead line of that part of the south-westerly shore of the Menominee River, hereinafter described and more particularly shown by a map on file in the City Clerk's office, is established and determined as set forth in the following description and the map, subject to the approval of the Public Service Commission of Wisconsin, namely:" [description follows].

15. Establish harbor line

City of Marinette, Marinette County, Ordinances, ch. 6, §6.15, Dec. 31, 1962:

"The harbor line on the Menominee River in the city is hereby established as follows:" [there follows directions in degrees and minutes and measurements in feet].

16. Permits for underage operators

Town of Liberty, Manitowoc County, Ordinance Regulating Boating and Related Activities in the Town of Liberty, §12, May 8, 1962:

"Permits to be issued under 14 years old."

17. Boats may not enter swimming areas

City of Green Bay, Brown County, General Ordinance No. 18-61 creating §22.09 of Code of General Ordinances, §1(6)(g), June 20, 1961:

"No person shall operate a boat within a water area which has been clearly marked in accordance with law by buoys or some other distinguishing device as a bathing or swimming area. This subsection does not apply in the case of an emergency, or to patrol or rescue craft."

18. Operation prohibited within \_\_\_ feet of shore or beach

Townships of Randall, Kenosha County, and Bloomfield, Walworth County, Powers Lake Boating Order, §III A. 3.:

"No person shall operate a motorboat within fifty (50') feet of the shoreline, except for the purpose of loading or unloading passengers, docking or departing from a pier or dock."

19. Motorboats to travel in counter clockwise direction

Town of Trenton, Washington County, An Ordinance to Regulate Water Traffic, etc., §X B., Aug. 31, 1960:

"[A]ll motorboats shall be operated in a counter clockwise direction, that is, south-east-north-west-south."

20. Prohibit towing vessel dragging anchor

City of Marinette, Marinette County, Ordinances, ch. 6, §6.09, Dec. 31, 1962:

"No person shall tow a vessel in the Menominee River, or any other navigable waters within the limits of the city while the anchor of such vessel is down or dragging on the bottom of the river."

21. Prohibit running into piers, cribs, docks or bridges

City of Marinette, Marinette County, Ordinances, ch. 6, §6.10, Dec. 31, 1962:

"No person having charge of any craft or float shall run the same into the piers, cribs or docks of the harbor or allow the craft or float to be driven or run into piers, cribs, docks, bridge or abutment."

22. Boats to pass through draw bridge bow first

City of Marinette, Marinette County, Ordinances, ch. 6, §6.12, Dec. 31, 1962:

"Every craft when passing in the draw of the bridge across the Menominee River from the First Ward of the city shall pass through bow first."

23. Motorboats and sailboats prohibited at night

City of Waukesha, Waukesha County, An Ordinance to Regulate Water Traffic, Boating and Water Sports Upon the Waters of the Fox River and Prescribing Penalties for Violation Thereof, §3(a), June 20, 1961:

"No motor boat or sail boat shall be operated upon said river between the hours of sunset and sunrise."

24. Motorboats prohibited

Jackson Township, Adams County, Ordinance on Motor Regulations at Wolf Lake, 1962:

"That all motor powered craft be prohibited from operating on Wolf Lake in Section Eleven (11) of the Town of Jackson, Adams County, Wisconsin."

25. Speed restrictions

Town of Jackson, Adams County, Ordinance No. 1, §1, May 23, 1959:

"No person shall operate a motor on the lakes at a speed greater than ten miles per hour, between the hours of 5:00 p.m. and sunrise the following morning at any time."

Cedar Lake, Barron County, Boating Ordinance, §2,  
Aug. 3, 1965:

"No boat propelled by gasoline or other similar motive power shall be operated on the waters of said township within two hundred (200) feet of any shoreline, dock, swimming area, or any occupied boat or canoe at a speed greater than ten (10) miles per hour."

City of Green Bay, Brown County, General Ordinance No. 18-61 creating §22.09 of the Code of General Ordinances, §1(3):

"Speed Restrictions. No person shall operate a motorboat at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a motorboat shall be so controlled as to avoid colliding with any object lawfully in or on the water or with any person, boat or other conveyance in or on the water in compliance with legal requirements and exercising due care."

26. Racing or racing boats prohibited

Village of Oconomowoc Lake, Waukesha County,  
Ordinance, No. 32, §16.06, Aug. 20, 1962:

"No person shall operate a motorboat in a race or speed contest with any other motorboat, except as provided in Section 16.12 of this Ordinance."

27. Number of persons in canoe regulated

City of Madison, Dane County, Ordinance No. 905,  
§1(9)(f)(1), Sept. 29, 1959:

"Canoes 16 feet or under in length shall not carry more than two persons; canoes over 16 feet and under 18 feet in length shall not carry more than three persons; canoes over 18 feet and under 20 feet in length shall not carry more than four persons."

28. Persons to sit or kneel while underway

City of Delafield, Waukesha County, Village Ordinance No. 27, Ordinance Regulating Boating and Related Activities, §4, June 7, 1967:

"Except for the purpose of anchoring, mooring, casting off, or other necessary purpose, no person shall operate or ride in any motor boat while the same is underway, unless such person is in a sitting or kneeling position."

29. Vessels leaving piers have right of way

Richmond and Whitewater, Walworth County, Ordinance No. 1, §7(a), July 5, 1962:

"Boats leaving or departing from a pier, dock or wharf shall have the right of way over all other watercraft approaching such dock, pier or wharf."

30. Boats prohibited within (50-200) feet of diver's flag

Waterford Township, Racine County, Boating Regulations, §4.02(5), Aug. 14, 1961:

"No motor boat shall pass within two hundred (200) feet of a moored boat, or skin diver's marker unless existing circumstances require it."

31. Horsepower restrictions

Town of Athelstone, Marinette County, An Ordinance regulating the use of motorboats and water skiing in the Town of Athelstone, §3, Oct. 16, 1965:

"No person shall operate any motorboat having a motor with a braking horsepower in excess of 7 1/2 on any lake in the Town of Athelstone between the hours of sunrise and 10:00 a.m., or between the hours of 6:00 p.m., and sunset."

Town of Bristol, Kenosha County, Ordinance Relating to the Regulation of Water Traffic, etc., §12.03(1), Dec. 26, 1961:



"No out-board or in-board motor capable of producing more than ten (10) horsepower shall be used on Lake George . . . . This limitation is in no manner intended to exclude any boat from the free use of the waters of Lake George, but is deemed necessary in the interests of public safety."

32. Motorboats/skiing (water) prohibited within —  
feet of shore, anchorage, swimmer, canoe, anchored  
boat, public landing

Town of Liberty, Manitowoc County, Ordinance Regulating Boating and Related Activities in the Town of Liberty, §16, May 8, 1962:

"No motorboat towing water skiers, aquaplaners, or similar activities shall pass within 100 feet of any bather, swimmers, bathing beaches or stationary watercraft."

33. Permit to use motorboat/water ski certain days for special occasions

Town of Liberty, Manitowoc County, Ordinance regulating boating and related activities in the Town of Liberty, §24, May 8, 1962:

"The use of motorboats and water skiing shall be allowed on any waters in the township on certain days for special occasions by permit only."

34. Swimming, skin diving, motorboats prohibited in fishing zones

Town of Westport, Dane County, an Ordinance to regulate water traffic, boating and water sports upon the waters of the Yahara River and prescribing penalties for violation thereof, §3(b)(2), May 3, 1960:

"No person shall engage in skin diving, water skiing or operate a boat by motor power in the fishing zone except in cases of emergency or for the purpose of entering or departing from such zone."

35. Age restrictions

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake and prescribing penalties for violation thereof, §6, June 17, 1963:

Operations by Minors: No person under 12 years of age shall operate or be permitted to operate a motorboat of more than 10 horsepower unless there is present in the boat a person 16 years of age or older. No person under 10 years of age shall operate or be permitted to operate a motorboat unless there is present in the boat a person 16 years of age or older. The owner of the boat shall be held to have violated this section if he knowingly permits or suffers any such operation."

Town of Liberty, Manitowoc County, Ordinance regulating boating and related activities in the Town of Liberty, §12, May 8, 1962:

"No person under the age of 14 years shall be allowed to operate a motorboat upon the waters of this town."

36. Drivers' license required to operate motorboat over 10 h.p. unless accompanied by adult

Village of Balsam Lake, Polk County, An Ordinance to Regulate Water Traffic, Boating and Water Sports upon the Waters of Balsam Lake and Prescribing Penalties for Violation Thereof, §4(b), 1960:

"No person shall operate a motorboat with a motor in excess of ten (10) horsepower unless validly licensed to operate a motor vehicle and over sixteen years of age unless accompanied by parent or guardian."

37. Underwater craft not to surface or submerge in traffic lane

East Troy, Walworth County, Ordinance No. 1.15, An Ordinance Regulating Water Traffic, §XX, March 21, 1962:

"No person shall engage in any activity employing a craft capable of operating below the surface of the water unless such craft submerges and surfaces in that area of the surface of the lake that has not been designated herein as the Traffic Lane . . . ."

38. Downed skiers or dropped skis to be picked up immediately

Waterford Township, Racine County, Boating Regulations, §4.02(6), Aug. 14, 1961:

"All downed or dropped skiers, skis, boards and similar contrivances shall be picked up immediately."

39. Two persons on board when towing skier

Town of Jackson, Adams County, Ordinance No. 1, §§3(A) & (B), May 23, 1959:

§3(A) "No person shall operate a motorboat for the purpose of towing a water skier unless such boat shall contain at least two occupants."

§3(B) "No person shall permit himself or herself to be towed while engaged in water skiing, unless such boat shall contain at least two occupants."

39. (continued)

Cedar Lake, Barron County, Boating Ordinance, §3,  
August 3, 1965:

[Two persons are required in a boat towing  
a water skier], "one (1) of whom shall at  
all times keep proper look-out to avoid  
injury to other persons or property."

Town of Fox Lake, Water Traffic and Boating Ordinance,  
Ordinance No. 19, §IVF, April 24, 1963:

"Whenever a boat is used for towing purposes,  
for water sports or otherwise, there shall be  
no less than two persons in the towing boat,  
one to operate the boat and one to be in charge  
of the tow line."

40. Hour regulations - water skiing

Town of Jackson, Adams County, Ordinance No. 1, §2,  
May 23, 1959:

"No person shall engage in the sport known as  
water skiing on Jordan Lake between the hours  
of 5:30 p.m. and 9:00 a.m. of the following  
morning at any time."

41. Skiing prohibited in marked weed bed areas

Town of Troy, Walworth County, Ordinance No. 18, An  
Ordinance Regulating Water Traffic, §XIII(8), May 5,  
1964:

"No person shall water ski or aquaplane in  
a marked weedbed area."

42. Restrict number of skiers to be towed

Town of Troy, Walworth County, Ordinance No. 18, An  
Ordinance Regulating Water Traffic, §XIII(2), May 5,  
1964:

"No motorboat operator shall tow more than  
one water skier nor shall any water skier allow  
himself to be towed by a motorboat already  
towing one water skier, except however, the  
towing of two skiers shall be allowed Mondays  
through Fridays excepting legal holidays."

43. Skiers to wear USCG approved safety device

Town of Troy, Walworth County, Ordinance No. 18, An Ordinance Regulating Water Traffic, §XIII B (3), May 5, 1964:

"Each person being towed shall wear a flotation device meeting standards prescribed by the United States Coast Guard, unless participating in an exhibition authorized in writing by the Town Board."

44. Boats towing skiers to travel counter clockwise

Town of Lyndon, Sheboygan County, Ordinance Relating to Operation of Motorboats on the Lakes and Waterways of Town of Lyndon, Sheboygan County, §5, April 1, 1967:

"The traffic pattern for fast boating (over 10 m.p.h.) and water skiing shall be counter-clockwise and shall be conducted in the center of the lake, within the confines of the buoys."

45. Water skiing prohibited

Cedar Lake, Barron County, Boating Ordinance, §4, Aug. 3, 1965:

"Water skiing shall be prohibited in the Red Cedar River from Cedar Lake to the Mikana Bridge and in the channel from Red Cedar Lake to Hemlock Lake."

46. Skiers and tow boats to leave and approach shore at 90° angle

City of Delafield, Waukesha County, Village Ordinance No. 27, Ordinance Regulating Boating and Related Activities, §7, June 7, 1967:

"Every person engaged in water skiing, aqua-planing, or similar activity, and every operator of a motorboat towing such person, shall leave and approach the shore in the course of egress and ingress, at an angle of 90° to the shoreline, as nearly as practicable."

47. Maximum length of tow rope 75 feet

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake and prescribing penalties for violation thereof, §13(e), June 17, 1963:

"Length of Tow: The maximum length of any tow rope for towing a person water skiing, aquaplaning or similar activity shall be 75 feet."

48. Rearview mirror required on boat towing skier

Richmond and Whitewater, Walworth County, Ordinance No. 1, §11(A), July 5, 1962:

"No person shall operate a boat for the purpose of towing a person on water skis, aquaplaning or similar device or permit himself to be towed for such purpose . . . . unless such boat is equipped with a wide-angle rearview mirror of not less than 160 degrees so constructed and fixed as to enable the operator to view the person being towed at all times."

49. Ski jumping prohibited on lakes less than 200 acres

Town of Troy, Walworth County, Ordinance No. 18, An Ordinance Regulating Water Traffic, §XIII(5), May 5, 1964:

"Ski jumping on lakes less than 200 acres in area is prohibited."

50. No skiing or skin diving in marked fish spawning areas

Town of Troy, Walworth County, Ordinance No. 18, An Ordinance Regulating Water Traffic, §XIV B(3), May 5, 1964:

"No person shall skindive or water ski in any marked fish spawning area."

51. Wake surfing prohibited

Waterford Township, Racine County, Boating Regulations, §4.02(6), Aug. 14, 1961.

"No wake surfing shall be permitted . . . ."

52. Persons under 16 swimming with snorkel prohibited

Townships of Randall, Kenosha, and Bloomfield, Walworth County, Powers Lake Boating Order, §III E.4:

"It shall be unlawful for a person under sixteen (16) years of age to swim with a snorkel."

53. Swimming with snorkel prohibited

Lake Ordinance for Geneva Lake, §9(d) (passed by the governing boards of the towns and municipalities around the lake):

"It shall be unlawful to swim with a snorkel."

54. Underwater swimming and diving prohibited

Lake Ordinance for Geneva Lake, §15(c):

"No person shall engage in under-water diving and swimming with self-contained under-water breathing apparatus . . . ."

55. Permit required for SCUBA diving and swimming

Lake Ordinance for Geneva Lake, §15(a):

"All skin and other under-water diving and swimming using or performed with self-contained, under-water breathing apparatus (Scuba Diving), snorkels or similar devices are hereby forbidden during the period from June 15 to September 15 each year . . . . except to recover personal property and bodies and to examine the bottom of the lake for some public authority, and then only after making application for and receiving permission from the Water Safety Patrol in writing."

56. Underwater swimming and diving prohibited unless assisted by SCUBA diver

Lake Ordinance for Geneva Lake, §15(d):

"It shall be unlawful to swim or dive under water when unassisted. When assisted it must be done so that each diver shall have another with him who is a competent, properly equipped SCUBA diver."

57. SCUBA diver to be accompanied by boat and red flag with white diagonal stripe

Lake Ordinance for Geneva Lake, §15(e):

"A SCUBA diver shall be accompanied when in the water by a boat designated by a flag with one diagonal stripe on a red background. The boat must be manned by a qualified SCUBA diver who has registered and has a permit as herein provided."

58. SCUBA diving prohibited at public beaches or in swimming zones

Lake Ordinance for Geneva Lake, §15(f):

"There shall be no SCUBA diving at any of the public beaches. Nor shall it be done in such a way as to interfere with fishermen and their lines, or with boats and their anchors."

59. SCUBA diving prohibited under 16 unless accompanied by registered SCUBA diver

Lake Ordinance for Geneva Lake, §15(g):

"Anyone engaging in this type of sport except as hereinafter provided must be over sixteen (16) years of age. Children under that age may engage in the sport only when properly registered and when accompanied by and under the control of a qualified registered SCUBA diver over sixteen years of age who has been issued a permit as above provided."

60. Articles of value recovered by SCUBA divers to be turned over to water safety patrol

Lake Ordinance for Geneva Lake, §15(j):

"All SCUBA divers who find articles of any value on the bottom of the lake shall deliver them to the Water Safety Patrol for return to their proper owners, and if such owners cannot be found, then for disposal according to law."

61. Diving prohibited unless 2 or more divers present

City of Madison, Dane County, Ordinance No. 905, §3(1), September 29, 1959:

"No diving shall be carried out unless there are two or more divers present."



62. Divers prohibited within 300 feet of public beaches or landings

City of Madison, Dane County, Ordinance No. 905, §3(4), September 29, 1959:

"Divers shall keep 300 feet away from public bathing beaches and public boat channels or landings."

63. Diver required to have emergency self-inflatable life preserver

City of Madison, Dane County, Ordinance No. 905, §3(5), September 29, 1959:

"Each diver shall have an emergency self-inflatable life preserver."

64. Loaded spear guns prohibited unless diver is in water

City of Madison, Dane County, Ordinance No. 905, §3(6), September 29, 1959:

"No spear gun shall be loaded or able to fire except when diver is in the water."

65. Spear guns, spear fishing or underwater fishing prohibited

Lake Ordinance for Geneva Lake, §15(b):

"Spear-fishing and the use of a spear or gun under-water is forbidden, and it shall be unlawful to have possession of a spearing device or gun constructed or intended for use or capable of being used in under-water fishing anywhere in any of the municipalities adopting this ordinance."

66. No swimming in traffic lane unless accompanied by one manned boat per swimmer

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §IVA, April 24, 1963:

"No person shall swim beyond two hundred feet from shore unless accompanied by a manned boat for each swimmer."

67. Swimming from unanchored boat prohibited

City of Madison, Dane County, Ordinance No. 905, §1 (9)(c), Sept. 29, 1959:

"No person shall swim from any boat unless such boat is anchored."

Richmond and Whitewater, Walworth County, Ordinance No. 1, §10, July 5, 1962:

"No person shall swim from any boat unless such boat is anchored and unless the swimmers stay within twenty-five (25) feet of the boat."

68. No swimming in traffic lane from sunset to sunrise

Town of Troy, Walworth County, Ordinance No. 18, An Ordinance Regulating Water Traffic, §XIV B.(2), May 5, 1964:

"No person shall swim in the traffic lane from 10:00 a.m. to 7:00 p.m."

69. Swimming from unmanned boat prohibited unless anchored

Towns of Delafield and Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, etc., §12(c), June 17, 1963:

"Hours Limited : No person shall swim more than 200 feet from the shoreline between sunset and sunrise."

70. Hour restrictions - swimming at public beaches

Towns of Delafield and Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake and prescribing penalties for violation thereof, §12(a), June 17, 1963:

"No person shall swim from any unmanned boat unless such boat is anchored."

71. Swimmers over 300 feet from shore to be accompanied by boat with ring buoy and person trained in life saving techniques

City of Portage, Columbia County, Revised Code of General Ordinances, ch. 23, §23.10(2):

"No person shall swim more than 300 feet from the shore unless he is accompanied by a boat containing a ring buoy and a person trained in life saving techniques."

72. Swimming areas to be marked

Town of Troy, Walworth County, Ordinance No. 18, An Ordinance Regulating Water Traffic, §XIVC, May 5, 1964:

"All beaches used by the public shall be identified by markers placed on the outer perimeter thereof . . . ."

73. Fee to use public swimming facilities

City of Oconomowoc, Waukesha County, Ordinance Creating Reasonable Fees for the Use of Public Swimming Facilities, §1, June 20, 1963:

"For the purpose of promoting public health, safety, morals, and general welfare, and for the appropriate control and maintenance of publicly owned and operated facilities, . . . . it is hereby deemed necessary to create a reasonable schedule of fees for the usage of public swimming facilities . . . ."

The initial fee schedule was as follows:

- 1) \$.25 per year for a resident family;
- 2) \$.50 per person for non-residents on weekdays;
- 3) \$1.00 per person for non-residents on weekends and holidays.

74. Lights required at night

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §III E, April 24, 1963:

"All craft, motor or otherwise, out on Fox Lake anytime from an hour after sunset to an hour before sunrise shall have some light that should be used to clearly indicate its presence to other craft."

75. Mooring lights required

Town of Troy, Walworth County, Ordinance No. 18, An Ordinance Regulating Water Traffic, §VII B, May 5, 1964:

"No person shall moor or anchor any boat, raft, buoy or other floating object in the traffic lane from sunset to sunrise unless there is prominently displayed thereon a white light."

76. Boats accompanying swimmer in traffic lane at night to be lighted

Town of Trenton, Washington County, An Ordinance to Regulate Water Traffic, etc. §XIV B.(2), Aug. 31, 1960:

"No person shall swim in the traffic lane between one hour after sunset and one hour before sunrise unless the accompanying boat . . . . is properly lighted."

77. Toilets to be plugged from outside of hull so can't be removed from inside boat

Lake Ordinance for Geneva Lake, §14:

"Toilets and 'Heads.' The toilet of any boat, the nautical term for which is 'head,' must be plugged from the outside of the hull in such a manner that the plug cannot be removed from the inside of the boat."

78. Search lights prohibited except in landing or emergency

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §III F, April 24, 1963:

"Searchlights may be used to furnish light in making a landing and only otherwise in case of imminent danger or emergency."

79. Underwater exhaust required

City of Madison, Dane County, Ordinance No. 905, §1 (6) (b), Sept. 29, 1959:

"Underwater Exhaust. Every motorboat shall be equipped to divert its exhaust under water or otherwise completely and effectively to muffle and silence the sound of the exhaust."

80. Lighting requirements (special)

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §III D, April 24, 1963:

"Motorboats operated on Fox Lake anytime from an hour after sunset to an hour before sunrise shall be equipped with a red running light on the left (port) side so as to be visible only from that side and a green running light on the right (starboard) side so as to be visible only from that side, both to be visible from headon; a white light shall be mounted at the stern."

81. Fire extinguishers required on all motorboats for hire and all inboards

City of Madison, Dane County, Ordinance No. 905, §1 (6)(d), Sept. 29, 1959:

"Fire Extinguishers. Motorboats operated for hire and carrying passengers shall be equipped with fire extinguishers with United States Coast Guard approval. All inboard motorboats shall carry fire extinguishers with United States Coast Guard approval."

82. Emergency electric lights required

City of Madison, Dane County, Ordinance No. 905, §1 (6) (e), Sept. 29, 1959:

"Emergency Electric Light. Every boat when operating at night shall be equipped with at least one portable or stationary electric light which shall operate independently of the regular light facilities so as to be available whenever the regular lights may become inoperative."

83. Oil lamps or lanterns prohibited on boats

City of Madison, Dane County, Ordinance No. 905, §1 (9) (b), Sept. 29, 1959:

"No boat shall have on board an oil lamp or lantern."

84. Steam whistles prohibited except to signal to open bridges

City of Marinette, Marinette County, Ordinance, ch. 6, §6.11, Dec. 31, 1962:

"No person having charge of any craft while navigating, lying or being within the harbor of the Menominee River, or any of the navigable waters or rivers within the city, shall blow any steam whistle for any purpose except that when it is necessary to pass through any bridge in the city, he may give three short blasts of the whistle, each blast not to exceed two seconds in length, as a signal for the bridge to open."

85. Children under (11-12) to wear jacket type preserver

City of Milwaukee, Milwaukee County, Code of Ordinances §8-80 (4) (c) 2:

"No person shall drive, operate or use any motor-boat 16 feet or less in length unless every child 12 years of age or less on board wears a standard type life preserver or life belt or similar device."

86. Toilets capable of discharging wastes into waters - sealed or unsealed - prohibited

Town of East Troy, Walworth County, Ordinance No. 1.15, An Ordinance Regulating Water Traffic, §XV B(1), March 21, 1962:

"[N]o person shall maintain or operate upon lakes situated wholly in this township any boat which is equipped with a toilet capable of discharging . . . human wastes into . . . lakes, whether the discharge pipe from such toilet be sealed or unsealed."

87. Interference with markers prohibited

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake and prescribing penalties for violation thereof, §16(c), June 17, 1963:

"Interference with Markers Prohibited: No person shall without authority remove, damage or destroy or moor or attach any watercraft to any buoy, beacon or marker placed in the waters of the lake by the authority of the United

87. (continued)

States, state, county or town, village, or by any private person pursuant to the provisions of this ordinance."

88. Reflectors required on rafts, piers or moored crafts

Town of Oconomowoc, Waukesha County, An Ordinance to Amend the Motorboat Ordinance of the Town of Oconomowoc Waukesha County, Wisconsin, §6(a), May 20, 1963:

"All piers, rafts, ski jumps or other stationary objects, extending into and/or located upon the waters located in the Town of Oconomowoc, shall have red reflectors signals on each side thereof and in the case of piers, such reflectors shall be not less than three (3) feet from the outer limits thereof."

89. Color of rafts designated

East Troy, Walworth County, Ordinance No. 1.15, An Ordinance Regulating Water Traffic, §XVIII A, March 21, 1962:

"All rafts and stationary platforms, buoys and markers of any kind anchored in the water, except docks and piers, shall be painted in conformity with the color scheme established by the rules and regulations of the Wisconsin Conservation Commission."

90. Rafts to have (8"-10") freeboard above water line

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §IV C, April 24, 1963:

"All rafts, platforms, and buoys shall be so anchored that they shall have at least six inches of freeboard above the water line."

91. Permit required for raft of jump (75'-200') or more from shore

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, boating and water sports upon the waters of Pewaukee Lake and prescribing penalties for violation thereof, §10(a), June 17, 1963:

91. (continued)

"Rafts and Buoys: No person shall erect or maintain any raft ski jump, stationary platform or any other obstacle to navigation more than 200 feet from the shore at any time unless a permit is obtained from the Chief of the Water Safety Patrol and unless it is so constructed or anchored that it has at least 6 inches of freeboard above the water line."

92. Mooring or anchoring boat in swimming area or public landings prohibited

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, etc., §10(b) & (c), June 17, 1963:

"(b) Designation of Anchorages: The shore zone is designated an anchorage or moorage except in areas of heavy traffic where anchoring or mooring may be prohibited by order of the Chief of the Water Safety Patrol. Anchoring or mooring for more than 24 hours is prohibited elsewhere on the lake.

(c) Public Landings: Mooring or anchoring of boats at public landings other than at piers as designated by the controlling governmental agency is prohibited."

93. Anchoring or mooring boat on lake for more than (12-24) hours prohibited

See Ordinance cited in 92,

94. Rafts or platforms prohibited more than 50 feet from shore

Town of Troy, Walworth County, Ordinance No. 18, An Ordinance Regulating Water Traffic, §XVI C, May 5, 1964:

"All buoys and markers shall be no more than 50 feet from shore . . . ."

95. Buoys to be white and numbered by Police Dept.

City of Madison, Dane County, Ordinance No. 905, §1 (4), Sept. 24, 1959:

"All buoys shall be painted white and bear a number issued by the Police Department."



96. Permits required for ski ramps and jumps

City of Madison, Dane County, Ordinance No. 905, §1 (9)(i), Sept. 29, 1959:

"Ski Ramps or Jumps. Ski ramps or jumps may be placed on lakes only with permission of the Police Department as to timing and placement. Such devices shall be subject to a safety inspection by the boat inspector."

97. Craft and floats not to be anchored so as to obstruct passage of craft

City of Marinette, Marinette County, Ordinances, ch. 6, §6.03, Dec. 31, 1962:

"No person having charge of any craft or float shall anchor it or otherwise fasten or permit it to be anchored or fastened in the harbor, rivers or navigable waters within the city so that it obstructs the passage of any other craft."

98. Mooring boats on bridges, piers or piles prohibited

City of Marinette, Marinette County, Ordinances, ch. 6, §6.13, Dec. 31, 1962:

"No person shall fasten any craft to protection piers or bridges, bridge approaches, or piles driven for the protection of bridge piers or approaches in the city."

99. Certificate of seaworthiness required on commercial boats

Lake Ordinance for Geneva Lake, §8 (c):

"Inspection. No person shall operate a commercial boat upon Geneva Lake unless he shall have in his possession a certificate of seaworthiness and passenger capacity from the Water Safety Patrol. Such certificate shall be obtained prior to operation of the boat in any year and shall be valid for one (1) year unless sooner revoked by the Marine Inspector for the Water Safety Patrol upon a finding that such boat is unsafe, unsound or unseaworthy. No certificate shall be issued for any commercial boat until the said inspector finds it to be safe, sound and seaworthy."

100. Maximum capacity to be shown on boats for hire

East Troy, Walworth County, Ordinance No. 1.15, An Ordinance Regulating Water Traffic, §XII B. (2)(a), March 21, 1962:

"All boats for rent or hire shall have stenciled or painted on the rear seat thereof the maximum safe carrying capacity of such boat."

101. Owner of boat for hire responsible for seaworthiness

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §V B, April 24, 1963:

"Every owner of a commercial passenger boat shall be responsible for its seaworthiness . . . ."

102. No intoxicated person to be accepted as passenger on commercial boat

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §V C, April 24, 1963:

"No intoxicated person shall be accepted as a passenger upon any commercial passenger boat."

103. Commercial boats to be berthed from 11 p.m. to one hour after sunrise

Town of Fox Lake, Ordinance No. 19, Water Traffic and Boat Ordinance, §V D, April 24, 1963:

"All commercial passenger boats shall be berthed and made fast at their respective regular mooring places not later than 11:00 o'clock p.m. daily and remain at such mooring place until one hour after sunrise."

104. Commercial passenger boats to be licensed

East Troy, Walworth County, Ordinance No. 1.15, An Ordinance Regulating Water Traffic, §XVI A, March 21, 1962:

"All commercial passenger boats licensed."

105. Hour restrictions - commercial boats

East Troy, Walworth County, Ordinance No. 1.15, An Ordinance Regulating Water Traffic, §XVI E, March 21, 1962:

"All commercial passenger boats shall be berthed and made fast at their respective regular mooring place until one hour after sunrise."

106. Renting boats to children under 18 prohibited

City of Milwaukee, Milwaukee County, Code of Ordinances, §8-80 (14):

"No vessel, craft, or float, either hand or power, shall be rented to children under 18 years of age unless accompanied by a parent, guardian or some other person 21 years of age."

107. Permit required for houseboat

Crandon, Forest County, Ordinance Regulating Houseboats, §I(a), July 23, 1964:

"No houseboat or similar structure shall be . . . operated . . . without:

obtaining and having attached . . .  
any current license or permit . . . ."

108. Houseboats to be inspected for seaworthiness

Crandon, Forest County, Ordinance Regulating Houseboats, §VI, July 23, 1964:

"All houseboats must be inspected for seaworthiness, and compliance with this ordinance, and be launched at a public landing . . . ."

109. Houseboats to be launched at public landing

See Ordinance cited in 108.

110. Anchoring, drifting or mooring of houseboats prohibited (12 to sunrise - all day - 1 a.m. to sunrise)

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, etc., §8(c), June 17, 1963:

"Houseboats: Anchoring, drifting or mooring of houseboats is prohibited from 12:00 midnight to sunrise: However, unoccupied houseboats may be anchored in designated anchorages or moored to shore during this period with written permission of the property owner. An exception may be granted by the Chief of the Water Safety Patrol . . . ."

111. Houseboats prohibited

East Troy, Walworth County, Ordinance No. 1.15, An Ordinance Regulating Water Traffic, §XV A(1), March 21, 1962:

"No person shall anchor, maintain or operate upon any lake situated wholly within the Township of East Troy a houseboat . . . ."

112. Sale or consumption of malt beverages or intoxicating liquors on houseboats prohibited

Crandon, Forest County, Ordinance Regulating Houseboats, §I(c), July 23, 1964:

"[N]or shall such houseboat be used for the sale or consumption of fermented malt beverages and intoxicating liquors."

113. Use or operation of houseboat within 2,000 feet of shore prohibited

Crandon, Forest County, Ordinance Regulating Houseboats, §I(c), July 23, 1964:

"[N]o such houseboat . . . shall be used or operated on such waters within 2,000 feet of the shoreline . . . ."

114. Motor vehicles and ice boats prohibited

Town of Bristol, Kenosha County, Ordinance Relating to the Regulation of Water Traffic, etc., §12.03(7), Dec. 26, 1961:

"No motor vehicles or ice boats shall be used upon or be allowed to stand upon the ice of Lake George."

115. Use of motor vehicle to tow, push toboggan, sled, skier, etc., on ice prohibited

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, etc., §17(a), June 17, 1963:

"Safe Operation: No person shall use or operate any automobile or other motor driven vehicle in any manner so as to endanger persons engaged in skating or in any other winter sport or recreational activity being engaged in upon the ice and no person shall, while using or operating any automobile or motor driven vehicle, tow, pull, or push any person or persons on skates, sleds, skis, toboggan or device or thing of any kind designated or utilized to carry or support one or more persons."

116. 10 mph speed limit for motor vehicles on ice

Towns of Delafield & Pewaukee and Village of Pewaukee, Ordinance to regulate water traffic, etc., §17(b), June 17, 1963:

"SECTION 17. Driving Automobiles or Other Motor Driven Vehicles on the Ice:

. . . .

(b) Speed: No person shall use or operate any automobile or other motor driven vehicle at a speed in excess of ten (10) miles per hour."

117. Propeller driven surface craft prohibited on ice

Towns of Delafield & Pewaukee and Village of Pewaukee,  
Ordinance to regulate water traffic, etc., §17(c),  
June 17, 1963:

"SECTION 17. Driving Automobiles or Other  
Motor Driven Vehicles on the Ice:

. . . .

(c) Propellor Driven Surface Craft  
Prohibited: No person shall operate any  
propellor driven surface vehicle, device or  
thing, whether or not designed for the trans-  
porting of a person or persons."

118. Hour restrictions - motor vehicles on ice

Towns of Delafield & Pewaukee and Village of Pewaukee,  
Ordinance to regulate Water Traffic, etc., §17(d),  
June 17, 1963:

"Hours: No person shall use or operate any  
automobile or motor driven vehicle on the ice  
after 8:30 p.m. in the evening."

119. Motor vehicles prohibited on ice bound lakes

Town of Troy, Walworth County, Ordinance No. 18,  
An Ordinance Regulating Water Traffic, §XVII A,  
May 5, 1964:

"No person shall operate a motor vehicle  
upon any icebound lake situated wholly  
within the Township of Troy."

120. Winter markers to be removed

City of Madison, Dane County, Ordinance No. 905,  
§1(6)(c)(4), Sept. 29, 1959:

"WINTER MARKERS. All posts or objects used  
as winter markers to replace buoys shall be  
removed from waters covered by this section  
no later than April 15 of each year, or 15  
days after official opening of lakes, which-  
ever occurs later."

121. Intoxicated persons prohibited on board

Towns of Delafield & Pewaukee and Village of Pewaukee,  
Ordinance to regulate water traffic, etc., §9(a),  
June 17, 1963:

"Intoxicated Persons not to Ride in Boats:  
No person shall permit any person who is so  
intoxicated as to be unable to provide for his  
own safety or the safety of others to ride  
as a passenger in any boat operated by him."

122. Littering prohibited on ice, water, shores

Lake Ordinance for Geneva Lake, §12:

"Littering Waters and Ice Prohibited. No  
person shall deposit, place or throw from  
the shore, any boat, raft, pier, platform  
or similar structure, any cans, bottles,  
debris, refuse, garbage, solid or liquid  
waste, sewage or effluent into the waters  
of the lake or upon the ice when formed."

123. Intoxicating liquors not to be consumed on board

Richmond and Whitewater, Ordinance No. 1, §8(B),  
July 5, 1962:

"No person shall open or consume any intoxi-  
cating liquors on any boat."

124. Prohibit deposit of debris

Town of Oconomowoc, Waukesha County, An Ordinance  
to Regulate Water Traffic, Boating and Water Sports  
Upon Free Waters of the Town of Oconomowoc, Waukesha  
County, Wisconsin, and Prescribing Penalties for  
Violation Thereof, §9, June 30, 1960:

"No person shall deposit, place or throw from  
any boat, raft, pier, platforms, or similar  
structure any cans, paper, bottles, debris,  
refuse, garbage, solid or liquid waste into  
the waters of the Town of Oconomowoc."

125. Prohibit selling from craft

City of Marinette, Marinette County, Ordinances,  
ch. 6, §6.13, Dec. 31, 1962:

"No person shall sell, or expose for sale, or deliver from any craft landed at the foot of any street or alley in the city, any wood, lumber, coal, stoves, or any other goods, wares or merchandise . . . except that stone, wood, lumber and other materials and articles, which are or may be delivered for the city may be so delivered, if agreed upon at the time of the making of the contract of sale."



APPENDIX NOTE E

STATUTES AUTHORIZING OR RESTRICTING  
ADOPTION OF LOCAL ORDINANCES

1. ALA. CODE tit.38, §§97(26)-97(28) (Supp. 1967)
2. ARK. STAT. ANN. §21-233(b) (1968)
3. ARK. STAT. ANN. §19-2332 (1968)
4. CAL. HARB. & NAV. CODE §268 (West 1955)
5. CAL. HARB. & NAV. CODE §§660, 662 (West Supp. 1968)
6. COLO. REV. STAT. ANN. §62-21-12 (Supp. 1965)
7. CONN. GEN. STAT. REV. §§15-136, 15-138, 15-157 (1958)
8. DEL. CODE ANN. tit.23, §2126 (Supp. 1968)
9. FLA. STAT. ANN. §371.59 (Supp. 1969)
10. HAWAII REV. STAT. ANN. §267-15 (1968)
11. IDAHO CODE ANN. §39-2407 (1961)
12. ILL. ANN. STAT. ch. 24, §11-44-2 (Smith-Hurd 1962)
13. ILL. ANN. STAT. ch. 34, §429.15 (Smith-Hurd Supp. 1969)
14. ILL. ANN. STAT. ch. 95-1/2, §318-1 (Smith-Hurd Supp. 1969)
15. IOWA CODE ANN. §106.17 (Supp. 1969)
16. KAN. STAT. ANN. §§82a-815, 82a-816 (1964)
17. LA. REV. STAT. ANN. §§34:850.23, 34:851.12 (1964)
18. ME. REV. STAT. ANN. tit.38, §202 (1964)
19. ME. REV. STAT. ANN. tit.38, §2 (Supp. 1968)
20. Ch. 275, §11, [1960] Mass. Acts & Resolves 163-64
21. Ch. 275, §15(b) & (c), [1960] Mass. Acts & Resolves 165-66
22. MICH. STAT. ANN. §§18.1287(12), (14), (15), (16), (17)  
(Supp. 1969)
23. MISS. CODE ANN. §8496-24 (1968)
24. MO. ANN. STAT. §306.190 (1963)

25. NEB. REV. STAT. §81-815.15 (1966)
26. NEV. REV. STAT. §488-345 (1967)
27. N.J. STAT. ANN. §40:48-1 (23) (1967)
28. N.M. STAT. ANN. §75-35-15 (1968)
29. N.Y. CONSERV. LAW §676(3) (McKinney 1967)
30. N.Y. TOWN LAW §130(17) (McKinney Supp. 1969)
31. N.C. GEN. STAT. §75A-15 (1965)
32. N.C. GEN. STAT. §75A-15(c) (Supp. 1967)
33. N.D. CENT. CODE §61-27-11 (1960)
34. OHIO REV. CODE ANN. §1547.61 (Page Supp. 1968)
35. OKLA. STAT. ANN. tit.63, §823 (1964)
36. OKLA. STAT. ANN. tit.82, §862(p) (Supp. 1968)
37. ORE. REV. STAT. §§488.028, 488.600 (1967)
38. R.I. GEN. LAWS ANN. §46-22-14 (Supp. 1968)
39. S.C. CODE ANN. §70-295.2 (1962)
40. S.D. COMP. LAWS ANN. §§42-8-62 to 42-8-64 (1967)
41. TENN. CODE ANN. §70-2210 (Supp. 1968)
42. TEX. PEN. CODE ANN. art. 1722a(19) (Supp. 1968)
43. UTAH CODE ANN. §§73-18-17, 73-18a-11 (1968)
44. VA. CODE ANN. §62.1-182 (1968)
45. W. VA. CODE ANN. §20-7-23 (Supp. 1969)
46. WYO. STAT. ANN. §41-528.7 (Supp. 1969)

1. ALA. CODE tit.38, §§97(26)-97(28) (Supp. 1967)

§ 97(26). Local regulation.—(1) The provisions of this chapter and rules and regulations promulgated thereto, and other general laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon, but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder; provided, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

(2) Any subdivision of this state may, at any time, but only after public notice, make formal application to the director for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate. The public notice shall be effected by the said subdivision causing a copy of the proposed public rules or regulations to be published one (1) time per week for four (4) consecutive weeks in a newspaper of general circulation within the area that the subdivision is located.

(3) The director is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state. (1959, p. 1452, § 26, appvd. Nov. 19, 1959.)

§ 97(27). Rules and regulations; filing and publication. — A copy of the regulations adopted pursuant to this chapter, and of any amendments thereto, shall be filed in the office of the secretary of state, and in the office of the department of conservation. Rules and regulations may be published by the director in a convenient form. The director of conservation shall cause to be publicized by the issuance of newspaper releases for new or amended or rescinded rules and regulations promulgated by him. (1959, p. 1452, § 27, appvd. Nov. 19, 1959.)

§ 97(28). Same; power of director to promulgate. — The director of the department of conservation shall make, adopt, promulgate, amend and repeal all rules and regulations necessary, or convenient for the carrying out of the duties and obligations and powers conferred on the said director of the department of conservation by this chapter. Further clarifying the rule making power of the director, he shall have power and authority to make, adopt, promulgate, amend, and repeal all rules and regulations as shall promote safety for persons and property in and connected with the use, operation, and equipment of vessels and for the carrying out of duties, obligations and powers conferred upon the director of the department of conservation by this chapter, subject to such supervision of the advisory board of conservation as set out in section 9, Title 8 of the Code of Alabama 1940 or subsequent amendments thereto. (1959, p. 1452, § 28, appvd. Nov. 19, 1959.)

2. ARK. STAT. ANN. §21-233(b) (1968)

**21-233. Provisions of act applicable to waters of state—Ordinances and local laws excepted—Special rules and regulations by game and fish commission authorized.—**(a) The provisions of this Act [§§ 21-221—21-242], and of other applicable laws of this State shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State, or when any activity regulated by this Act shall take place thereon; but nothing in this Act shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to, or are not in conflict with, the provisions of this Act, amendments thereto or regulations issued thereunder.

(b) Any subdivision of this State may, at any time, but only after public notice, make formal application to the Arkansas Game and Fish Commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(c) The Arkansas Game and Fish Commission is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this State.

(d) Nothing in this Act shall be construed to grant the power to the Arkansas Game and Fish Commission or to any person to authorize the use of, or use, any vessel on any waters of this State where the same shall be prohibited. In addition, nothing in this Act shall be construed to permit the use of vessels on any municipal or privately owned city water supply in violations of the applicable laws, rules or regulations that may have been, or may be, established for the protection of the public health in preserving said water supply for human consumption. [Acts 1959, No. 453, § 13, p. 1794.]

3. ARK. STAT. ANN. §19-2332 (1968)

**19-2332. Fishing in cities and towns—Regulation.—**Every city and incorporated town in the State of Arkansas shall have full power through ordinances duly ordained and enacted, to regulate the propagation, protection, catching and removing of fish in the waters of any pond or lake that lies in whole or in part within the corporate limits of such city or town, and to regulate all other matters pertaining to the waters or beds of any such pond or lake. [Acts 1933, No. 95, § 1, p. 305; Pope's Dig., § 9546.]

4. CAL. HARB. & NAV. CODE §268 (West 1955)

**§ 268.** Power of counties or cities to make further restrictions; motorboat race permits. Counties or cities may make further restrictions concerning the navigation and operation of power boats, and may grant permits to bona fide yacht clubs or civic organizations to conduct motorboat races over courses established, marked, and patrolled by authority of the United States Coast Guard, city harbor master, or other officer having authority over the waters on which a race is proposed to be conducted and on such days and between such hours as may be approved by the officer.

The provisions of this section shall apply to all waters which are in fact navigable regardless of whether they are declared navigable by this code. (Added Stats.1949, c. 566, p. 1056, § 2.)

5. CAL. HARB. & NAV. CODE §§660, 662 (West Supp. 1968)

**§ 660. Local regulation**

(a) The provisions of this chapter, and of other applicable laws of this state, shall govern the operation, equipment, and all other matters relating thereto whenever any motorboat or vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon. Nothing in this chapter shall be construed to prevent the adoption of any ordinance, law, regulation or rule relating to vessels by any entity otherwise authorized by law to adopt such measures, including but not limited to any city, county, city and county, port authority or district; provided, however, that such measures relating to undocumented vessels shall pertain only to time-of-day restrictions, speed zones, special-use areas, and sanitation and pollution control, the provisions of which are not in conflict with the provisions of this chapter or the regulations adopted by the commission. Such measures shall be submitted to the \* \* \* department prior to adoption and at least 30 days prior to the effective date thereof.

(b) The commission is authorized to make special rules and regulations with reference to the operation of any motorboats or vessels on any body of water within the territorial limits of two or more cities, counties, cities and counties or other political subdivisions where no special rules or regulations exist or when required to establish uniformity in such special rules or regulations as the commission may determine (1) are not uniform under local laws and (2) as to which uniformity is practicable and necessary.

(c) Any entity, including but not limited to any city, county, city and county, port authority or district, otherwise authorized by law to adopt measures governing the operation and equipment, and matters relating thereto, of motorboats or vessels, may adopt emergency rules and regulations which are not in conflict with the general laws of the state relating to motorboats and vessels using any waters within the jurisdiction of the entity if such rules and regulations are required to insure the safety of persons and property, because of disaster or other public calamity. Such emergency rules and regulations shall become effective immediately upon adoption and may remain in effect for not to exceed 60 days thereafter. Upon submission of such emergency rules and regulations to the \* \* \* department, the \* \* \* department may authorize the entity to make the emergency rules and regulations effective for such period of time greater than 60 days as is necessary in view of the disaster or circumstances. (Added Stats.1959, c. 1454, p. 3741, § 1, as amended Stats.1961, c. 609, p. 1759, § 2; Stats.1961, c. 1606, p. 3436, § 5; Stats.1963, c. 902, p. 2144, § 1; Stats.1966, 1st Ex.Sess., c. 61, p. 467, § 10.)

**§ 662. Filing copies of ordinances or local laws**

A copy of the ordinances or local laws adopted pursuant to this chapter, and of any amendments thereto, shall be filed in the office of the department. (Added Stats.1959, c. 1454, p. 3743, § 1, effective July 6, 1959.)

Asterisks \* \* \* Indicate deletions by amendment

6. COLO. REV. STAT. ANN. §62-21-12 (Supp. 1965)

62-21-12. Municipal corporations or organizations—powers.—Nothing in this article shall be construed to prevent municipal corporations or quasi municipal organizations, including but not restricted to metropolitan recreation districts, from policing lakes or bodies of water located within all or part of the territorial boundaries of said entities. Any person or persons designated by such entities to engage in policing work upon said bodies of water shall be empowered by the department to enforce the provisions of this article as an authorized representative of the department. In addition, said entities shall also be empowered to charge and collect reasonable permit fees to defer the expense of such policing operations without the obligation of remitting the same to the department; provided, that such fees shall be in addition to those otherwise provided for in this article. Said entities shall further be empowered to adopt and enforce reasonable rules and regulations governing boating on the bodies of water patrolled under their supervision, provided that said rules and regulations do not conflict with the provisions of this article.

Source: L. 65, p. 681, § 1.

7. CONN. GEN. STAT. REV. §§15-136, 15-138, 15-157 (1958)

Sec. 15-136. Ordinances and special local regulations. (a) Any town, by ordinance, may make local regulations respecting the operation of vessels on any body of water within its territorial limits. Upon adoption, each such ordinance shall be submitted to the commission and, if not disapproved by the commission within sixty days thereafter, shall take effect as provided in subsection (c) of this section. The commission may disapprove any ordinance or part thereof which it finds to be arbitrary, unreasonable, unnecessarily restrictive, inimical to uniformity or inconsistent with the policy of this part.

(b) The commission may make special regulations respecting the operation of vessels on any body of water which lies within the territorial limits of two or more towns (1) when no local regulations exist or (2) when such action is required to establish uniformity in the boating regulations of the several towns. Any town, by vote of its legislative body, and any group of ten or more interested persons may petition the commission for the adoption, amendment or repeal of special regulations. The commission shall hold a public hearing on each such petition in the petitioning town or in one of the towns which will be affected, giving all interested persons an opportunity to present their views. Notice of such hearing, stating the date, time and place thereof and the substance of the proposed regulation, shall be published at least ten days prior thereto in a newspaper of general circulation in the town or towns which will be affected.

(c) All local and special regulations adopted pursuant to the provisions of this section shall take effect on the first day of April following their adoption, except upon a finding by the commission that an emergency exists which requires an earlier effective date.

(1961, P.A. 520, S. 16.)

**Sec. 15-138. Publication of laws, regulations and ordinances.** On or before the first day of April annually the commission shall publish in pamphlet form and distribute all general and special laws and all regulations and ordinances pertaining to or affecting boating and boating activities, or a digest or resume of such laws, regulations and ordinances, together with information respecting rules, forms and procedures prescribed for the administration of this part. No regulation or ordinance shall take effect until so published and distributed, except upon emergency certification by the commission pursuant to the provisions of subsection (c) of section 15-136. (1961, P.A. 520, S. 18.)

**Sec. 15-157. Special acts and ordinances superseded.** All special acts and municipal ordinances contrary to or inconsistent with the provisions of this part are superseded and shall be of no force or effect. No political subdivision of the state shall enact or attempt to enforce any ordinance or regulation respecting the licensing or numbering of motorboats or impose any fee for the right to operate a motorboat on any waterway within its territorial limits. (1961, P.A. 506, S. 24.)

**8. DEL. CODE ANN. tit.23, §2126 (Supp. 1968)**

**§ 2126. Local regulation prohibited**

(a) The provisions of this subchapter, and of other applicable laws of this State shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State, or when any activity regulated by this subchapter shall take place thereon; but nothing in this act shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this subchapter, amendments thereto or regulations issued thereunder: Provided, That such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this subchapter, amendments thereto or regulations issued thereunder.

(b) Any subdivision of this State may, at any time, but only after public notice, make formal application to the Delaware Commission of Shell Fisheries for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(c) The Delaware Commission of Shell Fisheries shall make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this State. Added 52 Del.Laws, Ch. 154, § 16, eff. July 9, 1959.

9. FLA. STAT. ANN. §371.59 (Supp. 1969)

371.59 Local regulation qualified

The provisions of sections 371.011-371.51, 371.071-371.172, 371.50-371.58, Florida Statutes, shall govern the operation, equipment and all other matters relating thereto whenever any vessel shall be operated upon the waterways or when any activity regulated hereby shall take place thereon. Nothing in these sections shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels; provided such ordinances or local laws shall be operative only when they are not in conflict with this chapter or any amendments thereto or regulations thereunder.

10. HAWAII REV. STAT. ANN. §267-15 (1968)

**§267-15 Preemption of local law and special rules.** If any ordinance or regulation of any political subdivision of the State conflicts or is inconsistent with this chapter or with the rules and regulations adopted and promulgated pursuant thereto, the ordinance or regulation shall be void.

Any political subdivision of the State may, at any time, make formal request to the director of transportation for the department of transportation's adoption and promulgation of special rules and regulations with reference to the operation and use of vessels on any waters within its jurisdiction. The request shall set forth the reasons which make these special rules or regulations necessary or appropriate.

The department may make special rules and regulations with reference to the operation and use of vessels on any waters within the jurisdiction of any political subdivision of the State as may be reasonably necessary to implement the declared policy of section 267-1. [L 1965, c 200, pt of §1; Supp, §112-54]

11. IDAHO CODE ANN. §39-2407 (1961)

**39-2407. Local regulations prohibited.**—The provisions of this act shall govern the numbering and registration of vessels on the waters of this state. All other political subdivisions of this state are expressly prohibited from numbering or registering vessels in any respect. [1961, ch. 281, § 7, p. 499.]

12. ILL. ANN. STAT. ch. 24, §11-44-2 (Smith-Hurd 1962)

**§ 11-44-2. Anchorage of water craft**

The corporate authorities of each municipality may regulate the anchorage and landing of all water craft and their cargoes. 1961, May 29, Laws 1961, p. 576, § 11-44-2.



13. ILL. ANN. STAT. ch. 34, §429.15 (Smith-Hurd Supp. 1969)

§ 429.15 Regulation of water craft

In a county having less than 1,000,000 population, in public waters not under the jurisdiction of any municipality, the county board may regulate all water craft in a manner not inconsistent with the provisions of the "Boat Registration and Safety Act", as now or hereafter amended.<sup>1</sup>

1874, March 31, R.S.1874, p. 302, § 25.31, added 1967, July 17, p. 1878, § 1

14. ILL. ANN. STAT. ch. 95-1/2, §318-1 (Smith-Hurd Supp. 1969)

§ 318—1. Local ordinances

The provisions of this Act, and of other applicable laws of this State shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State, or when any activity regulated by this Act shall take place thereon; but nothing in this Act shall be construed to prevent the adoption of any ordinance or local law by any political subdivision of the State relating to operation and equipment of vessels the provisions of which are not inconsistent with the provisions of this Act, amendments thereto or regulations issued thereunder: Provided, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be not inconsistent with the provisions of this Act, amendments thereto or regulations issued thereunder. 1959, July 17, Laws 1959, p. 1473, Art. VIII, § 1.

15. IOWA CODE ANN. §106.17 (Supp. 1969)

106.17 Local regulations restricted

1. The provisions of this chapter and other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto of any vessel whenever such vessel is operated or maintained on the waters of this state under the jurisdiction of the commission, but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to the operation of equipment of vessels. Such ordinances or local law shall be operative only so long as they are not inconsistent with the provisions of this chapter or the rules and regulations adopted by the commission.

2. Any subdivision of this state may, but only after public notice thereof by publication in a newspaper having a general circulation in such subdivision, make formal application to the commission for special rules and regulations concerning the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

3. The commission is hereby authorized upon application of local authorities to make special rules and regulations, in conformity with this chapter, concerning the operation of vessels on any waters of this state under the jurisdiction of the commission within the territorial limits of any subdivision of this state. Acts 1961 (59 G.A.) ch. 57, §.18.

16. KAN. STAT. ANN. §§82a-815, 82a-816 (1964)

**82a-815.** Laws applicable; local regulations, when; regulations by state commission. (a) The provisions of this act, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this act shall take place thereon; but nothing in this act shall be construed to prevent the adoption of any ordinance or regulation by any subdivision or municipality of this state relating to waters under the control or jurisdiction of such subdivision or municipality: *Provided*, That such ordinances or regulations shall be valid and enforceable only so long as and to the extent that they are not contradictory to provisions of article 8 of chapter 82a of the General Statutes Supplement of 1959, and amendments thereto or regulations issued thereunder. Such ordinances or regulations shall not be adopted by such subdivision or municipality until after public notice by the enacting body. Following such adoption the enacting body shall submit the same to the commission, setting forth the reasons which make such regulations necessary or appropriate, and requesting the approval of such regulations by the commission. If the commission shall approve such regulations they shall become operative; otherwise such regulations shall have no effect. Notwithstanding the foregoing provisions, the commission shall not regulate fees to be charged by political subdivisions or municipalities as to waters under their control or jurisdiction.

(b) The commission is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the state. [L. 1959, ch. 321, § 15; L. 1961, ch. 471, § 7; July 1.]

**82a-816.** Filing of regulations; publication. A copy of the regulations adopted pursuant to this act, and of any amendments thereto, shall be filed in the office of the revisor of statutes as provided by article 4 of chapter 77 of the General Statutes of 1949, and acts amendatory thereof. Rules and regulations shall be published by the commission in a convenient form. [L. 1959, ch. 321, § 16; July 1.]

17. LA. REV. STAT. ANN. §§ 34:850.23, 34:851.12 (1964)

§ 850.23 Local regulations prohibited

Through the passage of this Part, the state fully reserves to itself the exclusive right to regulate the operation and establish the minimum equipment requirements of recreational watercraft. All other political subdivisions of this state are expressly prohibited from regulating pleasure watercraft in any respect, including but not limited to, their operation, minimum equipment requirements, registration (with or without a fee), or inspection. Acts 1958, No. 367, § 23.

§ 851.12 Local regulations prohibited

Through the passage of this Part, the state fully reserves to itself through the commission the exclusive right to regulate the operation and establish the minimum equipment requirements of vessels and motorboats. All other political subdivisions of this state are expressly prohibited from regulating watercraft in any respect, including but not limited to, their operation, minimum equipment requirements, registration (with or without a fee) or inspection. Acts 1960, No. 43, § 12.

18. ME. REV. STAT. ANN. tit.38, § 202 (1964)

§ 202. Local regulation prohibited

No municipality or political subdivision of this State may adopt any ordinance, law or regulation dealing with the operation or numbering of watercraft or any other subject matter of this subchapter.

1.<sup>1</sup> Bureau regulations excepted. Nothing in this section is to be construed to prohibit the adoption of regulations by the bureau heads as authorized in section 231.

1963, c. 354, § 1.

<sup>1</sup> So in original. There is no number 2.

19. ME. REV. STAT. ANN. tit.38, § 2 (Supp. 1968)

§ 2. Rules for channel lines; enforcement

The municipal officers of all maritime towns and plantations shall make rules and regulations, with suitable provision for enforcement, for the keeping open of convenient channels for the passage of vessels in the harbors and waterways of the towns for which they act, and shall establish the boundary lines of such channels and assign suitable portions of their harbors for anchorages.

Such rules and regulations as may be made by such municipal officers shall be enforced and carried out by the harbor master of said town, who may appoint a deputy, to act in case of his absence or disability, his deputy, if any, or any other law enforcement officer of the State or any political subdivision thereof.

1965, c. 242.

20. Ch. 275, §11, [1960] Mass. Acts & Resolves 163-64

*Section 11.* The director shall administer and enforce the provisions of this chapter, and, for such purposes, is authorized to make rules and regulations not contrary to the laws of the commonwealth or of the United States. He shall (1) submit to the secretary for his approval a numbering system for motorboats, and (2) require that all applications for number, certificates of number, and reports of boating accidents contain the same information as that contained in similar documents of the coast guard.

He may—

(n) Approve or disapprove any ordinance or by-law of any city or town which regulates the operation of such vessels and such activities as are subject to the provisions of this chapter or of any rule or regulations made under authority hereof, on such waters of the commonwealth as lie within such city or town.

21. Ch. 275, §15(b) & (c), [1960] Mass. Acts & Resolves 165-66

(b) Nothing in this section shall be construed as prohibiting any city or town from regulating, by ordinance or by-law, not contrary to the provisions of this chapter or of any rule or regulation made under authority hereof, other than numbering, of such vessels on such waters of the commonwealth as lie within the city or town, or such activities which take place thereon. Such cities and towns may, by joint action, provide for such regulations for such waters lying in two or more cities or towns.

(c) No such ordinance or by-law shall be valid unless it shall have been approved by the director and published in a newspaper of general distribution in said city or town not less than five days before the effective date thereof.

22. MICH. STAT. ANN. §§18.1287(12), (14), (15), (16), (17) (Supp. 1969)

§18.1287(12) Regulatory powers; special regulations.] Sec. 12. The department may regulate the operation of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances on the waters of this state. Where special regulations are determined necessary the department may establish vessel speed limits; prohibit the use of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances; restrict the use of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances by day and hour; establish and designate areas restricted solely to boating, skin or scuba diving, fishing, swimming or water skiing; and, prescribe any other regulations relating to the use or operation of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances which will assure compatible use of state waters and best protect the public safety. The department shall prescribe local regulations in such a manner as to make the regulations uniform with other special local regulations established on other waters of this state insofar as is reasonably possible.

§ 18.1237(14) Special rules; investigations; procedure.] Sec. 14. The department may initiate investigations and inquiries into the need for special rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards or other similar contrivances on any of the waters of this state. When controls for such activities are deemed necessary, or changes or amendments to or repeal of an existing regulation required, a regulation shall be prepared and presented to the commission for consideration. Upon approval by the commission, notice of a public hearing shall be made in a newspaper of general circulation in the area wherein the regulations are to be imposed, amended or repealed, at least 15 calendar days prior to the hearing. Interested persons shall be afforded an opportunity to present their views on the proposed rule either orally or in writing.

§ 18.1237(15) Submission of proposed rules; decision; adoption.] Sec. 15. The proposed rule shall then be submitted to the governing body of the political subdivision in which the controlled waters lie. Within 30 calendar days the governing body shall inform the department that it approves or disapproves of the proposed rule. If the required information is not received within the time specified, the department shall consider the proposed rule meets the approval of the concerned political subdivision. If the governing body disapproves the proposed rule, no further action shall be taken. If the governing body approves the proposed rule, or when the 30-calendar day period has elapsed without a reply having been received from the governing body, the rule shall be adopted as specified in this act.

§ 18.1237(16) Special local rules; request of local subdivision; procedure.] Sec. 16. Local political subdivisions which believe that special local rules of the type authorized by this act are needed on waters subject to their jurisdiction shall inform the department and request assistance. All such requests shall be in the form of an official resolution approved by a majority of the governing body of the concerned political subdivision. Upon receipt of such resolutions the department shall proceed as required by the provisions of sections 14 and 15.

§ 18.1237(17) Local ordinances pursuant to state rules; enforcement.] Sec. 17. (1) Local political subdivisions within whose jurisdiction specially controlled waters lie shall enact a local ordinance identical in all respects to the established state rule. Whenever the department changes, amends or repeals an existing rule, the concerned local political subdivision shall change, amend or repeal the previously enacted ordinance to assure uniformity with state regulations.

(2) The sheriff or his authorized deputies shall enforce local ordinances enacted in accordance with the provisions of this act.

(3) Local political subdivisions may enact as an ordinance any or all of sections 2 to 8, 31 to 34, 36, 61, 62, 71 to 79, 91 to 98, 101, 111 to 113, 151, 152 and 161 to 163.

23. MISS. CODE ANN. §8496-24 (1968)

§ 8496-24. Special rules and regulations.

Any agency or political subdivision of this State may make application to the commission for special rules and regulations with reference to the operation, equipment or safety of vessels on any waters of this State within its territorial limits or authorized jurisdiction and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate. The commission is hereby authorized, after notice and a public hearing as provided in Section 8496-23, Mississippi Code of 1942, Recompiled, to make such special rules and regulations with reference to the operation, equipment or safety of vessels or motorboats on any such waters of the State. The several counties and municipalities bordering the Mississippi Sound or the other coastal or tidal waters of the State are authorized and empowered to adopt ordinances setting out special rules and regulations with reference to the operation, equipment, or safety of vessels or motorboats on the Mississippi Sound or the other coastal or tidal waters of this State within their territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate; provided, however, that no such ordinance shall conflict with the provisions of this act or with the regulations of any Federal agency having jurisdiction over such waters, and further provided, however, that notice shall be given of any such proposed ordinance and a hearing shall be held thereon before the commission as provided in Section 8496-23, Mississippi Code of 1942, Recompiled, and that as a condition precedent the commission shall recommend the adoption of such ordinance, it being the intent of this act that uniform regulations of general application to all the waters of this State shall be adopted and promulgated by the commission wherever practicable, and any special regulation or local ordinance, as authorized herein, shall be limited to the exigencies of local conditions which cannot be corrected by a regulation generally applicable to all the waters of the State. The commission shall not adopt any rules or regulations applicable to the Mississippi Sound or the other coastal or tidal waters of the State of Mississippi.

24. MO. ANN. STAT. §306.190 (1963)

306.190. Applicability of regulations—local regulations

1. The provisions of this chapter, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder; except that the ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

2. Any city or subdivision of this state may adopt special rules and regulations with reference to the operation of vessels on any waters owned by the city or political subdivision.

3. The provisions of this chapter shall not apply to farm ponds not commercially operated for boating purposes. (L.1959, S.B.No.142 § 14)

25. NEB. REV. STAT. §81-815.15 (1966)

81-815.15. State Boat Act; local regulation; extent permitted; special rules and regulations. (1) The provisions of sections 81-815.01 to 81-815.20, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by sections 81-815.01 to 81-815.20 shall take place thereon; but nothing in sections 81-815.01 to 81-815.20 shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of sections 81-815.01 to 81-815.20, amendments thereto, or regulations issued thereunder; *Provided*, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of sections 81-815.01 to 81-815.20, amendments thereto, or regulations issued thereunder.

(2) Any subdivision of this state may, at any time, but only after public notice, make formal application to the commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(3) The commission is hereby authorized to make special rules and regulations with reference to the operation of vessels, including water skiing and other related activities, on any specific water or waters within the territorial limits of this state.

Source: Laws 1959, c. 432, § 15, p. 1453.

26. NEV. REV. STAT. §488-345 (1967)

488.345 Local regulations: When prohibited.

1. The provisions of this chapter, and of other applicable laws of this state, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel is operated on the waters of this state, or when any activity regulated by this chapter takes place thereon; but nothing in this chapter prevents the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder.

2. Such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

3. Any subdivision of this state may, at any time, but only after public notice, make formal application to the commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

4. The commission may make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

(Added to NRS by 1960, 481; A 1965, 1067)

27. N.J. STAT. ANN. §40:48-1 (23) (1967)

**40:48-1. Ordinances; general purpose**

The governing body of every municipality may make, amend, repeal and enforce ordinances to:

Boating. 23. Regulate the use of motor and other boats upon waters within or bounding the municipality;

28. N.M. STAT. ANN. §75-35-15 (1968)

75-35-15. Local regulations--Restrictions--Special rules and regulations.--A. The provisions of the Boat Act [75-35-1 to 75-35-22], and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by the Boat Act shall take place thereon; but nothing in the Boat Act shall be construed to prevent the adoption of any ordinance or local law relating to the operation and equipment of vessels where the provisions of the ordinance or local law are identical to the provisions of the Boat Act, amendments thereto, or regulations issued thereunder; Provided, that the ordinance or local law shall be operative only so long as, and to the extent that, they continue to be identical to the provisions of the Boat Act, amendments thereto, or regulations issued thereunder.

B. Any subdivision of this state may, at any time, but only after public notice, make formal application to the state park commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make the special rules or regulations necessary or appropriate.

C. The state park commission is authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

29. N.Y. CONSERV. LAW §676(3) (McKinney 1967)

3. Except when prohibited by the laws of the United States, any regional park commission as defined by section six hundred seventy-two of this article may, by rule, regulation or ordinance, regulate water sports and the operation, speed and mooring of boats in or upon any waters or waterways in the reservations and parks under the jurisdiction of such commission. Such rules, regulations or ordinances shall also apply to any waters offshore from any bathing beach within the jurisdiction of such commission but not to exceed a distance of one thousand feet from the shore line. Added L.1948, c. 486; amended L.1959, c. 767; L.1960, c. 934, § 24, eff. Oct. 1, 1961.



30. N.Y. TOWN LAW §130(17) (McKinney Supp. 1969)

The town board after a public hearing may enact, amend and repeal ordinances, rules and regulations not inconsistent with law, for the following purposes in addition to such other purposes as may be contemplated by the provisions of this chapter or other laws. In order to accomplish the regulation and control of such purposes, the town board may include in any such ordinance, rule or regulation provision for the issuance and revocation of a permit or permits, for the appointment of any town officers or employees to enforce such ordinance, rule or regulation and/or the terms and conditions of any permit issued thereunder, and for the collection of any reasonable uniform fee in connection therewith. . . .

17. Regulation of vessels. Except when prohibited by the laws of this state or of the United States; (1) a. Regulating the speed and regulating and restricting the operation of vessels and, in the counties of Westchester, Saratoga, Warren and Suffolk the size and horse power of inboard and outboard motors, while being operated or driven upon any waters within or bounding the town to a distance of fifteen hundred feet from the shore.

b. Restricting and regulating the anchoring or mooring of vessels in any waters within or bounding the town to a distance of fifteen hundred feet from the shore.

c. Restricting and regulating the anchoring or mooring of vessels in such waters when used or occupied as living or sleeping quarters and, providing time limits on duration of the stay of such vessels in such waters and requiring inspection and registration of such vessels when so used.

d. Restricting and regulating sewage disposal and garbage removal from said vessels and use of toilets thereon. The term "sewage" as used in this subdivision shall mean all human body wastes.

e. Designating public anchorage area or areas and regulating the use thereof.

(2) No such ordinance, rule or regulation shall take effect until it shall have been submitted to and approved in writing by the conservation commissioner.

(3) The provisions of this subdivision shall not apply to waters within or bounding an incorporated village to a distance of fifteen hundred feet from the shore, jurisdiction with respect to which is vested in the board of trustees of a village by the provisions of subdivision sixty-three of section eighty-nine of the village law.

18. Shellfish. Regulating the taking and the manner of taking clams, oysters, scallops and other shellfish from the lands of or from waters over the lands of

(a) a town vested with the title to, or holding a lease on, lands under tidewater in any harbor, bay or creek, and vested with the right of fishing, . . . .

31. N.C. GEN. STAT. §75A-15 (1965)

§ 75A-15. Local regulation.—(a) Any subdivision of this State may at any time, but only after public notice, make formal application to the Wildlife Resources Commission for special rules and regulations with reference to the safe and reasonable operation of vessels on any water within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(b) The Wildlife Resources Commission is hereby authorized to make special rules and regulations with reference to the safe and reasonable operation of vessels on any waters within the territorial limits of any subdivision of this State; provided however, that such rules and regulations governing the operation of vessels on State-owned lakes shall be made exclusively by the Department of Conservation and Development. (1959, c. 1064, s. 15.)

32. N.C. GEN. STAT. §75A-15(c) (Supp. 1967)

§ 75A-15. Local regulation; adoption of Uniform Waterway Marking System.

(c) The Uniform Waterway Marking System as approved by the advisory panel of state officials to the merchant marine council, United States coast guard, in October, 1961, is hereby adopted for use on the public waters of North Carolina; and no markers shall be used in the waters of this State in conflict with the marking system prescribed by this subsection. (1959, c. 1064, s. 15; 1965, c. 394.)

33. N.D. CENT. CODE §61-27-11 (1960)

61-27-11. Local regulation prohibited.—1.. The provisions of this chapter, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder: Provided that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

2. Any subdivision of this state may, at any time, but only after public notice, make formal application to the department for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

3. The department is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

34. OHIO REV. CODE ANN. §1547.61 (Page Supp. 1968)

**§ 1547.61** Rules and regulations; Tappan Lake.

Chapter 1547. of the Revised Code and other applicable laws of this state govern the operation, equipment, numbering, and all other matters relating thereto whenever any watercraft is operated on the waters of this state, conservancy district, or political subdivision of this state, or when any activity regulated by Chapter 1547. of the Revised Code takes place thereon; but nothing in Chapter 1547. of the Revised Code prevents the adoption of any rules, regulations, or ordinance relating to operation and equipment of vessels the provisions of which are identical to the provisions of Chapter 1547. of the Revised Code, amendments to such chapter, or regulations issued under such chapter; provided, that such ordinances shall be operative only so long as and to the extent that they continue to be identical to the provisions of Chapter 1547. of the Revised Code. Conservancy districts and political subdivisions of this state may enact ordinances, rules, or regulations limiting the horsepower of inboard or outboard motors, maximum and minimum size and type of watercraft, inflatable watercraft, and the speed at which watercraft may be operated, except that upon impounded bodies of water covering three thousand five hundred acres of land or more, no conservancy district or political subdivision shall prohibit the use of motors of one hundred twenty horsepower or less when used in conjunction with properly proportioned boats in a reasonable area to be designed for the use of said motors and boats and for water skiing; and provided that upon Tappan Lake sixty-five horsepower or less when used in conjunction with properly proportioned boats in a reasonable area to be designed for the use of said motors and boats and for water skiing.

Any department, conservancy district, or political subdivision of this state may, at any time, but only after public notice published in a newspaper of local circulation, make formal application to the chief of the division of watercraft for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules and regulations necessary or appropriate.

The division of watercraft may make special rules and regulations with reference to the operation of watercraft on any waters within the territorial limits of any subdivision of this state.

No political subdivision of this state or conservancy district shall charge any license fee or other charge against the owner of any watercraft for the right or privilege of operating said watercraft upon the waters of any such political subdivision or conservancy district and no license or number in addition to those provided for under this section shall be required by any state department, conservancy district, or political subdivision of this state.

35. OKLA. STAT. ANN. tit.63, §823 (1964)

**§ 823. Local regulation**

(a) The provisions of this Act, and of other applicable laws of this State shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on or in the waters of this State, or when any activity regulated by this Act shall take place thereon; but nothing in this Act shall be construed to prevent the adoption of any ordinance or local law relating to the use of municipally-owned water reservoirs or lakes of state-licensed vessels or motorboats.

(b) Any subdivision of this State may, at any time, make formal application to the Planning and Resources Board for special rules and regulations with reference to the operation of vessels on or in any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate. Laws 1959, p. 390, § 23.

36. OKLA. STAT. ANN. tit.82, §862(p) (Supp. 1968)

**§ 862. Powers, rights and privileges of district**

The District shall have and is hereby authorized to exercise the following powers, rights and privileges:

(p) To prescribe and enforce rules and regulations for the use for recreational and commercial purposes of the lakes created by the District by impounding the waters of said lakes, and the shorelands of the District bordering thereon, including the use of firearms, the inspection of all boats of every character proposing to operate or operating on said lakes, the issuance of permits for the operation of boats, surfboards, aquaplanes, sea-skis, or similar devices on said lakes for hire; the charging and collection of fees for the inspection and/or operation of such boats, surfboards, aquaplanes, sea-skis, or other similar devices on said lakes for hire; preventing the launching and/or operation of any commercial or for-hire boat, surfboard, aquaplane, sea-ski, or similar device for hire, on the waters of said lakes without a certificate of inspection and a permit for such use; prescribing the type, style, location, and equipment of all wharves, docks, and anchorages along the shores and upon the water of said lakes; the issuance of permits for wharfage, dock, and/or anchorage privileges when used for commercial purposes and charging fees for such commercial permits; and the establishment and maintenance of public wharves, docks, and/or anchorages and the charging and collection of fees for the use thereof by the public; to appoint or employ such persons as the District may deem proper and suitable for the purpose of enforcing such rules and regulations as may be issued hereunder, and for the enforcing of the provisions of this Act, which employees shall have the power of peace officers in and upon the properties of the District, except in the serving or execution of civil process; . . . .

37. ORE. REV. STAT. §§488.028, 488.600 (1967)

**483.023 Contrary local laws prohibited.**  
No political subdivision of this state may enact or enforce any law contrary to the provisions of this chapter.  
[1959 c.686 §60]

## REGULATIONS FOR SPECIFIC AREAS

488.600 Special regulations of State Marine Board for political subdivisions and State Game Commission. (1) After a hearing upon notice, the board, upon consideration of the size of a body of water and traffic conditions, may make special regulations consistent with the safety and the property rights of the public relating to the operation of boats in any waters within the territorial limits of any political subdivision of this state. The regulations may include, but need not be limited to, the establishment of designated speeds, the prohibition of the use of motorboats and the designation of areas and times for testing racing motorboats. However, designated speeds set by the board shall not apply to commercial vessels documented by an agency of the United States.

(2) The governing body of a political subdivision of this state may apply to the board for special regulations relating to the designation of moorage areas on lakes or reservoirs which are under the jurisdiction of a public agency, or to the operation of boats on the waters within the territorial limits of the political subdivision. Within a reasonable time, the board shall act upon the application in the manner provided in subsection (1) of this section. When special regulations have been established within a political subdivision in accordance with this subsection, the governing body shall establish and maintain the navigational markers prescribed by the board.

(3) After a hearing, upon notice, the board may make special regulations relating to the operation of boats, including the establishment of designated speeds and prohibition of the use of motorboats for the protection of game and game fish at the request of the State Game Commission.

(4) The notice required by subsection (1) of this section shall be published in at least two issues of a newspaper of general circulation in the political subdivision. The second publication shall be not less than one week before the hearing.

(5) Any speeds in excess of the speeds designated by the board, as provided in this section, shall be prima facie evidence of the violation of ORS 488.100.

[1959 c.656 §62; 1961 c.292 §1; 1965 c.539 §3; 1967 c.536 §3]

38. R.I. GEN. LAWS ANN. §46-22-14 (Supp. 1968)

46-22-14. Local regulation prohibited.—(a) The provisions of this chapter, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder; provided, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

(b) Any subdivision of this state may, at any time, but only after public notice, make formal application to the division of harbors and rivers for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(c) The division of harbors and rivers is hereby authorized to make special rules and regulations, not inconsistent with [chapter 9 of this title] or the rules and regulations issued thereunder, with reference to the operation of vessels not more than sixty-five (65) feet in length on any waters within the territorial limits of any subdivision of this state.

39. S.C. CODE ANN. §70-295.2 (1962)

§ 70-295.2. Chapter to govern operation, etc., of vessels on waters of State; local laws and ordinances; rules and regulations for subdivisions. —(1) The provisions of this chapter, and of other applicable laws of this State, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder; *provided*, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

(2) Any subdivision of this State may, at any time, but only after three days' public notice, make formal application to the Division for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(3) The Division is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this State. (1955 (49) 299; 1959 (51) 409.)

40. S.D. COMP. LAWS ANN. §§ 42-8-62 to ~~42-8-64~~ (1967)

**42-8-62. Territorial application of chapter—Identical local rules not prohibited.**—The provisions of this chapter, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder: provided, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

Source: SL 1959, ch 125, § 14; SDC  
Supp 1960, § 25.1414 (1).

**42-8-63. Application by political subdivision for special rules applicable therein.**—Any subdivision of this state may, at any time, but only after public notice make formal application to the game, fish and parks commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

Source: SL 1959, ch 125, § 14; SDC  
Supp 1960, § 25.1414 (2).

**42-8-64. Adoption of special rules and regulations applicable to particular subdivisions.**—The game, fish and parks commission is hereby authorized to make special rules and regulations with reference to the operation of vessels on any public waters within the territorial limits of any subdivision of this state.

41. TENN. CODE ANN. §70-2210 (Supp. 1968)

**70-2210. Rules and regulations.**—The commission shall establish uniform regulations governing the numbering, the safety equipment, and the operation of the vessels subject to this chapter so that any such vessel complying therewith may be operated with equal freedom, or under similar requirements, upon all the waters of Tennessee. Safety and operational regulations shall not be in conflict with federal laws and regulations applicable to such vessels upon the navigable waters of the United States which are within this state. The commission is authorized and directed to alter and amend their regulations as need be, from time to time, to prevent conflict with federal laws and regulations pertaining to vessels.

The commission is authorized to proclaim special rules and regulations governing the operation of vessels in special areas or under special conditions, if approved by the majority of the board.

Such rules and regulations of the commission as are authorized for this chapter shall be published at least one (1) time in newspapers whose circulation generally covers the areas affected by said rules and regulations; the publication of said rules and regulations is required to be at least fifteen (15) days before the terms of the rules and regulations will become effective. A copy of all rules and regulations passed by said commission shall be immediately filed with the secretary of state and the county court clerks for the counties affected.

42. TEX. PEN. CODE ANN. art. 1722a(19) (Supp. 1968)

Sec. 19. (a) The Governing Body<sup>1</sup> of any incorporated city or town, with respect to public waters within its corporate limits and all lakes owned by it, is hereby authorized by city ordinance to designate certain areas to be bathing, fishing, swimming or otherwise restricted areas, and to make such rules and regulations relating to the operation and equipment of boats as it may deem necessary for the public safety, the provisions of which are consistent with the provisions of this Act.

(b) The Commissioners Court of any county, with respect to public waters within the territorial limits of the county but outside the corporate limits of any incorporated city or town or political subdivision as contained in (c) below, except lakes owned by an incorporated city or town, is hereby authorized by order of the Commissioners Court entered upon its records to designate certain areas to be bathing, fishing, swimming or otherwise restricted areas, and to make such rules and regulations relating to the operation and equipment of boats as it may deem necessary for the public safety, the provisions of which are consistent with the provisions of this Act.

(c) The Governing Board of any political subdivision of the State created pursuant to the provisions of Section 59, Article 16, of the Constitution of the State of Texas, for the purpose of conserving and developing the public waters of this State, is, with respect to public waters impounded within lakes and reservoirs owned or operated by such political subdivision, authorized by resolution or other appropriate order to designate certain areas to be bathing, fishing, swimming or otherwise restricted areas; and to make such rules and regulations relating to the operation and equipment of boats as it may deem necessary for the public safety, the provisions of which are consistent with the provisions of this Act. Provided that a copy of any rule or regulation enacted pursuant to this Section shall be summarily filed with the Texas Highway Department and with the Texas Parks and Wildlife Department.



43. UTAH CODE ANN. §§73-18-17, 73-18a-11 (1968)

**73-18-17. Scope of application of act—Identical local ordinances authorized—Application for special local rules and regulations.—**(1) The provisions of this act, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this act shall take place thereon; but nothing in this act shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this act, amendments thereto or regulations issued thereunder; provided, that such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this act, amendments thereto or regulations issued thereunder.

(2) Any subdivision of this state may, at any time, but only after public notice, make formal application to the commission for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulation necessary or appropriate.

(3) The commission is hereby authorized to make additional rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

**73-18a-11. Regulation by political subdivisions prohibited—Exception.**

Through the passage of this act, the state fully reserves to itself the exclusive right to establish requirements with reference to the disposal of human body waste and litter from watercraft. In order to ensure state-wide uniformity, the regulation, other than the adoption for local enforcement of state regulations, by any political subdivision of the state of the disposal of litter or human body waste from watercraft is prohibited.

44. VA. CODE ANN. §62.1-182 (1968)

**§ 62.1-182. Local regulation.** (a) Any political subdivision of this State, may at any time, but only after public notice, make formal application to the Commission for special rules and regulations with reference to the safe and reasonable operation of vessels on any water within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(b) The Commission is hereby authorized upon application by a political subdivision or its own motion to make special or general rules and regulations with reference to the safe and reasonable operation of vessels on any waters within the territorial limits of any political subdivision of this State; without limiting the generality of the grant of such power, a system of regulatory or navigation markers may be adopted by the Commission. Provided that nothing in this section shall be construed to affect the application of any general law concerning the tidal waters of this State.

(c) Any county, city or town of this State, may at any time, but only after approval by the Commission, enact ordinances regulating the operation of vessels on any waters within its territorial limits, and the conduct and activity of any person using such waters, and may provide for the enforcement thereof and penalties for the violation thereof, provided said penalties do not exceed the penalties provided in this chapter for similar offenses. (Code 1950 (Suppl.), § 62-174.15; 1960, c. 500; 1964, cc. 346, 654; 1968, c. 659.)

45. W. VA. CODE ANN. §20-7-23 (Supp. 1969)

§ 20-7-23. Local rules and regulations.

(a) The provisions of this article, and of other applicable laws of this State, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State, or when any activity regulated by this article shall take place thereon, but nothing in this article shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this article, amendments thereto or regulations issued thereunder: **Provided**, that such ordinances or local laws shall be operative only so long as to the extent that they continue to be identical to provisions of this article, amendments thereto or regulations issued thereunder.

(b) Any subdivision of this State may, at any time, but only after public notice, make formal application to the director for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(c) The director is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this State. (1959, c. 78; 1961, c. 133; 1967, c. 147.)

46. WYO. STAT. ANN. §41-528.7 (Supp. 1969)

§ 41-528.7. Political subdivisions not to number vessels.—The provisions of this act [§§ 41-528.1 to 41-528.11] shall govern the number [numbering] and registration of vessels on the waters of this state. All other political subdivisions of this state are expressly prohibited from numbering vessels in any respect. (Laws 1963, ch. 151, § 7.)

APPENDIX NOTE F

STATUTES SPECIFICALLY REGULATING WATER BODIES

1. IOWA CODE ANN. §106.31 (Supp. 1969)
2. IND. ANN. STAT. §§68-832 to 68-834 (1961)
3. IND. ANN. STAT. §68-839 (Supp. 1968)
4. Ch. 575, [McKinney 1969] Laws of N.Y. 874
5. N. H. REV. STAT. ANN. §§486:3-486:7 (1968)
6. ORE. REV. STAT. §§488.610, 488.620 (1967)
7. PA. STAT. ANN. tit.55, §501 (1964)

Some special provisions of the type ordinarily contained in local ordinances include:

A. Special regulations for artificial lakes.

1. IOWA CODE ANN. §106.31 (Supp. 1969)

106.31 Artificial lakes

1. No motorboats with inboard motors; motorboats of plane or gliding type, including combination plane and displacement types, propelled by an outboard motor; rowboats of displacement type with outboard motor, shall be permitted on any artificial lake under the jurisdiction of the commission except that rowboats or motorboats equipped with an outboard motor, not to exceed six horsepower shall be permitted upon any artificial lake of one hundred acres or more in size.

2. No person shall operate any sailboat on any artificial lake under the jurisdiction of the commission except those lakes specifically designated by the commission. All sailboats, so operated, must be of a type and size approved by the commission.

3. All privately-owned boats on artificial lakes under the jurisdiction of the commission shall be kept at locations designated by the commission.

4. All privately-owned rowboats, used on or kept at the artificial lakes under the jurisdiction of the commission, shall be seaworthy for the waters where they are kept and used. All such boats shall be removed from state property whenever ordered by the commission, and, in any event, shall be removed from such property not later than December fifteen of each year.

B. Special speed and shore zone restrictions.

2. IND. ANN. STAT. §§68-832 to 68-834 (1961)

68-832. Operating boat at excessive speed prohibited.—No person shall operate any boat at a rate of speed greater than is reasonable and prudent, having due regard for the conditions and hazards, actual and potential, then existing, including weather and density of traffic, or greater than will permit him, in the exercise of reasonable care, to bring such boat to a stop within the assured clear distance ahead.

68-833. Operating in excess of ten miles per hour at night prohibited.—No person shall operate any boat during the period between sunset and sunrise at a rate of speed greater than ten [10] miles per hour.

68-834. Operating in excess of ten miles per hour on lake of less than 300 acres prohibited.—No person shall operate any boat upon any lake which contains less than three hundred [300] acres at a rate of speed greater than ten [10] miles per hour.

3. IND. ANN. STAT. §68-839 (Supp. 1968)

68-839. Operation within two hundred feet of shoreline of lake or channel five hundred feet in width—Minimum speed—Exception.—No person shall operate any motorboat so as to approach or pass within two hundred [200] feet of the shore line of any lake or channel thereof at a place or point where such lake or channel is five hundred [500] feet or more in width, except for the purpose of trolling or for the purpose of approaching or leaving a dock, pier or wharf or the shore of such lake or channel. No person shall operate any motorboat so as to approach or pass within two hundred [200] feet of the shore line of any lake or channel thereof at a rate of speed greater than ten [10] miles per hour except that on lakes formed by hydro-electric dams no person shall operate a motorboat so as to approach or pass within fifty [50] feet of the shore line at a rate of speed greater than ten [10] miles per hour.

4. Ch. 575, [McKinney 1969] Laws of N.Y. 874

CHAPTER 575

An Act to amend the navigation law, in relation to permitting water skiers to take off or land from shore or dock.

Approved and effective May 21, 1969.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision two of section forty-five of the navigation law, as last amended by chapter seven hundred ninety-four of the laws of nineteen hundred sixty, is hereby amended to read as follows:

2. No vessel shall be operated within one hundred feet of the shore, a dock, pier, raft, float or an anchored or moored vessel at a speed exceeding five miles per hour, unless such vessel is being operated near such shore, dock, float, pier, raft, or anchored vessel for the purpose of enabling a person engaged in water skiing to take off or land.

§ 2. This act shall take effect immediately.

C. Regulations for special bodies of water.

5. N. H. REV. STAT. ANN. §§486:3-486:7 (1968)

486:3 Squam and Conway Lakes and Silver Lake in Madison. No person shall at any time place in or upon, or use, or operate upon, Squam Lake or Conway Lake or Silver Lake in Madison any house boat. Whoever violates any provision of this section shall be fined not more than fifty dollars. Board of health and health officers of towns abutting said lakes shall have power and authority to enforce the provisions hereof.

186:4 Lucas Pond in Northwood. No person shall operate upon the waters of Lucas pond in the town of Northwood any boat propelled by electric, naphtha, gasoline, steam or other mechanical power, including boats propelled by so-called out-board motor. Any person who operates a boat in violation of this section shall be fined not more than twenty-five dollars. Any fines collected under the provisions hereof shall be for the use of the town of Northwood.

• • • •

186:6 Otter Lake. On and after July 1, 1959, no person shall use or operate any motor boat or other boat equipped with an outboard motor at greater than trolling speed, except in case of emergency, or by special approval of the selectmen, on the waters of Otter Lake in the town of Greenfield. Whoever violates the provisions of this section shall be fined not more than fifty dollars. Any fines collected hereunder shall be for the use of the town of Greenfield.

186:7 Lee's Pond. On and after July 1, 1967, no person shall use or operate any motor boat or other boat equipped with an outboard motor of more than seven and one-half horse power on the waters of Lee's Pond in the town of Moultonborough. Whoever violates any of the provisions of this section shall be fined not more than fifty dollars.

6. ORE. REV. STAT. §§488.610, 488.620 (1967)

488.610 Motorboats prohibited on certain lakes. No person shall use a motor boat for any purpose on the following named waters of this state located in the counties named:

Counties	Lakes and Reservoirs
Clackamas	Trillium Lake
Deschutes	Charlton, Devils, Irish, Lucky, North and South Twin Lakes, Taylor, Three Creek and Todd Lakes
Douglas	Opal and Timpanagos Lakes
Hood River	Lost Lake
Jefferson	Horseshoe, Dark and Olallie Lakes
Lane	Gold Lake
Linn	Clear Lake
Marion	Breitenbush Lake
Wasco	Frog Lake

[Formerly 488.060; 1961 c.420 §1; 1967 c.547 §1]

488.620 Speed restrictions in certain areas. (1) No person shall operate a boat with an outboard or inboard motor at a speed in excess of 10 miles per hour during those hours of the day and on those days of the year that it is lawful to fish, on East Lake, Pauline Lake and Elk Lake in Deschutes County; Magone Lake in Grant County; Timothy Lake in Clackamas County; Davis Lake in Deschutes and Klamath Counties; Diamond Lake in Douglas County and Squaw Lakes in Jackson County.

(2) No person shall operate a boat with an outboard or inboard motor at a speed in excess of 10 miles per hour on the following named waters of this state located in the counties named:

Counties	Lakes and Reservoirs
Clackamas	Clear Lake and on that portion of the waters of the reservoir known as North Fork Reservoir which lies upstream from a line drawn across the reservoir at right angles to the thread of the stream at a point 2.3 miles upstream from the North Fork Dam measured along the thread of the stream
Deschutes	Hosmer, Lava, Little Cultus, Little Lava and Sparks Lakes
Jefferson	On that portion of the waters behind Pelton Dam, known as Lake Simtustus, which lies upstream from a line drawn across the lake at right angles to the thread of the stream at a point .85 miles upstream from the Pelton Dam measured along the thread of the stream
Klamath	That portion of Upper Klamath Lake that lies west of a line beginning at a point on the north shore of Pelican Bay one-quarter mile east of Crystal Creek and extending due south to the opposite shore of the lake; any stream, creek or canal that leads into the portion of Upper Klamath Lake described above including Crystal Creek, Recreation Creek and Four-Mile Creek, also known as Harriman Creek
Lane	Munsel and Waldo Lakes
Linn	Smith and Trailbridge Reservoirs

7. PA. STAT. ANN. tit.55, §501 (1964)

CANADOHTA LAKE

**§ 501. Horsepower**

No boat equipped with a motor having a developed horsepower rating in excess of ten shall be operated on Canadohta Lake, in Crawford County. 1953, June 19, P.L. 279, No. 54, § 1.



APPENDIX NOTE G

EXAMPLES OF ADMINISTRATIVE RULES  
REGULATING SPECIFIC WATERS

1. Examples of General State Administrative Rules: OHIO DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WATERCRAFT
2. Regulations With Reference to a Map: Rules and Regulations Governing Malsapuu Shore Waters and Shores. "HAWAII SHORE WATERS REGULATIONS," Department of Transportation, Harbors Division.

Anchoring or Docking on Division of Wildlife Areas

NRC - 1 -72 is hereby rescinded

NRC - 3 -12

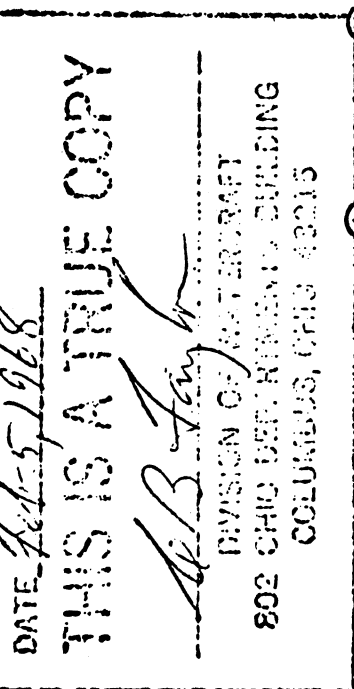
- (A) It is unlawful for any person to anchor, dock, moore, beach, or tie up any watercraft or leave any watercraft unattended for a period in excess of eight consecutive hours at the following Division of Wildlife properties.
- (1) Oak Point on South Bass Island, Put-In-Bay Township, Ottawa County, Ohio.
- (2) Resthaven Wildlife Area, Margaretta Township, Erie County, Ohio.
- (B) Watercraft except watercraft occupied continuously by persons fishing or hunting rails, gallinules, or waterfowl shall not be anchored, docks, moored, beached, tied-up, or left unattended by any person on any land or water area of the Division of Wildlife named in this Rule for a period of time in excess of four hours unless such watercraft is anchored, docked, moored, beached, or tied up at a Division designated public docking area established by the provisions of this Rule.

- (1) It is unlawful for any person to anchor, dock, moor, beach, tie up or leave unattended for a period in excess of four hours, more than one watercraft on any lake named in this Rule except as herein provided.
- (2) It is unlawful for any person to dock, moor, tie up, leave unattended, or control more than one watercraft at a Division public docking area on any lake named in this Rule.

Aldrich Pond  
Aquilla Lake  
Beaver Creek Wildlife Area  
Circleville Canal  
Clark County Lake  
Clouse Lake  
Cooper Hollow Ponds  
Delaware Ponds  
Fallsville Ponds  
Fulton Pond

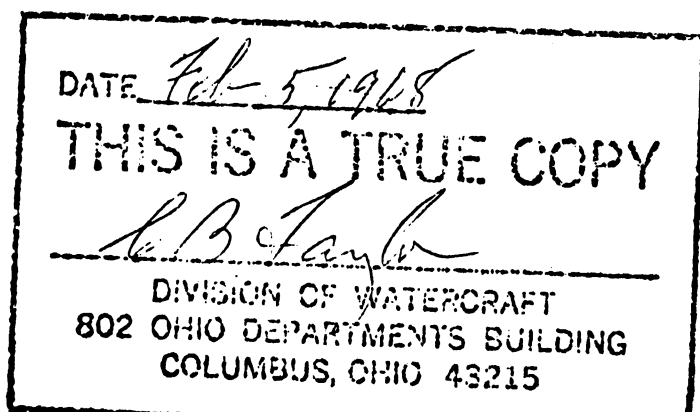
Sandusky County  
Geauga County  
Williams County  
Pickaway County  
Clark County  
Perry County  
Jackson County  
Delaware County  
Highland County  
Fulton County

Effective date, February 15, 1968



Greenfield Dam  
Grand River Wildlife Area  
Grant Lake  
Hebron Canal  
Highlandtown Wildlife Area  
Indian Creek Ponds  
Killdeer Plains Area  
Miller Blue Hole  
Monroe County Lake  
Nimisila Reservoir  
Oldaker Pond  
Orwell Pond  
Ottoville Quarries  
Oxbow Lake  
Paulding Ponds  
Pleasant Valley Ponds  
Resthaven Wildlife Area  
Rock Mill Dam  
Ruff Pond  
Rush Run Area  
Shreve Lake  
Spring Valley Lake  
Tranquility Ponds  
Trimble Ponds  
Tycoon Lake  
Walhonding Canal  
Waterloo Ponds  
Wolf Creek Area Ponds  
Woodbury Ponds  
Zepernick Lake  
Zoar Lake  
Lake Vesuvius

Fairfield County  
Trumbull County  
Brown County  
Licking & Fairfield Counties  
Columbiana County  
Brown County  
Wyandot County  
Sandusky County  
Monroe County  
Summit County  
Highland County  
Ashtabula County  
Putnam County  
Defiance County  
Paulding County  
Ross County  
Erie County  
Fairfield County  
Columbiana County  
Preble County  
Wayne County  
Warren County  
Adams County  
Athens County  
Gallia County  
Coshocton County  
Athens County  
Morgan County  
Coshocton County  
Columbiana County  
Tuscarawas County  
Lawrence County



- 2 -

Filed in the Office of the Secretary  
of State at Columbus, Ohio

Effective date, February 15, 1968

on Feb 5 1968 A.M.  
P.M. 3 30

**TED W. BROWN**  
SECRETARY OF STATE

Per *KK*

Use of Outboard Motors and Power Boats on  
Wildlife Areas

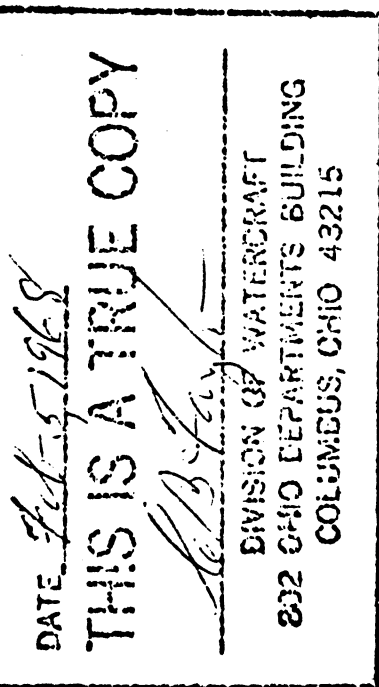
NRC - 1-74 is hereby rescinded

NRC - 3-13

It shall be unlawful to use any motor, except electric motors to propel boat on any water area mentioned in this Rule, except as provided in Sub-section 1 and 2 of this Rule, on the following state owned or controlled areas;

Aldrich Pond	Sandusky
Aquilla Lake	Geauga County
Beaver Creek Wildlife Area	Williams County
Circleville Canal	Pickaway County
Clark County Lake	Clark County
Clouse Lake	Perry County
Cooper Hollow Ponds	Jackson County
Delaware Ponds	Delaware County
Fallsville Ponds	Highland County
Fulton Pond	Fulton County
Greenfield Dam	Fairfield County
Grand River Wildlife Area	Trumbull County
Grant Lake	Brown County
Hebron Canal	Licking & Fairfield Counties
Highlandtown Wildlife Area	Columbiana County
Indian Creek Ponds	Brown County
Killdeer Plains Area	Wyandot County
Massillon Fulton Canal	Stark County
Miller Blue Hole	Sandusky County
Monroe County Lake	Monroe County
Nimisila Reservoir	Summit County
Oldaker Pond	Highland County
Ottoville Quarries	Putnam County
Oxbow Lake	Defiance County
Paulding Ponds	Paulding County
Pleasant Valley Ponds	Ross County
Resthaven Wildlife Area	Erie County
Rock Mill Dam	Fairfield County
Rush Run Area	Preble County
Shreve Lake	Wayne County
Spencer Lake	Medina County
Spring Valley Lake	Warren County

Effective date, February 15, 1968



DIVISION OF WATERCRAFT

NRC-3-15 On the waters of Nettle Lake, Williams County, Ohio

- (1) It shall be unlawful to water ski between the hours of 6:00 P.M. and 10:00 A.M. local time.
- (2) It shall be unlawful to operate a watercraft at speeds in excess of 10 MPH between the hours of 6:00 P.M. and 10:00 A.M. local time.
- (3) All watercraft towing skiers shall proceed in a counter clockwise direction during ski hours except while beaching or going into shore.
- (4) It shall be unlawful to water ski in the bay at the north end of the lake at any time.
- (5) It shall be unlawful to operate a watercraft at speeds in excess of 5 MPH in the slip between the middle bay and the north bay.
- (6) It shall be unlawful to anchor a watercraft in the slip between the middle bay and the north bay.

Effective date: June 13, 1968

Filed in the Office of the Secretary  
of State at Columbus, Ohio

on June 3 1968 A.M. 3 30  
P.M.

**TED W. BROWN**  
SECRETARY OF STATE

Per [Signature]

PART XII - RULES AND REGULATIONS GOVERN-  
ING MAKAPUU SHORE WATERS AND SHORES

Article - Makapuu Shore Waters and Shores

Section

12.01 AUTHORITY, PURPOSE AND SCOPE. Pursuant to the authority vested in it by Chapter 112, including but not limited to, Sections 112-3 and 112-5, Revised Laws of Hawaii 1955, as amended, the Department adopts as additions to the Rules and Regulations Governing Hawaii's Shore Waters and Shores of the Department of Transportation, State of Hawaii, Rules and Regulations contained in this Part to further the public interest, safety, and welfare within the geographical limits of Makapuu Shore Waters and Shores on the Island of Oahu as hereinafter defined in Section 12.02.  
(History: New Part XII, 11-29-65.)

12.02 DEFINITIONS. "MAKAPUU SHORE WATERS AND SHORES" shall mean and include an area confined by boundaries as shown on Exhibit "A" attached hereto and made a part hereof and also described as follows:  
(Added: Note Exhibit at end of this Part.)

- (1) Beginning at a point, being the mean high water mark which is directly opposite from the Northeast corner of the Makapuu Beach Park Building, thence
- (2) In the Makapuu Point direction along the mean high water mark to the tip of Makapuu Point; and
- (3) Along a straight line connecting such point described in (2) above to, and ending at the point of beginning.

"OPERATE" shall mean to navigate or otherwise use a vessel, surfboard or paddle board (paipo board).

"PADDLEBOARDS" (PAIPO BOARDS) shall mean any type of board that is (1) without skegs, (2) does not exceed four (4) feet in length and (3) is used for the sport of surfriding.

"SKEGS" shall mean any fin-like projection protruding from the bottom of a surfboard or paddleboard (paipo board).

"SURFBOARD" shall mean any type of board that exceeds four (4) feet in length and is used for the sport of surfriding.

**Section**

"VESSEL" shall mean every description of watercraft used or is capable of being used as a means of transportation on water.

(History: New Section, 11-29-65.)

**12.03 BATHING AREA.** The Makapuu shore waters and shores as defined in Section 12.02 are primarily reserved for bathing and swimming.

(History: New Section, 11-29-65.)

**12.04 PADDLEBOARDS (PAIPO BOARDS).** The use of paddleboards (paipo boards), as defined in Section 12.02, is permitted within the Makapuu shore waters and shores as defined in Section 12.02.

(History: New Section, 11-29-65.)

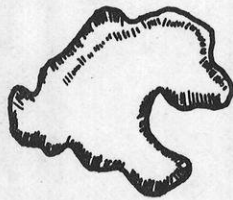
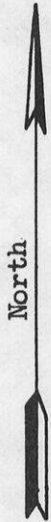
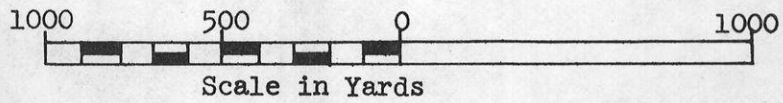
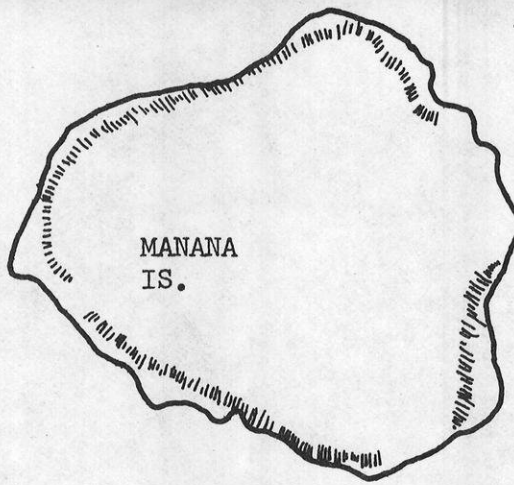
**12.05 RISTRCTIONS.** No person shall operate a vessel or a surfboard in the Makapuu shore waters and shores as defined in Section 12.02.

(History: New Section, 11-29-65.)

**12.06 EXCEPTION.** If approved by the Department of Transportation, the restrictions cited in Section 12.05 may be waived for certain public events. The restrictions cited in Section 12.05 shall not apply in cases of emergencies nor to authorized personnel on duty for the safety and protection of the general public.

(History: New Section, 11-29-65.)

PART XII  
EXHIBIT "A"



KAOHKAIPU  
IS.

