



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
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603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

DECISION & ORDER

In the Matter of: Barbers Pole, in Lake Winnepesaukee, Tuftonboro, New Hampshire

HISTORY:

The Department of Safety received an undated petition submitted by Thomas M. Hilbink, Esq. and signed by at least twenty-five (25) co-petitioners supporting the request. The petitioners applied for a hearing pursuant to RSA 270:12. The Petition was sent to the Division of Safety Services and, in turn, to the Bureau of Hearings without the envelope in mid-April 2011. A request submitted shortly thereafter by Mr. George Elkins requesting a copy of the Petition was honored. A motion entitled Motion to Postpone or Cancel the July 30 hearing on the No Wake Zone in the Barbers Pole was received on July 14, 2011 which was forwarded to Attorney Hilbink, along with a Letter of Instruction to him and Mr. Elkins. The instruction included procedural review to be argued at the public hearing.

Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules, Saf-C 409, a public hearing was held under the authority of RSA 541 between the months of June and September and was scheduled on Saturday, July 30, 2011 at 12:00 p.m. at the Tuftonboro Town House, Route 109-A, Center Tuftonboro, New Hampshire. Mr. Curtis Duclos conducted the public hearing as my designee. The procedure for adoption of such rules is outlined in section RSA 270:12 of Title XXII governing navigation, harbors, and coastal survey in the State of New Hampshire.

PETITION:

The Petition reads: "A petition to establish a No Wake Zone in the area known as the Barbers Pole on Lake Winnepesaukee starting between the southern tip of Little Birch Is. and lot 17 on the mainland to a point between lot 284 on Cow Is. and lot 3 on the mainland. All signers of this petition certify that they are landowners in the town of Tuftonboro, residents of Tuftonboro, or both."

ORAL ARGUMENTS ON THE MOTION:

Mr. George W. Elkins testified against the petition referencing his motion (Exhibit B) and standing on the information contained therein. He argued the validity of the signers based on the information he learned when comparing the names to Tuftonboro town records. His position is that the responsibility of determining if a petition is properly submitted to the State of New Hampshire seeking a hearing is the responsibility of the State. In addition, Mr. Elkins argued that the State should use legal documentation and lawful standards, rather than accept that each signer (in this specific hearing) is a trustee.

Thomas Hilbink, Esq. testified in favor of the Petitioners as an owner and trustee of Little Birch Island having presented the Petitioners position on the legitimacy of the signers (Exhibit D). He agrees with Mr. Elkins that the State has the burden of determining if signatures on a petition are valid. There is not a sole trustee of Little Birch Island; there are six owner trustees.

Mr. Elkins noted that the fact finder at the second hearing conducted regarding Barbers Pole in 2010 required the petitioner's lawyer to validate the signers of the petition. Attorney Hilbink had no knowledge of the appeal hearing Mr. Elkins referred to. The Petitioner's spokesperson said that he will submit a reply argument regarding the signers of the petition as trustees referencing the trustee rights to sign the petition as landowners. Attorney Hilbink will submit the Petitioner's position before the end of the business day August 8, 2011.

The arguments submitted along with the submitted written positions were taken under advisement and the public commentary hearing proceeded.

Motion to Postpone or Cancel the July 30 Hearing on the No Wake Zone in the Barbers Pole

DISCUSSION:

I have carefully reviewed the Motion to Postpone or Cancel the July 30 Hearing on the No Wake Zone in the Barbers Pole ("Elkins Motion"). The Elkins Motion submitted by Mr. George W. Elkins to the Department of Safety ("DOS") was forwarded to the Petitioner's spokesperson, Thomas Hilbink, Esq. along with a Letter of Instruction with a copy returned to Mr. Elkins. The Petitioners were given a reasonable timeframe to reply. A Response to the Elkins Motion was received and Attorney Hilbink sent a copy to Mr. Elkins. The instruction letter said that on July 30, 2011 at the onset of the public hearing oral argument may be offered; a synopsis which is found on page #3 (*Supra*). Mr. Elkins argued the validity of signers based on comparing the names of property owners or the named trustees listed within the Tuftonboro town tax record relying on his motion (Exhibit B) saying that the State, not he, is responsible for determining the validity of signers to the Petition. Attorney Hilbink relies on his response (Exhibit D) agreeing with Mr. Elkins that the State is the determiner of signer legality. A land trust is a method for handling the ownership of real estate. It is an arrangement by which the recorded title to the real estate is held by a trustee, but usually all the rights and conveniences of ownership are exercised by the beneficial owner (beneficiary) whose interest is not disclosed. Each Petition with a similar situation must be evaluated on the submitted documentation.

After carefully reviewing the exhibits and the oral arguments set forth, I find the following:

FINDINGS OF FACT:

1. That the Petitioners have the burden to present the State with the identification of all the signers meeting the language of RSA 270:12,
2. That the documentation provided within Petitioners Exhibit D, meets the criteria of law.

DISPOSITION:

That the documentation provided within Petitioners Exhibit D, meets the criteria of law within RSA 270:12 and Administrative Rule Saf-C 409.01; therefore, the public commentary submitted for consideration as published within this Decision and Order is allowed.

EXHIBITS: Public Hearing

- A. Petition received in mid-April 2011;
- B. Motion to Postpone or Cancel the July 30 hearing on the No Wake Zone in the Barbers Pole submitted by George W. Elkins dated July 14, 2011;
- C. Letter of Instruction to Mr. Elkins and Attorney Hilbink dated July 19, 2011;
- D. Petitioner Response to the Motion submitted by Attorney Hilbink dated July 28, 2011;
- E. Notice of Public Hearing published on July 14, 2011;
- F. Document entitled: NO WAKE ZONE in the area of the BARBERS POLE, submitted by Stephen Clark;
- G. Position statement on behalf of Steven R. Purchansky, presented by Robert E. Dunn, Jr., Esq.;
- H. Petitioner Post Hearing Motion Reply 1-7 and Minkoff submitted by Thomas Hilbink, Esq.

OFFICIAL NOTICE:

I take official notice of the following:

- Submitted Petition received in mid-April 2011;
- the Motion submitted by Mr. Elkins dated July 14, 2011;
- the instructional letter to Mr. Elkins and Attorney Hilbink dated July 19, 2011;
- the Response to the Motion by Attorney Hilbink dated July 28, 2011;
- the clipping from the newspaper of statewide circulation published on July 14, 2011;
- the hearing was conducted under the established statutes and rule listed on page one;
- the soundtrack of the public hearing conducted July 30, 2011 containing the instruction and recorded public commentary from the persons speaking in favor or against the petition;
- the list of exhibits submitted on the hearing date, or presented on that date and provided after the hearing within seven calendar days;
- The public commentary submitted by U.S. Mail or Email prior to the hearing, on the date of the hearing, or within the seven calendar days allowed after the hearing, and that have been listed by name and made a part of the official file for this hearing;
- The hearing was closed to public comment at the end of the business day on Monday August 8, 2011, as the seventh day occurred on a weekend day.

STATISTICS:

Thirty-two (32) people signed the petition submitted initiating the hearing process (some of the petitioners spoke at the public commentary hearing on July 30, 2011 and/or submitted letters or emails in favor of the Petition);

The following sign-in sheets are categorized as follows:

Five (5) persons signed up to testify in favor of the petition;

Twenty-two (22) persons signed recording themselves present in support of the petition;

Fifteen (15) persons signed up to testify against the Petition including Counsel speaking on behalf of a client;

Forty-seven persons (47) signed up recording themselves present against the Petition;

Written public comments received before and/or at the hearing, or by email, or by U.S. Mail within seven (7) calendar days following the hearing are categorized as follows:

Sixteen (16) different individuals or couples wrote emails or letters in favor of the Petition;

Fifty-five (55) different individuals or couples wrote emails or letters against the Petition;

One (1) person wrote stating he was unclear about the need for a No Wake Zone.

SYNOPSIS OF TESTIMONY:

Thomas Hilbink, Esq. testified supporting the petition as an owner and trustee, but also for his daughter and extended family along with those who enjoy swimming, sailing, kayaking and camping, fishing and transit in and around the Barbers Pole channel. The channel is approximately 800 feet wide, so narrow that thirty years ago you could call people to come over just using your voice to communicate. Usually a motorboat is used to travel to and from the island; however it is becoming more treacherous as the boats are more prevalent and the engines more powerful. He also testified that proponents say going at headway speed is inconvenient. It will, in fact, take longer, but his measurement estimation from the corner of Little Birch Island to Cow Island is 2,000 feet in length. It will take 3 minutes and 45 seconds; and is inconvenient for some users but as balanced with what? He said he has seen many near misses and boats have come perilously close to him and family members when swimming close to shore. Many times when there are two boats and the person operating the boat is watching other boat(s), rather than other factors, they travel closer to shore. He and others have called out praying they will realize the safety issue and correct themselves. Other boats coming into the channel are cutting the corner as they come around and travel within 50 feet of the swimming area and the dock. There are 60 people who share and spend time on the island, not counting other friends and other family. They have tried to rectify the safety hazard over many years, including placing a larger raft in the channel that would push the boats back toward the middle. Secondly, a small buoy was placed 150 feet from shore to give boaters a marker they could stay clear of, however, that marker was cut. Mr. Hilbink said that another method was to flag down boaters to explain the safety concerns in the spirit of neighborliness but at times was frustrating. He said the problem is the boaters traveling through are infrequent users of Barbers Pole or in transit, rather than regular users who would not be a problem.

More recently, measures have been taken to notify Marine Patrol. Everyone knows they are under-manned and with the budgetary crisis the measures by Marine Patrol will not increase. Nothing yet has created a safe zone. Some say there are sufficient laws to enforce the safety issue, but Mr. Hilbink's belief is the vast majority of boaters do adhere to the law.

Attorney Hilbink said that depth perception is a very big challenge for the human senses. Why will this rule bring safety to this space? He answered saying the simple rule of 'no wake' is easier to estimate than a distance to observe and follow; it is a 'bright line' the petitioners feel everyone needs to follow. Boaters know when there is or is not a wake. In his closing, he said whether his friends and neighbors agree or not, everyone loves the lake and wants to continue to use the lake for all the uses and memories shared and bring safety and enjoyment to our space and all who enjoy the channel.

George W. Elkins testified against the petition. He has lived in the Barbers Pole area for twenty years and enjoyed the lake all his life. Mr. Elkins said that the State already has a multitude of laws on the lake including the Safe Passage Law. The northern end of the proposed NWZ begins at his property line at which point the width of the channel is 900 feet. The present laws require boats to proceed at a no wake speed one hundred and fifty feet away from the shore, other boats, swimmers, swim ropes, etc. He compared the reminder as being the length of two football fields, six hundred feet wide, saying if a boater can't see ahead and operate the boat safely within that space, shame on the driver of the boat. He said the issue is really one of enforcement, giving examples of people driving a car on a roadway. Marine Patrol cannot place a boat in Barbers Pole every day, but he noted it has been observed there is more presence this summer than the last five

years. He has only seen one boater stopped and that was a few days ago. If a person chooses to kayak, swim, or operate a small boat out beyond the 150 foot area, that is a personal choice each person makes, similar to a person riding a bicycle on a busy roadway. The boating public should not have to appease a small group of people who want to be guaranteed safety.

Since Mr. Elkins has lived in this area he can remember no accident and he is a member of the Tuftonboro Rescue Team. The safety issue is one of enforcing existing laws. The safe passage law is one law that MP enforces on the entire lake. As to environment, some claim the boat wakes contribute to the erosion of shoreline and dropping trees. He submitted fifteen photographs (Exhibit H) showing the shoreline on his property and the shoreline properties to each side showing the shore consists of all rock except a small beach with no sign of erosion. The shoreline of Cow Island is practically consisting of all rock; the same is true with Little Birch and Squirrel Island. He summed up saying that waves will not erode that rock.

Bill Bertholdt testified in favor of the Petition as a forty year, fulltime resident. He has observed that the channel is being described as much wider than previously discussed. He said if two boats are within the channel passing or approaching each other the law requires a width of four hundred and fifty feet and Personal Watercraft even more including a three hundred foot no wake speed requirement from each shoreline. He travels through this area frequently, but his main concern is safety as a long-time sheriff. Most boaters cannot tell one hundred and fifty feet. He uses the length of his own boat's dimension to judge distances, not that people are trying to operate in violation, but infrequently some do. In today's world with higher powered boats and higher speed limits it is harder to pay attention to the vessel, its operation and what's going on around you. If you cannot take the three or four minutes of time to travel the two thousand feet through this channel, you should not be operating a boat, period. He gave examples of the need to judge distances from your boat to diver flags, docks, etc. There are just too many chances of a few seconds of not observing for an accident to occur. He has never seen any enforcement over the years in this area and this concerns him. His other concern is vessel equipment failure giving examples if traveling at forty-five miles per hour.

Stephen Clark has owned property on Cow Island for twenty-three years and is testifying against the Petition. As a boater, Mr. Clark travels the channel from April through November, long after the time when the people seeking the restrictions are gone for the season. Focused on the petition, his examination shows at least twenty of the thirty-two signers are related and share interest, hardly representing ownership of properties in the area; according to New Hampshire law RSA 477:25, the trustee is the legal owner of the property arguing there are only eighteen legal signatures making the Petition invalid. The proposed zone is the most practical route for boaters in the northeast quadrant of the lake traveling to places such as Wolfeboro and Alton Bay. Island residents travel through the channel twice if going for groceries and if traveling at a no wake speed will impose an undo hardship, disagreeing with the three minutes described by another speaker as most live in the Southwest area of Cow Island. Mr. Clark submitted a mini-petition representing residents on Little Bear Island opposing the No Wake Zone herein after ("NWZ").

Mr. Clark has spoken to a number of marine commercial businesses who told him the extra time to travel through the channel will impact their business. He also said the two YMCA Camps told him it will have a negative impact on their operations. Lastly, multiple attempts in the past by petitioners seeking a NWZ have been unsuccessful because Marine Patrol had said it was unnecessary and would channel boats to other areas. He said nothing has changed since that time. Boat registrations have been declining or remained the same since 2005. If checked, calls for service will show there are no safety issues. The numbers affected either way by this rule show seven of the thirty properties bordering the Barbers Pole are for the petition and the other properties are against indicating a percentage of a seventy-six percent majority against this action. The waters of New Hampshire belong to the residents of this State and not to a few with a private agenda.

Vanessa Boris testified in favor of the Petition as one of three owners of Squirrel Island. She is speaking for herself and her two brothers, the other two owners. She testified to an incident occurring five years ago involving a day when a number of boats were passing through Barbers

Pole. She and her family were swimming well within the NWZ between the beach and their raft. A boat traveled to within a few feet of her cousin and terrified her (Ms. Boris) saying she will never be the same person after this happened. Whoever was driving the boat never looked over because he was trying to navigate through this narrow area with two boats from the South and three more coming from the North at the same time and trying to weave their way through Barbers Pole. This part of the lake is dangerous and there are grave safety concerns. Her family has tried many ways to assist including calling Marine Patrol, calling out or waving to people to try and help them understand the one hundred and fifty foot rule. The Department of Safety is limited in the tools they have; she said the 'tool' is a NWZ.

Ms. Boris described her property saying that it is located near Buoy #17, describing the narrow boating area and so many boaters that misjudge distances as they approach the entry or while going in the opposite direction coming regularly too close to Squirrel Island where there is only two hundred and forty feet width. She said over the course of the number of years petitioning for this speed restriction, with the exception of this year, there has been inadequate policing of this area. Attempting to travel across the channel to her property on the mainland on weekends is treacherous. Safety is a concern as to the boaters even with a requirement to be licensed; she believes many, if asked to retake the test, would fail. As to erosion, waves splash over the rocks from wake action. As an example she described a tupelo tree that is dieing. Those using the eastern shorefront of her property should be able to swim and use this area safely. The lake should be there for all, whether boating in small craft or swimming.

Chris Hazel testified against the Petition, saying his property is located on the shoreline at about the middle of the channel. He said the three minute travel-through testified to earlier is 'a stretch'; he has done it in about seven minutes. Mr. Hazel feels this petition is selfish because people purchased property in this area knowing full well the use of the channel for the weekends and few weeks of the summer when there are wakes, etc. If there was a NWZ, he knows he would no longer require adjustments to his dock and how his boats are protected. Selfishly, he would like to say he would like to swim or kayak across the channel on a July fourth weekend at noon, but would not let his children engage in recreation on a busy highway. Is it fair to make everyone slow down for a few? He does not think it is a fair, civic way to use this space, when it can be used on "off hours" adjusting his behavior to allow others to use the channel. Mr. Hazel said that the channel is used similar to a two-way roadway and most travel the channel in this fashion.

Abby Adams testified in favor of the Petition living on the Tuftonboro side near Buoy #17 for about twenty-eight years. She reminded everyone that last year there was a ruling for the NWZ for safety reasons, but it was challenged due to a technicality concerning signatures; so, the Commissioner has looked at this matter already. She said that the ends of the channel are wider then, they narrow to 390 feet and boaters aren't sure how to maneuver as they travel through. She wanted to say she observed a loon and chick in the channel yesterday and this observation is another good reason to slow down in this area.

Michael Caplin testified against the Petition. He made the observation that to come in after acquiring the property, knowing how the area of water has been used and to change it to suit yourself is selfish.

Robert Brian Hennessey testified in favor of the Petition. He lives across from Buoy #17 and has measured the width of the channel in this area as three hundred and ninety feet. He said people know there is good fishing right at Buoy #17, and with boats in that spot it narrows the area further for other vessels traveling through.

Mr. Hennessey said that last year there was an issue with the signers, but this year it has been fixed and all the signers are legitimate owners, noting that the one trustee receives the tax bill paperwork from the town. He said that Mr. Elkins also argued in his motion that two other property owners were not accounted for in his investigation, but both are property owners. He pointing out that someone signed the sign-in sheet twice today, so he has a problem with this occurring and challenges the signatures.

On the subject of erosion, he had submitted pictures of his and a neighbor's property at a prior hearing showing that it has occurred. He testified that [it] (*assumption wake action*) makes it difficult to keep his boat at his dock. He suggested a website to view examples of busy boating days within the channel. Mr. Hennessey said if this petition does not pass, they will petition again next year because enough people who live in the area of Barbers Pole and experience the problems day after day understand the issues raised, but people from Moultonborough don't see this taking place all through the summer.

Michael J. Burke testified against the Petition and he and his family have never seen an unsafe action. His family swims and kayaks and has traveled into the middle of the channel on Saturdays, but waits if he sees an approaching motorboat. He also said the reason the prior hearing allowed a NWZ was because few people knew of the prior hearing and therefore did not have an opportunity to oppose it. There is more than enough room for two boats to have safe passage in most of the channel. He suggested other locations for the island residents to swim in another cove on the opposite side.

Mr. Burke is also concerned that if a NWZ is allowed, there will be rafting, when many boats are tied together partying etc, in the middle of the channel. Also, waves are throughout the lake from wind, asking if we are going to outlaw wind. He finds it alarming that a few individuals can have a NWZ established just because of their unsubstantiated opinions with no factual (information) on either side. He said the State should do statistical data and observation, rather than changing a law just on opinions that are biased. It should be the Department of Safety making the decision.

Robert E. Dunn, Jr., Esq. on behalf of **Stephen Pruchansky**. Mr. Pruchansky testified against the Petition. Attorney Dunn submitted a legal brief [Exhibit G] consisting of several pages including addendums and photographs. (*I do not find it is necessary to provide a protracted review as the exhibit was provided to the Petitioner spokesperson. The following is not a synopsis of the raised issues, but a brief example of the concerns for consideration.*) Steven Pruchansky owns two properties on Cow Island. Counsel proffers that the establishment of a NWZ will be manifestly contrary to the public interest. He cites the standard for review concerning such a petition is RSA 270: 12,1, and mandates that no rules restricting operation can be adopted unless, after notice and hearing, it is evident that the "public interest *requires*" the adoption of such rules. Attorney Dunn continued saying that burden cannot be met here. Indeed, the public interest requires that no rule be adopted. Counsel argues the evidence shows that the existing navigation system within the Barbers Pole provides an extremely high level of safety. In the past nine years, there have only been nine calls for service of any sort in the Barbers Pole; in four of those years, there were no calls at all. The establishment of a NWZ in the Barbers Pole, therefore, cannot improve the existing level of public safety. A change in the existing situation would at best produce no improvement, and actually would be likely to be detrimental from a safety perspective. Another one of the paramount reasons why the creation of a NWZ would be contrary to the public interest is the resulting diminution of recreational values in the Barbers Pole and the entire northern end of Lake Winnepesaukee. The establishment of a NWZ also is likely to cause a reduction in the real estate values of properties in the Barbers Pole. A NWZ also seems calculated to diminish the scenic value of the Barbers Pole. Under the existing navigation system, boats can proceed through the Barbers Pole without having to slow to headway speed. If a NWZ is established, this presumably will result in a smaller number of boats being able to proceed through the Barbers Pole at peak times, with a resulting increase in the line of vessels which are moving through the area or waiting to proceed. The establishment of a NWZ in the Barbers Pole would be contrary to the public interest. All of the regulatory criteria argue against it and there is no persuasive reason why the long-standing system of free navigation through the Barbers Pole between the northern and southern portions of the Lake should be restricted.

Mr. Pruchansky also testified against the petition, his letter included within Counsel's exhibit. He believes the NWZ will affect and restrict his right of access to his home and property as well as creating unnecessary boat traffic and waves that would affect the safety of swimmers and cause erosion to his property. Boats would be required to accelerate at the end of the zone, causing large waves to wash ashore endangering swimmers and eroding the shoreline. As a safety

issue he said as a boat speeds up from the end of a NWZ, the bow rises blocking the driver's visibility until the boat is 'on plane'.

He said there are two camps, Northwoods and Pleasant Valley, at the north end of the passage whose campers enjoy water sports and swimming, and he is concerned about their safety as the waves created by boats accelerating and decelerating are much larger than boats moving at cruising speed. The NWZ would restrict access to the northeast quadrant of the lake forcing boaters to possibly select alternate routes either through a narrow passage at the north end of Little Bear Island or through an even narrower passage through Hole-in-the-Wall. This would also create much more boat traffic around Ragged Island, a nature and loon sanctuary, and it would greatly reduce the variety of uses available to the public as well as having a negative economic impact on the businesses in that area of the lake. The petition is signed by twenty-five people which reflects a minority compared to the approximately 40,000 recreational boaters on the lake, many of whom own property in towns such as Alton, Meredith, Center Harbor, Moultonborough, Guilford, Wolfeboro, Laconia, as well as Tuftonboro.

John Harrington testified stating that he is against the Petition.

Bill Burke testified against the Petition showing a tax map saying that he took the scale of the map and checked the distances spoken of within the Barbers Pole and agrees with the previous speakers' measurements. His family, including nine grandchildren, is enjoying the water in the same way his children have done including swimming, tubing and canoeing over the last thirty-four years and there has never been a safety issue. He also said the renters of properties on the island from Ms. Boris and her brothers enjoying similar activities returning year after year never saying they have had a problem.

James Hopgood testified against the Petition speaking to general safety as a prior Marine Patrol Officer. He said there is a safety issue on Lake Winnepesaukee, but Barbers Pole is safer than other parts of the lake.

Dave Robinson testified against the Petition saying if there was a NWZ people will be forced to travel into 'The Broads' of the lake, but many times there are three and four foot 'rollers'. He said that presently there are rollers in the Broads that are one or two feet high. He also spoke on the subject of erosion from wakes caused from speeding up or slowing down, but also from storm action which is more damaging than is caused by boat action.

Barbara Jones testified against the Petition testifying that she swims close to shore. A NWZ within Barbers Pole will displace the boats to another area such as Hole-in the-Wall and between Little Bear and Long Island which is narrower than Barbers Pole with more "crisscross" traffic going through a number of markers. The whole lake should be a safe zone. The recently imposed speed limit should be monitored, saying there was no problem before the speed limitation and it should be watched ongoing.

Ed Eagan testified against the Petition. His property is located on the shoreline near the middle of the channel. He and his family have come to this property for thirty-seven years; he reports that he has never observed one single accident in that period of time. He said if Marine Patrol has not seen a reason in the many years enforcing the safety of the lake to place buoy markers or a speed restriction then he can see no reason to do so.

Artie Lang testified against the Petition. He is the Executive Director of the Northwoods, Pleasant Valley and Sandy Island Y.M.C.A. Camps. His concern is if the NWZ occurs, it will end near the location of the camps. The camps serve about four hundred and twenty-five people every day all summer long as they swim, canoe, kayak, and windsurf. He is concerned about the boats speeding up and slowing down and the traffic pushed down the lake to where the children aged eight through sixteen are doing activities; this will increase the danger to the children.

M. Dave Farley testified against the Petition. He totally understands the safety concerns brought up all over the lake and supports people going slower through narrow passages, but a NWZ will not help. His commercial barge travels the area from ice out to October. He said the lake is quiet during the weekdays. Mr. Farley is located near the Hole-in-the-Wall within an existing NWZ, noting that people have driven through that area at night driving at full and half-throttle, driving too close to fishing boats. It needs to be enforced as much as possible and increase fines. He also suggested placing red and white course direction buoys to assist with traffic direction control, similar to those found on the ocean. From a business point, the travel through will cost time and by slowing down, speeding up and stopping will cost more for fuel than presently. He has seen boating activity that perhaps should be curtailed and the Marine Patrol should monitor the described activities.

SYNOPSIS OF EXHIBITS; LETTERS; E-MAIL SUBMITTED:

(Documents received prior to or within the lawful timeframe after the public hearing. Specifics such as salutations, non-related remarks, home or email addresses have been removed from these documents as they will be posted on a website. All commentary has been cataloged and recorded including any noted exhibits. The information received is listed alphabetically by last name.)

John Liptak at the point when sending in his email commentary, states he is unclear as to the need for a NWZ. His concern is that implementation of a NWZ in this area will unnecessarily inconvenience the many resident boaters and transients who frequent this highly necessary thoroughway. He will support some form of remedial action should public records show a troubled safety history at this location; however, having boated in this general vicinity for over forty years, he is unaware of this being the case. He requests that prior to considering changes to the existing navigation rules, the safety record of the Barbers Pole area be studied to determine if a need for reform is warranted. If a clear history of public safety issues cannot be identified, then he opposes the implementation of a NWZ. This proposal is not insignificant in its ramifications and, if implemented, will have a significant impact on the Lake's boating community from this point forward.

SUPPORTING THE PETITION:

Abby Adams asked that an online video be viewed showing traffic congestion and reminding that the prior decision discussed safety concerns. She stated that it is nearly impossible to tie her boat to her dock due to wakes and erosion to her property has intensified. A majority of Barbers Pole residents surrounding the channel support the NWZ.

Nancy Ahern said "the safer we can make the lake, the better off we all are."

Bill Bertholdt wants to be sure that when considering the testimony of the first speaker who stated that canoeists and kayakers should enter the waters in the Barbers Pole area at their own risk is contrary to the law found within RSA 270. Also, if the narrowest width of the channel is 390 feet there is not enough room for two boats to travel at more than headway speed whether going the same or different directions. He also said Mr. Duclos informed the people at the hearing that this is a new hearing, however there have been no essential changes. Due to budget restrictions this year the only safe and sensible resolution is to approve the petition requested. He also believes the signature question has been properly addressed.

Anne Blodgett said the lake is for everyone, not just those who choose to speed around and endanger others. She also said the NWZ will allow people to enjoy their property and the water along their shore, rather than those selfish boaters who are destroying the lake for the purpose of speeding thrill rides.

Nancy Brown said the safety and erosion concerns which gave rise to last year's ruling are still urgent. She has witnessed the increase in number, size, power, and wakes of boats

zooming through the passage between her residence and the islands along with the undercutting of the concrete abutment which supports her wooden dock. She has seen other NWZs effectiveness in Chesapeake Bay near the mouth of the Patuxent River; Barbers Pole needs the same type of protection.

Christy Clark has seen traffic through Barbers Pole increase over the years. Boats are going too fast and the area is too congested and heavily populated to allow the present speeds through the channel.

Warren Clark states the Barbers Pole area is a relatively narrow channel and it is also a very busy waterway which means that there will frequently be boats passing relatively close to each other. Headway speed is a good law and he strongly supports it. He observes that boats often slow down, but not all the way to "headway speed" and rather often slow to ten or twelve miles per hour, with ten being the speed that provides the largest possible wake which erodes the shoreline, disturbs people living along the side of the channel, dunks swimmers, damages docks, boats and other property and most importantly can lead to very unsafe situations for other boaters. He has slowed to headway speed approaching another boat only to have his small boat nearly swamped which slowed only to "maximum wake speed". The one thing that boaters on Lake Winnepesaukee seem to really follow is NWZs. Perhaps it is because it is one rule that the Marine Patrol can enforce from a distance.

Al Gerrish is in support of limiting boat speeds because Barbers Pole is a narrow passageway.

R. Brian Hennessey registers his objection to the signature process at the July 30 public hearing as follows: "I want to register my objection to the signature process at the No Wake Zone hearing in Tuftonboro on July 30. As per my testimony, at least one person was seen signing two names on the petition as being against the NWZ. Mrs. Light from Little Birch Island witnessed this and spoke to Mr. Duclos telling him what happened. Mrs. Light confronted the double signer and was told to mind her own business. She replied this is my business. During my testimony I pointed out to Mr. Duclos as well that this had occurred; I feel this is especially ironic given that signatures on the original petitions have been challenged twice. As far as I can see nothing was done by Mr. Duclos to correct this and nothing was done to verify that all signers were indeed present. I am very skeptical of the numbers regarding who signed in as for and against on July 30. I suspect the balance of those for and against the NWZ are skewed and that there may have been others signing in more than once with different names. This could form the basis of an appeal should the NWZ be denied. I was also uncomfortable that Mr. John Harrington, vice president of SBONH, the group that opposes speed limits, parked himself right up front next to the signature table."

Robert Hennessey (*unsure if this person is or is not the same person as above*) said that this measure was approved last year with the admission of the Department of Safety determining that there were safety and erosion issues. With the submission of over thirty signatures this year, the technical reason it did not become law is corrected.

Mary Hutchins stated that the only reason the State did not allow the NWZ previously was due to questionable signatures. Her issues are: the narrowness of the channel to have boats, swimmers, loon chicks and the resulting erosion of the shorefront because of wakes coming from both directions. The multiplying affects are all the same as when the State first created the NWZ.

David Light believes that safety and erosion concerns mandate a reduced speed limit for Barbers Pole, putting his own desire for fun and ease of 'flat-water' access for waterskiing below his sense of responsibility for the safety of himself, his family, and others, including the need to protect the local shoreline. He reports in the past fifteen years shoreline erosion of his family's property has dramatically accelerated in direct proportion to the increase in size and speed of boats. Crossing the Pole in a canoe or small motorboat is something he avoids and encourages

his family members not to do either. His property has experienced the loss of trees and island square footage due to oversized wakes.

Thomas Light writes as a Trustee of The Little Birch Island Trust and also as an owner. He states the northerly (cove) side of Little Birch Island has been protected from wind-induced wave action since the last ice age by the proximity of the easterly shore. With the advent of power boats in the late 1800's and early 1900's the boats were primarily of the cutter design (long and sleek with a knife edge bow) which did not give rise to any significant wake. With the availability of almost unlimited power combined with new hull designs for 'plow to plane' type boats, this has led to wave action coming into the cove between Squirrel Island and Little Birch Island far beyond anything he has observed in the early years on Little Birch (up to 75 years ago). The resulting erosion of the cove side has gotten significantly [worse] over the years leading to trees falling over into the water. Peace and tranquility have been increasingly diminished by the noise of high-speed, high-powered boats using the Barbers Pole channel as a "super highway", making the use of rowboats, small outboard boats, canoes, kayaks, and small sailboats increasingly risky.

(A second email submitted post hearing was received seeking to rebut public comment received on July 20, 2011.)

Mr. Light reports that the front of the island is too rocky and has too much natural wave action from prevailing winds for toddlers and young children to access and swim. The cove side is both too shallow and mucky or is filled with natural plant growth such as pond lilies which he does not wish to disturb. Over fifty years ago he located a partially sandy bottom area on the Barbers Pole side and developed a small beach area. He disagrees with the presumption that there are no boats creating wake within the 150' zone, noting that a significant number of boats are too close anyway, especially those turning into Orchard Cove. The back side (cove side) of the island is in a natural forest situation; the trees die, but remain standing for many years. A tree that falls over while still green, with some root still intact and not blown down, has been felled by erosion.

Elizabeth O'Rourke has summered on the lake for the past fifty-nine years, reporting the lake traffic has increased greatly during the last decade noting the boats are bigger and faster. Her family enjoys canoeing, swimming and kayaking, and it is a safety issue when boats speed by.

Tyler Phillips states aside from Barbers Pole near Buoy #17 being shallow, the channel runs very close to the eastern shores of Little Birch and Squirrel Islands, which have been long-time nesting habitats for native birds and elusive fish, as well as the eastern shore of Guernsey (Cow) Island. His camp is located directly across from the channel on the mainland of Tuftonboro Neck and is from where he has made his observations and conclusions: 1.) Boating folks do not slow down entering or exiting the Barbers Pole at Buoy 17, maintaining the same speeds as they go through this 'eye of the needle'. This is clearly dangerous by any measure. 2.) The passage of two crafts from opposing directions at open-water-speed through Barbers Pole sets up significant waves, enough to impact his shoreline a quarter-mile away on the west-facing shore of Tuftonboro Neck. 3.) Safety aside, there is significant wave erosive action caused by both the sheer volume of traffic through the channel and the speed with which that traffic travels. 4.) As a boater himself, a NWZ sends out important 'signals' to all craft. The signals are "Slow down, give way, observe distances" and respectfully suggests that such a zone would accomplish this same result as it does at other locations on the lake with minimum hold-up and much safer passage.

Mark and Nancy Watson attended the July 30th hearing saying they strongly believe boat traffic in this area must be slowed to assure the safety of residents along the channel, as well as those passing through. They state that the traffic flow through Barbers Pole can be compared to that of an hourglass, with several boats vying for a narrowed space to slip through. It is nearly impossible on a busy day to maintain the required distance from other boats for safe passage. They asked the fact-finder to view a video located on a website.

The Watsons say it may be unpopular for some, to place limits on all boating enthusiasts, but it is necessary to do what is best for the safety of the majority. The public must be protected. It has been argued there is only a problem at high-traffic times, but there are numerous no wake

zones throughout the lake that exist similarly, noting that boaters obey the limits in these zones. It is costing them nothing but a fraction of time for the return of a multitude of safety.

The existence of wildlife inhabiting the lake must be preserved. Recent sightings of a loon chick have been reported in the channel. The average boater will likely not identify the young as a loon, due to its subtle coloring, which also makes it difficult to see and easier to strike.

OPPOSING THE PETITION:

John and Kenneth Adriance (*this email comment was written in the first person*) stating the writer has boated on the lake since the writer was twelve years old and there has never been a problem in the area of Barbers Pole. Of the thirty property owners that the Petition, if passed will affect, twenty-three are opposed to making this area a NWZ. If there was a problem, the writer is sure the Marine Patrol would make its presence known. The writer ended pleading to not add any regulations that don't make any sense and where the 'immediate people involved' have no issues with [it] (the current status). The writer believes that decisions should be made based on the majority of the people concerned; asking why punish the majority at the whim of the few.

Paul and Jill Amer are opposed to the NWZ

Jon Barton said current regulations provide that the operator of a vessel is responsible for any damage from the boat wake. According to the marine patrol there are no particular safety issues or concerns with this area of the lake. There is no need for any change in the present policy and doing so will cause a hardship to commercial and personal boat operators by increasing the travel time necessary to access 'the broads', points south, or picking up and discharging passengers at Nineteen Mile Bay. This is not a safety issue it is a matter of a small number of landowners attempting to impose their will on the people of New Hampshire and the boating community.

Joel Beinvenu wrote the Barbers Pole area between the Tuftonboro mainland and Cow Island is not a hazardous area and should not be made a NWZ. This area is wide enough for several boats to pass through, and in the thirty years as a resident of Cow Island, he has never been aware that this may have safety implications.

Cheryl Bogardus objects to any change in speed regulation in the area east of Cow Island. For every action, there will be an equal and opposite reaction. In other words, creating a no wake area there will only increase high speed boat traffic in other areas including in front of the entire north side of Little Bear Island where my property is located. Already the traffic is congested in this area of the lake and if you make this change, it will become dangerous for the many small sailboats and MANY kayakers that are in this area. Boaters will zoom around through the narrow passage between Little Bear and Long Island to avoid a NWZ.

Mike Burke has lived at the Barbers Pole thirty-four years, never encountering a dangerous situation. His family does a substantial amount of swimming, kayaking, canoeing and tubing in the Barbers Pole area throughout the summer. He argues the survey map from the town of Tuftonboro does not support the need for a NWZ. The vast majority of people residing in the Barbers Pole area (and who will be directly affected by this proposal) are opposed. He believes that if a NWZ is established in such a vast area as the Barbers Pole, it is likely to become an area where boaters will "raft". Rafting is when several boats tie-up to each other and anchor, obstructing an area of passage. Rafting has become a problem in various areas of the lake due to the obstruction (*of rafting*), partying, etc. It appears that, based on many of the comments made by the petitioners, they wish to create their own private portion of the lake for their particular use. For example, in the petition filed last year, one petitioner claimed that he can't kayak in the area of the Barbers Pole. Mr. Burke says he frequently kayaks in the area of the Barbers Pole from early morning to dusk and has never had any issues with boats passing by.

William Burke has owned property on the lake in the Barbers Pole area since 1977. His family spent each summer fulltime there; his children water-skied, kayaked, canoed and swam. He said, now our children's children are doing the same with absolutely no concern on our part or their parents of any safety concerns.

Ted Carl stated that the area in question is easily wide enough for boats to navigate in both directions outside the safe passage limit, and the areas traveled by boats are far enough off shore that no waves of consequence reach shore. If we set a precedent of establishing a NWZ in an area like this, we could conceivably have NWZs around many more of our 274 islands and passage points. The 150 foot no-wake regulations already established offer all the rules we need on the lake in areas like the one being considered.
Thank you,

Diane Caruso said she is a long-time user of the area waterway saying the petition wants to impose yet another NWZ on passages to the Moultonborough Neck area of the lake. This makes sense at the Hole-in-the-Wall or Long Island Bridge, but at the Barbers Pole there is plenty of room for boaters to pass safely and not bother landowners. She asks if this petition is going to come up every year until the boaters and landowners tire of fighting it. Is there no limit to how often they can ask?

Thomas Caruso is a New Hampshire resident who uses the lake for recreational and relaxation purposes, enjoying the lake year-round, but especially the Fall when the lake is surrounded by the autumn colors. He said the proposed petition would impose an unnecessary restriction to boaters that all too often do not have a voice in lake matters. The impact would be negative to boaters trying to reach the Moultonborough Neck area of the lake. Currently it can be reached by going under the Long Island Bridge, a NWZ, through the Hole-in-the-Wall, a NWZ, or around Bear and Cow Islands. The most navigable area is between Cow and the mainland. Turning this area into a NWZ will create another bottleneck. The area is wide enough to allow safe passage of two boats without violation of boating laws. Establishment of this zone will benefit a very small group of lake users at the expense of hundreds of others.

Richard Casele submits information saying if allowed this ruling will affect hundreds of people who have property in the vicinity of the NWZ, as well as others who travel through that area. In addition, this decision will have significant impact on the boat traffic through other areas that provide access to the eastern side of the lake, specifically the area between Little Bear Island and Long Island near flashing light # 10. Lake Winnepesaukee is a public lake, which belongs to the citizens of the State of NH. There are enough current rules and laws on the books that can be enforced, should the Marine Patrol determine that this is an area that needs more/better enforcement. The taking of the public's rights to move about freely on the lake (without being burdened by unnecessary NWZs at every turn) should not be influenced by a few elitists who want to turn back the hands of time and create an environment that existed fifty years ago. One would tend to think that the decision in favor of this NWZ would offer only benefits and no repercussions. If the NWZ is granted, the repercussions in the area of the NWZ and also in other areas will be substantial. For example: a) Boats traveling through the NWZ will have to slow down and speed up at either end of the zone. It's obvious that the boat wakes are biggest during the slow-down and speed-up phases. Therefore, the property owners at either end of the NWZs will now be impacted with substantially larger boat wakes than they currently experience. In addition to causing substantial property erosion, these larger wakes can and will cause damage to boats and docks, and will be a significant safety hazard to children (and possibly adults) and pets who are in the water. Another repercussion of this NWZ will be the substantial redirection of boat traffic to and from the eastern side of the lake. Currently, the only two paths which are not burdened by a NWZ are the Barbers Pole and the previously mentioned passage between Little Bear and Long Islands, between Flashing Lights 10 & 58. If the NWZ at Barbers Pole is upheld, then the only pathway to/from the eastern part of the lake will be between this Little Bear/Long Island passage. The magnitude of boat traffic that will choose to take the Little Bear/Long Island passage will be astronomical. This is not fair to the residents and taxpayers of that area. In addition to increased

traffic, this will cause substantial 'boat wake' erosion and provide an even greater safety hazard than currently exists. Why should the petition of a few (including one that complained in the past about not being able to "swim across the Barbers Pole Channel"), impact so many others? A NWZ will cause tremendous impact and hardship to the marine contractors who travel through this area. Considerable barge time charges will be passed on to the people who hire these contractors in the vicinity of the Barbers Pole. Taxes and expenses for shorefront owners (mainland and island) are already too high – we cannot absorb these higher barge costs if we need shorefront work performed.

Michael Chandonnet is a frequent boater on the lake and visitor of the area and has never had any issue with speeds of boats. Marine patrol hasn't had any issue with speeds of boats in this area either. There is ample room for boats traveling in opposite directions to do so 'on plane' while adhering to the 150' rule. It would seem a very select few wish to curtail everybody's use of that area to suit their desires. It is his understanding that over 75% of the effected land owners do not want this legislation to go through. The idea of this massive piece of lake being a "NWZ" does not pass the goofy test. It is not needed. It is not wanted.

Cory Clark began by saying he has worked at Sandy Island YMCA Camp for five years and driven boats for them for two years. His family has a dock in the Barbers Pole on the mainland adjacent to the Northwoods/Pleasant Valley camps and drive boats through Barbers Pole at least ten times a day and reports he has never had a problem driving through. Sandy Island has 'change-over day' on Saturdays where camp staff pick up/drop off campers on the mainland dock in the Barbers Pole and use the passage to go to/from Sandy Island, saying he has never had a safety issue at peak traffic time on a Saturday. He is opposed to the Petition because of the significant time that it would add to the commute to Wolfeboro or to friends in Orchard Cove. Mr. Clark estimates it will take an extra seven and one-half minutes to drive through at a no wake speed.

Olivia Clark states that she has lived on Cow Island for years and has been operating motorboats for ten of those years. She said working on Sandy Island for two summers also has made this issue, or non-issue, apparent to her adding that commuting to and from work through the Barbers Pole on weekends and weekdays has never been an issue. Ms. Clark has never encountered any problem that would lead her to believe that a NWZ is necessary in the Barbers Pole.

Stephen Clark submitted public comment in June, prior to the hearing being scheduled. A second commentary was received after the hearing. Mr. Clark has owned property on Cow Island, very close to the area in question, for twenty-three years, spending forty-seven summers in Tufonboro and actively boating for more than forty years. He presented the following for consideration:

- Upon examination of the petition submitted to your office, and from information from previous hearings, it is readily evident that at least half of the 32 petitioners are related and share interests in multiple properties within the area in question.
- Thirty properties are located in the proposed zone and based on the petition signatures and my association with those in opposition, I have determined that 23 of the 30 properties affected are opposed to this zone. Over 75% of the landowners do not want this restriction.
- At headway speed, it will take approximately 8 minutes to travel its length. This would add over 15 minutes to a boat trip from much of Cow Island to the mainland for groceries, supplies or to pick up guests. This would significantly increase the travel time for many islanders who rely on mainland access in a timely manner.
- The proposed zone will affect boating on over 25% of the lake as it is the most practical travel route for those boaters in the north-east quadrant of the lake traveling to the southerly destinations such as Wolfeboro and Alton Bay.
- The establishment of this zone would negatively affect our neighbors on Little Bear and Long Island as boating traffic would likely increase in areas that are far more restrictive than the area in question.

- This proposed ruling carries an economic impact as well. Commercial operators and marine trade people regularly travel this route and will be forced to increase their rates to account for the additional travel time incurred.
- Several YMCA summer camps including one on Sandy Island operate from a mainland access dock immediately adjacent to the proposed zone and make countless daily trips through this area. This proposal would have a major impact on their operations.

Mr. Clark's second statement provided a map which he argues clearly defines the length of the proposed NWZ and shows how the calculated time to pass through the channel was derived; in addition clearly showing that the testimony of Thomas Hilbink was incorrect when he stated that it would only take three minutes to pass through the proposed zone. Mr. Clark stated that if Mr. Hilbink travels that distance in three minutes, he would be traveling almost eight miles per hour which would be a violation.

Mr. Clark writes that multiple previous attempts at this action have been unsuccessful. In the decisions handed down as a result of previous hearings it was stated by Marine Patrol that the proposed zone is unnecessary and that the enforcement of current laws is an adequate solution to any perceived problems. Speaking with Director Barrett of Marine Patrol late last fall, Mr. Clark was informed that there were no safety issues, increased calls for service, or accident data that would indicate that this is a necessary action.

Mr. Clark closed by saying this restriction will affect the majority of the boating public only to accommodate a very small group of self-centered landowners. The waterways of this State belong to the people of the State and should not be manipulated by a small group with a private agenda.

Lon Cohan is a Little Bear Island property owner and opposed to the proposed no-wake zone for reasons including: 1) The area in question is not restricted enough to warrant a NWZ. 2) Enforcement of existing boat operation regulations by the Marine patrol (i.e. headway speed when passing within 150 ft of another boat, reckless operation, etc.) will solve most issues that people have. 3) A NWZ where proposed will drive traffic to the northwest corner of Little Bear Island & Long Island, a more restricted area, and there will be a push to establish a NWZ there. This will effectively restrict traffic between the north & south ends of the lake.

Douglas and Nancy Deporter state the NWZ would severely impact the traffic flow from the south side of the lake to the north, leaving only Point Sarah on Little Bear Island as a no-wake option. Since Point Sarah is a smaller channel than the Barbers Pole area with limited visibility around the corner this would cause many more issues with traffic.

As property owners on the north side of the Hole-in-the-Wall, just outside of the NWZ on Little Bear Island, the Deporters report that they suffer erosion of their shoreline every time a large boat slows down or speeds up for the zone and would not like to have this be further mitigated by an increase of traffic through the Hole-in-the-Wall due to the longer proposed no-wake channel which is offered by the Barbers Pole. On July 15, 2011 the Deporters filed a incident complaint, which will be investigated by a Marine Patrol Supervisor, but is not related in detail herein. They feel this was done to create "numbers" to present at the hearing and this one should most definitely not be taken in account as it could be considered entrapment.

Lastly they have traveled through the Barbers Pole area for many years and have never observed an issue with traffic as long as boaters used courtesy and abided by the current boating laws. This proposed NWZ will create larger problems for more shoreline owners than the damage that may or may not be occurring on some busy weekends on the wider channel area of the Barbers Pole. There are seven property owners who feel there is an issue with traffic, hoping that these other issues are weighed into the decision factor and the correct decision is made and not based upon politics. We are sure the property owners would not like to see the number of people who, upon slowing down for the no-wake area, decide that this is a good spot to relieve their bladders as we see every weekend in front of our property.

Tim Dunleavy, Marine Patrol Lieutenant

I offer the following as it pertains to the petition requesting a NWZ in the area of the Barbers Pole on Lake Winnepesaukee. This area has been a concern for some members of the Winnepesaukee boating community for many years. The record shows that similar petitions have been denied in 1988 and 1997. A common thread in those decisions indicates that the petitioner's primary concerns were violations of RSA 270-D: 2, "Safe Passage". In fact, both decisions identified that compliance with this existing law would eliminate the need for the NWZ.

As a result, Marine Patrol conducted directed patrols in response to the concerns raised at all of the hearings including the 2010 season in response to the petition that was deemed improper. Marine Patrol activity records for the area of the Barbers Pole, from Fox Point running southerly to Pick Point, were examined. The analysis focused on the 1998-2000 boating seasons (when the last legal petition was denied by then Commissioner Flynn and "directed" patrols were increased) and the 2009-present boating seasons. Data examined included:

1. Warnings and summons issued by Marine Patrol Officers during the 2009-2011 boating seasons
2. Warnings and summons issued by Marine Patrol Officers during the 1998-2000 boating seasons
3. Accident Statistics for the 2009-2011 seasons
4. Accident Statistics for the 1998-2000 seasons

To briefly summarize the results, there was a decline in the number of safe passage violations/warnings issued by the Marine Patrol of approximately 75% from the 1998-2000 to 2009-2011 seasons (see attached graph). Only one accident was reported for this area in 2009. A canoe with two persons aboard capsized in rough water /weather and no other vessel or wake was involved (see attached table). Zero calls for service have been received for this area specific to moving violations since October, 2009 (see attached CFS report). Calls for service data were not available prior to October 2009 due to software change.

On Saturday, July 16, 2011 and again on Wednesday, July 20, 2011, Marine Patrol conducted a traffic survey from 1300-1700 hours. This survey included a boat count, types of violations observed, and numbers of violations. Also noted were weather and water conditions. Both a weekend and mid-week day were chosen in order to capture the obvious differences between the expected boating densities on the lake. Officers observed the area (identified in the petition) from an unmarked boat during peak boating hours. For Saturday an average of one violation occurred for every 24 boats passing through the area and one for every 87 boats on a weekday, the 20th. Recognizing that the sampling only consisted of two days, they were perfect days for all types of water activities (a more detailed hourly summary is attached for each day).

Lastly, a couple of issues that are often overlooked by petitioners are the environmental changes that arise with the creation of a NWZ. Shoreline erosion, damaged waterfowl nests and noise pollution will likely increase immediately adjacent to the zone's boundaries. NWZs create two concentrated areas of large wakes and the presence of constantly accelerating/decelerating boats. The wakes of slowing/accelerating boats are much larger than those of boats traveling on plane. These wakes often increase erosion and disrupt/destroy nesting areas of waterfowl during the brooding season. The accelerating/decelerating of boats also causes engine noise to increase during the transition from headway to 'plane speed' and vice-versa. This is caused by the increase/decrease of the engines RPM vs. the water flow through the boat's exhaust. Again, these issues will be noticed most at the zone's boundaries.

Statistical data continues to show that the overwhelming majority of the violations being committed in the area of the Barbers Pole remain unsafe passage. In fact, our recent data shows a decline in these violations and no report of violations from the public for almost two years. Considering all of the above, the Marine Patrol does not recommend the establishment of a NWZ in the area of the Barbers Pole.

Curtis and Jane Elliot are current residents of Cow Island. According to their rough calculations, at its narrowest point, the distance of the water that separates Cow Island, Squirrel Island and Little Birch Island from the mainland is approximately 900 feet. If two boats were to pass one another, going in opposite directions, following the 150 foot rule (150 feet from shore on each side plus 150 feet separating the two passing vessels) there would need to be 450 feet. This area allows for double that amount of space, over 300 feet from each shore plus 300 feet between the two passing vessels. The Elliot's believe that 900 feet is more than ample distance for boat

traffic to pass saying the State has determined that a buffer of 150 feet is ample space to avoid shoreline erosion as well as allow for safe boat passage, so if the 150 foot rule is not an issue, then they see no need to allow such a request. There are many lakefront property owners who would wish to have a NWZ in front of their homes and feel that if this current request were implemented that the flood gates would be open to allow such a request from many other lakefront property owners.

Lucille and Bob Evans state that they reside on the north side of Little Bear Island which is already plagued with wakes from large boats that pass by. They believe that the proposed change will cause even more damaging traffic to be diverted to their area and ended by reporting that the wake from these large boats causes damage to their waterfront and docks.

Dave Faneuf states that the proposal was initiated primarily by only two families that have property in the area and it would come at the expense of thousands of boaters who use that area of the lake every summer. The Barbers Pole is wide enough to accommodate boats without violation of the Safe Passage Law and in the event that a boat traveling through the area does come within 150 feet of the shore or another vessel the Safe Passage Law already mandates a reduction in speed to No Wake/Headway. This proposal has been rejected by your office on several different occasions in the past and I do not see any changes in boat traffic that would necessitate its passage on this occasion.

Jeffrey Foote has owned property on Whortelberry Island for the past twenty-eight years, looking directly at the Barbers Pole from his cottage and travels this area often. He said the problem is not with boat speed in this area; the problem is that people do not follow the rules of safe boating. A better solution to a NWZ would be to better enforce the marine safety rules in this area. Mr. Foote said that we do not need more restrictions, what we need are people who visit our State to live by our rules, the boater safety rule being one of them.

Cindy Goodwin owns property on Cow Island across from the Barbers Pole where the little peninsula is jetting out into the lake. If the NWZ were to be implemented, the increased erosion created from slow moving large crafts would be detrimental to the shoreline and is strongly against a NWZ in this area.

Owan Gwyn submits commentary as a concerned property owner located directly adjacent to the Barbers Pole. He owns two parcels of property next to the Barbers Pole representing a combined tax value in excess of \$800,000 and strongly opposes the establishment of a NWZ. He said the establishment of a NWZ will have a negative impact on property values, reduce the pleasure of the boating public and add an untimely and unwarranted burden to the responsibilities of our Marine Patrol. Year after year, the petitioner files for the establishment of a NWZ and year after year his plea is rejected because the majority of the property owners and the boating community realize the negative impact this would create.

Gareth Gwyn submits his commentary saying the majority of lake boaters utilize this channel for many various transportation routes. This Petition would clog the area, allow for slower transport and hinder the usage of the majority in light of just a few people. The lake already has many no-wake areas in which one can find serene waters for preferred boating. This channel, however, is vital for quick access and it would present a safety hazard to block it up with a NWZ.

He is a concerned homeowner on Cow Island located immediately adjacent to the Barbers Pole. Mr. Gwyn says that he would be saddened should a NWZ be placed at Barbers Pole as he believes it would not only ruin the effectiveness of the channel, but also set the wrong precedent for future situations. By allowing Barbers Pole to exist as it is would demonstrate the proper representation of safety, effectiveness and show the support of a larger community simultaneously.

It is Mr. Gwyn's opinion that if the petition is approved, a NWZ would: negatively impact property values; create more erosion to the shoreline as every boat would drop down from cruising speed plane, and send a larger amount of surging water to each shore; send additional and unnecessary boat traffic to the outlet between Little Bear and Long Island as boaters always avoid

NWZs; increase commuting time for boaters using the Barbers Pole. The Barbers Pole has been a preferred boater's route for over two hundred years, during which time no exceptional boating danger has existed. The petitioner's reasons are completely "personal" in nature and do not reflect the desires of the majority of the boating community. Many smaller lakes surround the Lakes Region and offer alternatives for those seeking a Non-Motoring Boat Experience; and, if passed, Marine Patrol would then be required to "police & patrol", which would add a unnecessary expense to the NH Department of Safety.

Jeffrey Hamlin states that the proposed zone will directly affect boating on the lake in a major travel route for boaters in the northeast quadrant of the lake traveling to the south. If the petition was to be approved, boat traffic will increase substantially at the very narrow channel between Long Island and Sarah's Point on the northwest side of Little Bear Island.

Roland Harris provided commentary stating as a boat owner/operator on Lake Winnepesaukee, he is opposed to enforcing a NWZ when boating rules already exist that clearly define when headway speed is required. In this case, it appears that a few individuals are trying to make an exception to the rules and impose a burden of use on the vast majority of boaters on the lake. The imposition of NWZs (beyond the current boating rules) should be limited to cases whereby boating safety is an issue, which doesn't seem to be the issue with the Barbers Pole.

Frederick Hayes adds his name to those who oppose the imposition of a NWZ in the area of the Barbers Pole in Lake Winnepesaukee. He states this speed limit is completely unwarranted and unnecessary. In his forty plus years as a weekender and now summer resident cannot recall any emergency or safety issues in this area. The persons requesting this action have an agenda based on faulty information. Granted that this is a busy channel, especially on Saturdays and Sundays, but causing huge backups of boats will not serve to help. This restriction will affect the majority of the boating public only to accommodate a very small group of landowners. The waters of the State do belong to the public and their use should not be manipulated by a small group with their private agenda.

Mark Hayes is a forty-plus year summer resident, first of Cow Island in the area behind Little Birch Island where his parents still own property and for the past eleven years his property on Little Bear Island. He joins a number of fellow Tuftonboro islanders in being emphatically against imposing a NWZ in the area of the Barbers Pole. Many others have already put forward thoughtful and solid arguments against such an action: the interests of a few related individuals imposing their will on all other users of the Lake, the lack of any statistical data of any accidents in the area, the expected increase in traffic between Little Bear Island and Long Island and so on.

Mr. Hayes asks if the main group of pro NWZ petitioners is so concerned about safety in navigating the area, why does the petitioner group insist on doing so in small boats that can be easily overloaded. He reports watching on a number of occasions where there have been four and five adults in open aluminum boats of fourteen feet or less crossing between the Tuftonboro mainland and the islands. Those familiar with the area know that the area can often be affected by winds from both the northwest and southwest and two foot or greater waves are not uncommon. Such a zone cannot remove the effects of nature and small boats with limited 'freeboard' have no business crossing open water in such conditions. Mr. Hayes thinks that if safety was the primary concern, the island families who are behind the push for the NWZ would have done the same.

Christopher Hopgood has been boating at the lake for the last twenty-nine years and worked at various marinas around the lake. His family owns a lot near the Barbers Pole and two lots on Cow Island and has extensive boating experience around the whole lake. There are plenty of narrower passages than the Barbers Pole. He uses the Barbers Pole area for water-skiing and tubing for family and friends. In addition, this proposal will create further traffic around the northwest area of Little Bear Island and ultimately lengthen the time it takes to get to his and his parents properties.

James Hopgood has been on the lake on Bixby Shore for forty-five years and knows the weather and boat traffic very well. He owns a lot north of the Barbers Pole and two lots on Cow Island. He was a Department of Safety Officer in 1975 and, as a result, knows nearly every buoy on the lake. There are many narrower passages than that in question and his family's area of choice for water-skiing is Barbers Pole noting the water is very calm in the morning.

Richard Hopgood has been boating on Lake Winnepesaukee since the late 1950s, and served as a boating safety inspector with the New Hampshire Department of Safety from 1970 to 1975. He owns a piece of property on Cow Island and worked as a counselor at Camp Northwoods, just north of the Barbers Pole, in charge of the sailing and water-skiing programs and intimately familiar with this stretch of water. The rule of "Safe Passage" has been part of the New Hampshire boating rules of the road for as long as he can remember. Since the beginning of the Boating Operators Licensing program and its required testing, there is absolutely no reason for a boat operator to not be familiar with the Safe Passage rule. The rule requires that headway speed be maintained within a distance of 150 feet from other boats, shore, rafts, barges and any other craft. This has successfully governed safe boating on the lake for many years. Slowing down during the few hours a year that might present enough congestion to require it, seems to make much more sense than inconveniencing the entire boating public for an entire season by creating a large and unnecessary full time NWZ.

This area between the Tuftonboro mainland and Cow Island is a main access for Moultonborough Bay, Melvin Village, and the Pier 19 Grocery in 19 Mile Bay. Large craft, cruisers and the "Big Sandy", which carries Sandy Island guests from Camp Northwoods to Sandy Island, have for years respected residents of both the mainland and Cow Island in the area of the Barbers Pole by slowing down to eliminate large wakes. He said we do not need to create a Weirs Channel bottleneck in this area. Furthermore, a NWZ at the Barbers Pole will tend to divert boaters wanting to access the aforementioned areas through passages that are much narrower.

C. Jeff Huberty asks the following points be considered for an appeal:

(In reviewing this email, the message seems to focus on the prior 2010 hearing already ruled upon.)

- Most of the people who signed the petition were from two properties (Squirrel Island and Little Birch Island). These people are not property owners, some are renters and the rest are relatives of the owners. The actual owners only frequent the island in the Fall when most boat traffic is finished for the year, also many of the people on the petition stated that they have been or are renters. RSA 541.3 clearly states all people signing the petition shall be property owners or be a resident of N.H. He does not believe that these people have met that requirement.
- As a resident of Cow Island for 11 years and living in close proximity of the area (500') this NWZ will actually cause more wakes as boats coming off of plane to headway speed will generate a much bigger wave than a typical boat traveling on plane.
- This NWZ will have blocked three out of four ways to exit the Tuftonboro/Moultonborough/Melvin Village bays leaving only the small area known as Sara's Point between Long Island and Little Bear Island as the only way to exit these bays to all destinations on the lake. The Sara's Point area is much smaller than the Barbers Pole area and he feels it won't be long before these same individuals will try to close that area as well which will greatly affect the Harilla Landing Marina and all residents of the bay.
- The four previous attempts to create a NWZ in this area were opposed by Marine Patrol. At this meeting the Marine Patrol Director had no opinion either way. He feels that if the Marine Patrol opposed the Petition in the past three hearings that they should have had an opinion at the 2010 hearing. He also wrote saying "hopefully politics were not involved in their decision". A NWZ could only be detrimental to the people who utilize the passageway on a daily basis to travel to the various marinas and docks for access to and from the islands. The current boating laws i.e. (150' rule) and other laws are sufficient for Marine Patrol to enforce in this area.

Lynda Johnson attended the public hearing regarding the Barbers Pole NWZ, on July 16, 2010 continuing to speak in strong opposition to this particular NWZ. Her email, received prior to the July 30, 2011 hearing, discusses her recollections from that prior hearing and is not relating to the current Petition.

Barbara and/or Gregory Jones submitted three separate email commentaries dated June 4; July 14; and, August 4, 2011.

(Some of the commentary is condensed that looks as if the messages were repetitive or not focusing on the scope of review under the law, otherwise little editing. All of the commentary was fully reviewed in the fact finding progression.)

Ms. Jones parents, and now she owns a camp on Bixby Shore just northwest of Northwoods Camp and know this stretch of water very well. Her present property on the former Camp Idlewild portion of Cow Island causes her to make the trip back to Bixby Shore frequently, and has been doing so for the more than thirty years. That stretch of water is large, far broader and longer than other NWZs, such as exist at the Hole-In-The-Wall between Little Bear Island and Dow, Farm Island and Chase Island, and other much more constricted areas. Never, in all those years of traversing this passage, have the Joneses ever seen any dangerous crowding of boats; saying, there is plenty of room for safe passage. Her understanding is that the Marine Patrol is not in favor of this proposal, as there is no evidence of need for it. This area is so large that her family and many others use it for water-skiing when other areas of the lake are too rough. Waterskiing in other current NWZs is unimaginable. The Barbers Pole stretch is just not a natural NWZ.

Clearly the petitioners, who represent a very small percentage of landowners, wish to restrict the boat traffic in that area. Any owner of waterfront property would like to reduce the amount of boat traffic in front of his property and asking for a speed limit restriction would definitely act as a deterrent to all but the most determined boaters. While this would be a fortunate outcome for seven property owners, it would create an unfortunate and unfair imposition on all boaters, as well as property owners in other areas who would bear the brunt of increased, diverted traffic. It would greatly lengthen the routes for contractors and business people who service the islanders, to the economic detriment of all. Law enforcement costs money. Please do not create a large area that will be difficult to patrol and will divert precious resources from areas of the lake that genuinely do require enforcement for real, not imagined, safety reasons.

On July 14, the Joneses wrote that they have had further thoughts about the huge impact such a restriction would have on a major section of the lake. Creating a lengthy NWZ between Tuftonboro Neck and Cow Island would mean that boaters seeking access to an entire quadrant of the lake, including Moultonborough and Melvin Village Bays, would be forced to endure a long, slow passage through this newly created NWZ; or go through the very small and appropriate NWZ known as the Hole-in-the-Wall between Little Bear and Devens Island; or go under the Long Island Bridge (appropriately a NWZ); or go through the narrow channel between Little Bear and Long Island. The congestion created at any of these four accesses to the northern part of the lake will create far more safety issues than currently exist. This passage between Little Bear and Long Island is narrower than that at the Barbers Pole and takes north-going boat traffic into an already congested east-west path, one with a very narrow channel marked by red and black buoys (heading toward Long Island Bridge.) Dumping north-heading traffic into this already heavily traveled east-west passage would create dangerous and confusing congestion. Furthermore, the basin between Harilla Landing, Little Bear, Ragged and Long Island is used by many wake boarders and water-skiers. Increasing boat traffic in this area will definitely create greater safety concerns for boaters here.

Her understanding is that many of the petitioners own mainland property. For us islanders, boat use is not optional, nor merely recreational, but absolutely necessary for the use of her property. Creating lengthy, time-consuming (and unnecessary) NWZs definitely impacts on the use of our property. All petitioners who own land on a public body of water, just as anyone who buys a house on a road, implicitly agrees to the conditions of the road when buying the property. Attempts to inflict an unnecessary NWZ on all boaters are like trying to take a public road and make it a private way, and should be seen as the obviously self-serving move that it is. If safety concerns are the true motivation behind the petition, then let us see how the relatively newly enacted speed limits help alleviate these concerns. The speed limits should help with safety issues on the entire lake, including the Barbers Pole area under consideration for special treatment.

On August 4 the Joneses submitted the following: For more than two hours on August 30th we heard testimony from landowners and boaters regarding the impact of the proposed NWZ at the Barbers Pole. Speakers were 3-to-1 (15 to 5) against imposition of this restriction, with each

speaker adding some new bit of information regarding the effect of this lengthy restriction to travel on the lake.

The primary speakers in favor of the petition were owners of Birch and Squirrel Islands. Both islands have protected coves in which occupants of these islands dock their boats and can make use of the lake unlike their immediate neighbors, who do not have the luxury of protected coves. Yet these abutters spoke against the petition, arguing that safe use of the lake from their property is definitely possible. The fact that renters of Squirrel Island have a high return rate, returning to the same property year after year, proves that the current situation is not perceived by all as a deterrent to safe use of the property. Petitioners spoke frequently of creating a "Safe Zone", rather than using the language of the current proposal, which is a NWZ. Who can argue that the entire lake should be a "Safe Zone." Imposing a lengthy NWZ on the most-direct north-south route on the lake will not make the lake safer – instead, it will create greater hazards in other areas, specifically the narrower and already congested area between Little Bear and Long Islands (Point Sarah.)

At the opening of the hearing, Curtis Duclos listed areas of concern when you consider a No Wake Petition, including the size of the body of water, and the effect upon the variety of uses. Compare the large expanse of water on either end of the Barbers Pole with that on either end of the Little Bear/Long Island channel. The southern basin includes Harilla Landing, at which two hundred and four boaters store their boats, and Lands End development on Long Island, in addition to the other properties along the shores of Long and Little Bear Islands. Many boaters use this basin in a variety of ways; recreational, (water-skiing, wake boarding), as well as passage to the mainland and boat storage. This basin is far busier now than either end of the Barbers Pole. (The three YMCA camps located at the northern end of the Barbers Pole spoke to the negative impact the NWZ would have on the current safe operation of their activities.) The northern end of the Point Sarah Channel empties into a major east/west channel leading to the Long Island Bridge. Even now, this is a busy and confusing confluence of routes, requiring boats to thread through a narrow series of channel markers. Surely the clear and open route by the Barbers Pole is far safer than that which exists at Point Sarah. Creating a NWZ at the Barbers Pole will create a tremendous safety hazard elsewhere, as people seek efficient access to the northern quarter of the lake. If the majority of the north-south boat traffic is diverted from the natural passage at the Barbers Pole to this much more confusing and constricted passage, the result will be less safe conditions on the lake, not more.

Another criterion mentioned at the beginning of the hearing is the number of people affected by the adoption of the petition, vs. not adopting it. It should be abundantly clear that the NWZ would negatively impact far more people than it would "help". In effect, it would restrict, or make more dangerous, access to the entire north quarter of the lake.

The Joneses said after listening to the comments at the hearing and thinking seriously about the impact of this petition ever since learning of it, they find it impossible to imagine how the petition could succeed, when measured against the criteria outlined at the opening of the hearing, let alone given all the other good input from the public. One of the petitioners, however, closed his statement with the warning that if the petition is not granted this year, "We will be back and back until we get this fixed", or words to that effect. The Joneses wrote, if you do act in the interest of the greater good and rule against this petition, is there any way to prevent this same group from bringing the issue up every year? Last year, this issue slipped under everyone's radar screen; no one knew that any such petition was afoot until it had been granted. Only someone's alertness, after the fact, created the opportunity to revisit the decision, which clearly impacts so many, many people. They ended asking is there any way to set this issue aside, at least for, say a five-year period or can a very small group of individuals continue to take your valuable time arguing this issue, year after year? The Marine Patrol has not identified this area as unsafe. Recently a sensible speed limit was created for the lake. Please allow some time to pass with the speed limit in place to see if this alleviates the petitioners' concerns.

Cindy Kelly opposes the implementation of a NWZ believing this change, requested by a small number of people, will affect a larger number of boaters in a negative way.

Davis Kingsbury represents ownership of land and homes in the Nineteen Mile Bay Area since 1940. He has a great concern relative to the effort to control the speed in the Barbers Pole area traveling this area frequently, obeying the speed laws and using good judgment. Those who violate the law and do not slow down when within 150 feet of another boat should be punished. Director Barrett of the Marine Patrol reports there have been no safety issues. Those persons who filed the petition knew, or should have known, about the boat traffic in this area before they purchased their property. He closed saying let's not limit the activity of the island owners and others who travel this area.

Kenneth Knapp has for the past twenty-seven years lived for approximately five months of the year on Cow Island, Lake Winnepesaukee. During that extended period he has used the boat route to the mainland which runs by the Barbers Pole between Cow Island and the Tuftonboro mainland. He states he has never experienced a safety issue using this route. Making this area a NWZ is both unjustified and oppressive. It would significantly increase the time required to access the mainland and could cause a bottleneck of slow-moving boats, particularly when barge traffic is present. Currently, the boat traffic flows quite well through that area and he is unaware of any safety issues the present arrangement has caused.

Artie Lang writes as the Executive Director of the YMCA of greater Boston Camping Services to make sure of the opportunity to speak on behalf of the staff and campers of North Woods, Pleasant Valley, and Sandy Island YMCA Camps at the hearing in Tuftonboro on July 30th. He has concerns about the possible change to a NWZ writing the following: "I believe it is a bad idea, would be a poor decision and should not be passed. We serve over 3,000 people (not including camper parents) every summer on and in Lake Winnepesaukee. Many have been coming for years and years. I believe that as a YMCA we serve a very diverse group of families and children, many who would have no opportunity for this type of experience at any other time in their lives. I think the NWZ would cause us, and therefore the Lakes Region, to lose out on income, visitors and all the great experiences people have had for years on Lake Winnepesaukee.

I am against the NWZ for the following reasons:

1. We frequent this area for business in bringing over 1500 people, to and from Sandy Island, over the summer. The NWZ would greatly increase the number of trips we would have to make based on extra time. This would lead to higher guest fees, to cover gas, and possibly a loss of business to us as well as the Lakes Region.
2. I'm concerned about the traffic that would back up in the section of the lake that we [use to] teach children to ski. This is a risk to our boat drivers and skiers, significantly decrease[ing] the viable ski area. Teaching kids these skills has been successful over the years because traffic moves smoothly, allowing skiers to make broad, slow turns.
3. I have real safety issues as people speed up and slow down coming or going from the NWZ, as the increased wake, speed and traffic increases the likelihood of our camper's kayaks and canoes swamping. These kids are just learning, and this will make them less successful."

Ron Lheureau attended the hearing on July 30th, 2011. His email follows verbatim: "After observing and listening to the arguments of the originating petitioners from Little Birch and Squirrel Islands, it was quite apparent that their primary focus is to inflict their will on the boating public with regard to their desired behavior in "their" waters. Here are two island property owners who have perfectly good swimming areas on all sides of their respective, and very small, islands, yet choose to swim on the side of their island with occasional heavy boat traffic.....with children! Seems more like they are trying to make a point than ensuring the safety of their children. The Google Earth image from April this year (with ice) below shows more than adequate safe swimming areas around each of these islands and even the Barbers Pole side is protected by land protrusions if they swim in the recessed area between these islands. This, coupled with their boat operation behavior I observed on that morning of July 30, has forced my hand in writing this. The behavior I mention is the operation of a small powered rowboat from Little Birch to the mainland directly across the

Barbers Pole area. While a boat proceeding in that direction would have right-of-way over boats entering the area from the south, for someone to intentionally cross precisely in front of that oncoming boat, forcing him to stop, is clearly the action of someone trying to inflict their "slow down" will on some unsuspecting boater, even at the risk of endangering themselves! Thee (sic) was only one boat northbound at that time and waiting a less than a minute before darting across traffic would have been the prudent thing. But apparently this person was not inclined to wait, yet the petitioners feel that all the rest of the boating public can easily waste an additional 4-5 minutes transiting this water passage.

We kayak across that area frequently and have never experienced a problem. We simply choose to cross after the boats have passed. It is never continuous boat traffic. This waterway is used ice-out to ice-in, a period of seven to eight months, yet traffic in that area can only be judged as "heavy" for a few hours per day on a handful of weekends. We are summer-long residents of Cow Island, adjacent to the Barbers Pole area and see no reason to add a NWZ to that area, especially just to satisfy the desires of a handful of people vs. the tens of thousands of the users of this beautiful lake. One additional key point is that, as of last year, there is a speed limit in force, which should have a significant "improvement" on the safety of that waterway (which has no record of safety problems).

Lastly, it would be great if this matter could be judged as "settled" for some waiting period, perhaps 5 years, in the absence of any new "evidence", lest these petitioners continue to bring this matter up every year, wasting everyone's time."

James and Marsha MacKinnon have property on Cow Island and dock their boat on the mainland at Pick Point. They travel this route many times per week, sometimes numerous times a day. The MacKinnons are against the NWZ and see no need for additional regulations in that area saying the majority of boaters in that area abide by the present 150' rule. The lake will always have those boaters who are either ignorant of the laws or just don't feel they apply to them. Enforcement of the present laws should be more than enough regulation in the Barbers Pole area.

Bob McWhirter traveled through the area in question shortly after the hearing. He provided the following verbatim comments: "It was a great day to be out on the lake and observe the conditions described during the meeting.

1. I believe that you could void the petition, given that it appears multiple people from the same property/family signed the petition in order to have it appear that more property owners are in favor of the proposed NWZ.

2. I observed the swim float that one of the petitioners described. It is in fact off shore of Little Birch Island facing the area where the boat traffic passes through the Pole, into the "Broads". The placement of that float does narrow the area of passage for boat traffic, but there is still ample room for boat traffic to safely pass. Although the placement is legal, one could argue that it is not a very logical place to put it, given the fact that the "Trust" owns the whole Island, which includes several hundred feet of beautiful shore facing the Gilford Mountain range and several hundred more feet of shore on the side and back of the island with multiple spots to place a swim float, all being in a much safer spot than where the current float is. I would appreciate it, if you could have one of your Marine Patrol Officers confirm my observations if you are not familiar with the area.

It appears to me that some of the petitioners are only aggravating the situation by choosing to swim in a less than desirable spot, based on the available property they have to use. They have a very well protected area for their boat docks and could easily find a more desirable spot to swim. I also believe that the fact that some of the petitioners rent their property as part of a commercial enterprise, only make it more difficult to insure the safety of those that (sic) use the property. By one of the petitioners own comments, he stated that up to 60 people could be using the island at any given time. Given that fact, it makes no sense to place the swim float where it is. Marine Patrol can not be expected to fix "Stupid". However, maybe suggesting they move the swim float would help the petitioners feel safer. I am not for more government intervention on our daily lives, but maybe this situation is calling out for help!"

Jan and Glenn Mueller are landowners on the shoreline between the Barbers Pole and Chase Point and have been on the lake for thirty years. The Muellers are completely opposed to a NWZ at the Barbers Pole and their email lists the following points:

- The width at the Barbers Pole is completely adequate for normal speed boat traffic.
- The Cow Island waterfront has no houses facing the traffic channel.
- The Tuftonboro waterfront properties are at least 500 yards from the traffic channel.
- Both shorelines are rocky and not subject to erosion.
- The Barbers Pole channel is our only access to the main lake at normal speeds.
- We have never seen or heard of a problem with boat traffic in this channel.
- A NWZ would radically increase our time to access the main lake.
- A NWZ could make our property less desirable and thus lower our property value.

Robert Parmenter is a former Orchard Cove landowner saying that he has used this passage almost daily during boating season for approximately seven years and never experienced any safety issues. He stated "We still do a lot of boating on the lake and see no need for a NWZ in this area. For the few that [who] want[ed] a NWZ and tried to sneak this [it] into lake rules, I have to state that this lake is for all not just a few who would like to control everyone. As far as erosion, this area is wide enough that there should be no concern. Boats on plane create a small[er] wake as [than] boats going at head[way] speed. Mother Nature creates more erosion on lakes than any boating activity ever will."

Jeane Prewitt is not in favor of the Petition.

Jon Pruchansky submitted the following commentary: "... 59 Cow is the property on the Northern point as you come out of the Barbers Pole, so it would likely be exactly where boats are speeding up and creating excessive wakes in plowing mode. Large waves already have a propensity to wash onto the shore, so this would certainly create all of the problems expressed below (endanger swimmers and people on the docks and increase wash out). Additionally, our primary access to the various towns on the lake is through the Barbers Pole. With a NWZ there, traffic would significantly increase in the narrow opening between Little Bear and Long Island, which would certainly force you to create a NWZ there as well. At that point, as referenced below, there will be no true passageway from, among others, Moultonboro (sic) Bay, Melvin Bay, and 19 Mile Bay, out to the rest of the lake. Every impacted person should thus be considered and given the opportunity to vote on this matter (not just those in the immediate vicinity). One additional item that is not mentioned below is that those who are continuously bringing up this petition do not even spend much time on the lake; it is primarily a single family trust that is opposed, and many of them spend little to no time on the lake."

Stephen Pruchansky submitted the following commentary: "... Being a property owner and abutter to the proposed zone I am opposed to it for safety, environmental and property value reasons. A NWZ would create a traffic jam and substantial waves as boats accelerate in leaving the zone that endangers small children, (sic) adults as well as campers swimming at the beaches on both sides of the zone. The logjam of boats would restrict traffic and create large waves eroding the shorelines of the lake and devaluing all adjoining property. Restricting passage thru the Barbers Pole would also serve to cut the Lake in half by segregating passage to the towns and property located in Tuftonboro and Moultonboro (sic) and affecting marinas, business and thousands of residents adversely. The states motto is LIVE FREE OR DIE, why restrict passage on an open water way to the detriment of thousands of boaters and homeowners when this passage has posed no safety issues or environmental issues as it now exists but change would create shoreline erosion, endanger swimmers and decrease property value."

Frederick Roys writes "I've been a summer island resident on the south part of Guernsey Island for 52 years and I know both the importance of the existing no-wake zones as well as the necessity to get around the lake in a reasonable amount of time. Also, when there is no other traffic interfering with safe passage rules, the Barbers Pole offers a nice stretch of often calm water on which to tube or water ski. Unfortunately we live in an age where we are often saddled by

constraints of a noisy minority. Most of the time this defies logic and is contrary to what the overwhelming majority desire. Look no farther than the people who move into new neighborhoods surrounding airports, only to complain about the noise and imposing flight restrictions on cargo carriers and passenger airlines. Or, the seemingly well intentioned folks who move into a beautiful new house on the edge of farm land who later complain of the fertilizer smell in the spring; and lobby to change farming. Let's not fall into the trap of kowtowing to a noisy, selfish few. My vote is against forming a NWZ in the Barbers Pole."

Karen Sanders submits commentary as follows: "This same group filed a petition last year for a NWZ and was initially granted a hearing on July 21, 2010. None of the property owners/residents who are directly affected by this petition were notified until after the hearing had been held and had to request the State to hold a hearing on Oct 1, 2010 to reopen the issue. It was determined that the original petition was not valid because of the petitioner's failure to comply with the residency/property ownership notification requirements. This is not the first time a petition for a NWZ has been filed by this group and each time it has been denied. It is my understanding that the NH Marine Patrol has testified on this issue in the past and noted that a NWZ was not needed in this area. I find it frustrating that this group is continuously petitioning for a NWZ, based on their opinions of why it should be enforced, when there is no factual or statistical data that would even suggest that a NWZ is needed. This seems to be a waste of the State's time and taxpayer money, and once again we have to spend time drafting letters and attend hearings on an issue that has been denied time and again. Nothing has changed since the last time this group petitioned for a NWZ except for the speed limit law which is even more reason that it should be denied again. There are enough laws on the books to allow for safe boating in the Barbers Pole area. For 75 years our family has been able to enjoy kayaking, canoeing, motor boating, swimming, and water skiing without being adversely affected by the boat traffic in this area. If it becomes necessary to hold another hearing regarding this matter I would appreciate being informed with a copy of the petition and proof the petitioners meet the ownership/residency requirements."

Steven Shedden writes stating that he is the sole Trustee to the Stephen Shedden Realty Trust and its sole beneficiary as follows: "This Trust is for the Real Estate known as 62 Cow Island, Tuftonboro (*tax map information removed*) and opposed to the Petition for the following reasons: First, the wakes generated by all boats at Headway Speed will erode the shore line on both sides; second, more fuel and thus pollution is used at headway speed; third, The width of this area, shore to shore is about 1000 feet allowing 150 from each shore leaves 700 feet, more than enough safe distance for boats to pass each other, fourth, as a main travel lane North to South, All boaters will suffer either a delay in travel time or be faced traveling from west of Cow Island and ultimately clogging the area between Little Bear and Long Island which is smaller at about 615 feet (Not a NWZ). This will increase travel thru "Hole in the Wall" as well, more importantly all this traffic will pass Ragged Island a Loon Sanctuary. Please vote down this petition before we pollute the lake with more erosion, more exhaust pollution, and upset the loons on Ragged."

Chris Stevens resides on Cow Island and travels through Barbers Pole frequently. He sees no reason for the petition saying there is plenty of room for two boats to pass. Also, congestion in the area is rare and currently regulated under the existing Safe Passage Law.

Richard Stone submits commentary saying the proposal was initiated primarily by only two families who have property in the area and it would come at the expense of thousands of boaters who use that area of the lake every summer. The Barbers Pole is wide enough to accommodate boats without violation of the Safe Passage Law and, in the event that a boat traveling through the area does come within 150 feet of the shore or another vessel, the Safe Passage Law already mandates a reduction in speed to No Wake/Headway. This proposal has been rejected by your office on several different occasions in the past and I do not see any changes in boat traffic that would necessitate its passage on this occasion.

Ron and Patty Stone submitted commentary saying as a property owner on Cow Island, they wholeheartedly wish to oppose this restriction in travel. They enjoy their island property for only several months of the year, which is obviously limited to travel by boat traveling through this zone each weekend. This zone is quite wide, nearly 400 feet across, and travel is safe and reasonable. They say their travel time will be greatly impacted and does not seem logical at all.

The Stones utilize services from commercial operators and have concerns about the impact on costs. Landowners in the Barbers Pole area purchased their properties knowing full well that this is an area frequented by boats traveling through Tuftonboro.

Brian Tufts states the proposed NWZ will make boating around the lake much less enjoyable, make trips take longer, and likely increase traffic through the tiny "Hole-in-the-Wall" area.

Bruce Tufts understands the need for safety, but it seems to be quite unnecessary to restrict that area to "no wake" speed. This area is the most direct way to get to the Broads, Wolfeboro and Alton Bay etc. He has traveled through this area countless times and has never experienced any problems day or night. To force boats to such a slow speed will be counterproductive. There is no way boaters are going to travel such a long distance at no wake speed. He said "Boaters are going to be forced to find alternative routes i.e. the "hole in the wall" and cause more traffic and associated marine patrol issues."

DISCUSSION:

In gathering findings of fact, the following is considered:

RSA 270:1, II Declaration of Policy

"In the interest of maintaining the residential, recreational and scenic values which New Hampshire public waters provide to residents of the state and to the promotion of our tourist industry, and in light of the fact that competing uses for the enjoyment of these waters, if not regulated for the benefit of all users, may diminish the value to be derived from them, it is hereby declared that the public waters of New Hampshire shall be maintained and regulated in such way as to provide for the safe and mutual enjoyment of a variety of uses, both from the shore and from water-borne conveyances. Such provisions shall take into consideration the following: the variety of special uses appropriate to our lakes, public safety, protection of environment, and water quality, and the continued nurture of New Hampshire's threatened and endangered species."

RSA 270:12 Operating Restrictions.

The commissioner of safety shall, after receiving a petition signed by 25 or more residents or property owners of each affected town or towns in which a lake, pond or river is located and after notice and hearing, at which it appears that the public interest requires, adopt rules under RSA 541-A governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area of 35 acres or less; provided that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75-109. Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August and September following the date of the petition.

RSA 270-D: 2 General Rules for Vessels Operating on Water.

"...Vessels shall be operated at headway speed only, while passing under all bridges. VI. (a) To provide full visibility and control and to prevent their wake from being thrown into or causing excessive rocking to other boats, barges, water skiers, aquaplanes or other boats, rafts or floats, all vessels shall maintain headway speed when within 150 feet from: (1) Rafts, floats, swimmers; (2) Permitted swimming areas; (3) Shore; (4) Docks; (5) Mooring fields; (6) Other vessels. . . ."

Saf-C 409.01 Request for Hearing.

- (a) Any group of 25 or more persons, any association having not less than 25 members, or any governmental subdivision or agency may, pursuant to RSA 270:12, petition the commissioner for a hearing to determine whether a problem exists which could be alleviated by the adoption, in accordance with RSA 541-A, of the following types of rules:
 - (1) Governing the maximum horsepower of boat engines and outboard motors on all or any portion of the public waters of the state;
 - (2) Prescribing maximum speed limits for the operation of boats on all or any portion of the public waters of the state; or
 - (3) Prohibiting the use of motor boats and outboard motors on public waters having an area of 35 acres or less, except any body of water covered by RSA 270.
- (b) Pursuant to RSA 270:12, this rule shall not apply to those bodies of water covered by RSA 270:75-109.

Saf-C 409.04 Criteria for Review.

- (a) The commissioner shall, after the hearing, adopt rules of the type authorized by RSA 270:12 if it appears that, consistent with RSA 270:1, II, the rule shall provide for the safe and mutual enjoyment of a variety of uses, taking into consideration the factors in (b) below.
 - (b) In determining whether to adopt such rules the commissioner shall consider the following:
 - (1) The size of the body of water or portion thereof for which rulemaking action is being considered;
 - (2) The effect which adopting or not adopting the rule(s) would have upon:
 - a. Public safety;
 - b. The maintenance of residential, recreational, and scenic values;
 - c. The variety of uses of such body of water or portion thereof;
 - d. The environment and water quality; and
 - e. Threatened and endangered species.
 - (3) The number of people affected, either directly or indirectly, by adopting or not adopting the rule(s); and
 - (4) The availability and practicality of enforcement of the rule(s).
-

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition are given weight in determining findings; however, greater weight is given to the authority of law establishing factors which shall be considered in formulating a ruling based upon the statutes and administrative rules (*Supra*). There was an objection voiced saying that a person was observed adding a name or names to the sign-in sheet marked for persons who were not speaking. The moderator did not stop the proceeding, but educated those present that all who are present should take the time to be certain the proper sheet was written on. I agree with the moderator who did not halt the proceeding to investigate and deal with the alleged person observed to have signed a multiple name. This is not a compelling reason. The appropriate review is the substance of information presented through public commentary as compared to or contrasted with the applicable law, not just the numbers of persons.

Having ruled on the legality of the signers of the Petition, I next concentrate on the public commentary submitted as provided in the above summary. The first two speakers, Mr. Elkins speaking against the Petition followed by Attorney Hilbink in favor of the Petition, provided detailed presentations supporting the main objectives of each viewpoint and line of reasoning for me to consider. I will not provide a protracted analysis at this juncture, as all timely-received public comments, exhibits, emails and letters are a matter of record along with the audio-recording and one email received after the deadline that was not considered.

The approximate size of Barbers Pole, although varying somewhat as to how and where people measured its length and width along the channel, did not differ greatly from the distances provided by the first two speakers. Attorney Hilbink providing eight hundred feet wide for Barbers Pole and a length of two thousand feet; his measurements were taken from Little Birch Island to Cow Island. Mr. Elkins provided width measurements of nine hundred feet where the channel and proposed NWZ begins, describing much of the rest of the channel width as two football fields, or six hundred feet.

There is a common thread among the people providing commentary centering on issues focusing on public safety. That said, the persons in favor of the NWZ provided specific illustrations and recollections, some having occurred a number of years ago, but significant enough to still provide clearly vivid testimony. Many remember using smaller non-motorized craft and are now hesitant concerning venturing out into Barbers Pole because they are concerned for their safety and that of their families. In contrast, many public comments say with as much conviction that they have not observed or heard of any safety concerns over a number of years.

Testimony and exhibits indicate that when contacting Marine Patrol, statistics reveal no accidents and little unlawful boating incidents recorded within the proposed NWZ. Lieutenant Dunleavy provided a history, statistics, an overview of calls for service and monitoring 'safe passage' boating activity along with his analysis. Based on his investigation, the Marine Patrol does not recommend a NWZ. After review, the main thrust for a NWZ centers on safety violations and seeking the NWZ to reduce or remove the improper or unlawful operation of boats by controlling their speed through this channel.

Proponents of the NWZ provided information concentrating on examples such as boaters failing to follow current navigational laws. They provide instances including boaters not slowing down when approaching docks, damaging boats and docks, dunking swimmers and swamping rafts occurring well within the one hundred and fifty foot NWZ area along the shoreline. They remind me to recall that erosion issues were one of the main reasons the DOS initially agreed to approve the NWZ in 2010. Opponents discussed the line of boat traffic and the need for boats to decelerate/accelerate at the ends of the NWZ causing larger waves to wash ashore endangering swimmers and eroding the shoreline. The NWZ would restrict access to not only the northeast quadrant, but also many other areas of the lake contributing to boaters possibly selecting alternate routes either through a narrow passage at the north end of Little Bear Island or through an even narrower passage through Hole-in-the-Wall, in some cases a longer route especially for smaller craft. This would also create much more boat traffic around Ragged Island, a nature and loon sanctuary, and it would greatly reduce the variety of uses available to the public as well as having a negative economic impact on the businesses in that area of the lake.

The estimations of travel time varied from adding three minutes and forty-five seconds to about eight minutes to pass through Barbers Pole with a NWZ. Those against the NWZ argue, as I stated in the previous paragraph, that many boaters will possibly take another route. They also described losses to boaters involved in motorized boating activities such as water-tubing and other related pastimes requiring boats to travel above a no wake speed. Persons disagreeing with the NWZ discussed not having the current uses of the water including water-skiing, commercial barge services and youth/staff water activities at the YMCA camps. In addition, the channel may become a location for rafting, thus changing the existing uses of Barbers Pole.

There was little commentary discussing water quality and likewise diminutive dialogue received regarding threatened and endangered species within Barbers Pole now occurring with only two persons mentioning a loon and chick recently observed. Lt. Dunleavy, an enforcement officer on Lake Winnepesaukee, observed in his commentary that the environmental changes with the creation of a NWZ contributes to shoreline erosion, damaged waterfowl nests, and noise pollution adjacent to the zone's boundaries. He also said a NWZ creates two concentrated areas of large wakes and the presence of constantly accelerating/decelerating boats. The wakes of slowing/accelerating boats are much larger than those of boats traveling 'on plane', meaning the boat accelerates to a speed that allows the boat to become level. These wakes often increase erosion and disrupt/destroy nesting areas of waterfowl during the brooding season.

On the subject of the number of people affected to consider, they include the persons who own, rent and use the shorelines along the mainland and islands and the people who use the water within Barbers Pole, whether it is by swimming, fishing, water-skiing and boating in its many forms both motorized and non-motorized. A number of the comments received signify to me that they realize that Lake Winnepesaukee is New Hampshire's largest lake with access by vessel to many

destinations including the boundaries of the waters located within the City of Laconia and the towns of Alton, Center Harbor, Center Tuftonboro, Gilford, Meredith, Moultonborough and Wolfeboro. There are many private dwellings and commercial businesses on the shoreline and islands, also increased condominium-style living along with commercial marinas and locations for visitors to either rent or launch their own boats, all of which have added to the number of users of the lake.

In learning more about the many uses identified for Barbers Pole, I am concerned that placing a NWZ within this described main travel area among so many destinations will affect more people than the number of persons seeking this limitation of speed. Many of the described testimonials centered upon boaters violation of safety laws. At the prior hearing in 2010, Marine Patrol presented a letter providing no opinion. For this hearing I have a clear notification from them based upon their statistical data along with recent monitoring of boater activity within Barbers Pole. I believe the ongoing enforcement in this area of the lake is proper and satisfactory to protect all the users of Barbers Pole.

The testimonials, both for and against, are an important part of the fact-finding review process and given weight as applicable. The measurements and size of the body of water and numbers of people affected as presented by the speakers do vary; however, not to such a degree that I can judge the information as being false or misleading; the same holds true as I review the written comments from many people.

As the Commissioner of Safety, I have carefully studied the listed statute(s) and rule(s) governing this petition. I recognize and give great weight to the instructive language found within RSA 270:1,II (Supra); this passage speaks unmistakably to the Declaration of Policy our legislature has placed within the statute. The Barbers Pole is a channel which is a means of access to the northeast quadrant and many other parts of Lake Winnepesaukee. A NWZ will contribute to a bottleneck of vessels within the channel and possibly contribute to boaters selecting alternate routes that will take longer to traverse and for smaller craft, in more open-water conditions, more difficult to navigate.

There is persuasive commentary showing that the variety of uses reveals diversity within Barbers Pole including, but not limited to, boating, fishing, water-skiing, swimming and enjoying wildlife habitat, but little or no information on water quality concerns. I have determined that the availability of Marine Patrol personnel and practicality of monitoring and enforcing navigational laws are adequate within Barbers Pole, one of the routes within Lake Winnepesaukee.

After carefully reviewing and considering all of the evidence and testimony received, in conjunction with the law and what the petition seeks to accomplish, please refer to my findings.

FINDINGS OF FACT:

1. That pursuant to RSA 270:12, fifty-four (54) people petitioned the Commissioner of the Department of Safety to conduct a public hearing to regulate motor boat usage in the area of Barbers Pole located within Lake Winnepesaukee in Tuftonboro, New Hampshire.
2. Official notice for the hearing was published in a newspaper of statewide circulation, The Union Leader, Manchester, NH on July 14, 2011. In addition, notification was sent to the town officials of Tuftonboro. Press releases were disseminated to the general media and the Notice of Hearing was posted on the Department of Safety website at: <http://www.nh.gov/safety/divisions/hearings/compendium/watercraft/index.html>
3. The petition seeks to adopt a rule to establish a No Wake Zone (speed restriction) in Barbers Pole located within the Town of Tuftonboro, New Hampshire.

4. A public hearing was scheduled on Saturday July 30, 2011 and conducted pursuant to RSA 541, RSA 270:12 and Administrative Rule Saf-C 409 at the Tuftonboro Town House, Route 109-A, Tuftonboro, New Hampshire.
5. That for the size of the body of water or portion thereof the Petitioners provided data saying from the corner of Little Birch Island to Cow Island is a distance of two thousand feet in length and the width of the channel is eight hundred feet. Another described the width as nine hundred feet; width measurements varied at points throughout the channel. Although the measurements do not agree, the general figures are sufficient for determining the other contributing factors to consider within Saf-C 409.04.(b)(1);
6. Public comment was received centering on public safety by proponents and opponents of the requested No Wake Zone that shows public safety is a concern and the implementation of a No Wake Zone will not be in the best interest of safety Saf-C 409.04.(b)(2)(a);
7. Public comment was received generally regarding the maintenance of residential, recreational, and scenic values with a showing that wave action contributes to damage, but the waves appeared to be caused by boaters violating current 'safe passage' law, going closer to shore than one hundred and fifty feet at described speeds above a 'headway speed' limit in violation of RSA 270-D:2 Saf-C 409.04.(b)(2)(b);
8. Public comment was received generally regarding the variety of uses of such body of water or portion thereof showing a diversity including use of motorized and non-motorized watercraft, swimming, water-skiing, sail-boating and fishing; also, commercial barge services and youth/staff water activities at the YMCA camps. The estimations of travel time varied from adding three minutes and forty-five seconds to about eight minutes to pass through Barbers Pole with a NWZ Saf-C 409.04.(b)(2)(c);
9. Public comment was received generally with little regarding the environment and practically no commentary on diminished water quality Saf-C 409.04.(b)(2)(d);
10. An enforcement officer on Lake Winnepesaukee observed in his commentary that the environmental changes with the creation of a NWZ contribute to shoreline erosion, damaged waterfowl nests, and noise pollution adjacent to the zone's boundaries. He also said a NWZ creates two concentrated areas of large wakes by the presence of constantly accelerating/decelerating boats. The wakes of slowing/accelerating boats are much larger than those of boats traveling 'on plane'. These wakes often increase erosion and disrupt/destroy nesting areas of waterfowl during the brooding season Saf-C 409.04.(b)(2)(e);
11. Public comment was received generally regarding the number of people affected, either directly or indirectly, by adopting or not adopting the rule(s). There were no specific numbers of people or households provided, but commentary provided reveals an increase in use attributable to and including persons who own, rent and use the shorelines along the mainland and islands within and adjacent to Barbers Pole. In addition, the people who use the water within Barbers Pole enjoy it in many ways whether by swimming, fishing, waterskiing and boating with both motorized and non-motorized vessels. Lake Winnepesaukee is New Hampshire's largest lake with access by vessel to many destinations including one city and a number of other towns surrounding Tuftonboro. There are many private dwellings on the mainland shoreline and the shoreline of numerous islands. In addition, increased condominium-style living along with commercial marinas and locations for visitors to either rent or launch their own boats show that Barbers Pole is used to travel to and from destinations by vessel Saf-C 409.04.(b)(3);
12. The New Hampshire Department of Safety through the Marine Patrol enforces the navigational laws governing the public waters within Barbers Pole in Tuftonboro, New Hampshire. Public comment was received generally regarding the availability and practicality of enforcing the navigational safety laws. The issue of observed violations of safe-boating laws is divided,

however Marine Patrol Officers have compiled statistical data over a period of years which continues to show that the majority of the few violations being committed in the area of the Barbers Pole are categorized as violations of 'safe passage' laws, many as listed within RSA 270-D:2. Recent data shows a decline in these violations and no report of violations from the public for almost two years. Saf-C 409.04,(b)(4);

CONCLUSION OF LAW:

Pursuant to RSA 270:12 (as amended effective 6/24/2011) and the New Hampshire Code of Administrative Rules, Saf-C 409, the information submitted was thoroughly considered within the petition, along with the public commentary received. The practicality of a No Wake Zone in Barbers Pole is not reasonable or sensible. The evidence demonstrates that the petition is not in the public interest and shall not fulfill the purpose of law.

DISPOSITION:

The Petition seeking to establish a No Wake Zone in the area known as "Barbers Pole" on Lake Winnepesaukee in the Town of Tuftonboro is **denied**.


John J. Barthelmes
Commissioner of Safety

RSA 541:3 Motion for Rehearing.

"Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion."

I certify that a copy of the Decision and Order has been forwarded to the below named via first-class mail or electronic mailing (*as applicable*).


C. N. Duclos,
Commissioner Designee

Petitioner's Designee
Attorney Thomas Hilbink **VIA EMAIL**
(To be distributed to petitioners)

Mr. George W. Elkins **VIA EMAIL**

Town Administrator **VIA EMAIL**
Tuftonboro, New Hampshire

Director Robert Quinn,
Division of State Police
Department of Safety

Lieutenant Timothy Dunleavy,
Division of Safety Services
Department of Safety

CC: File

Date of mailing: *August 25, 2011*

The Decision and Order shall be uploaded to the Department of Safety Website and remain for at least seven days. After that time, a synopsis of the decision shall replace this Order and Decision,

Go to:

The original documents shall be available and may be reviewed or copies obtained through the Department of Safety. You may contact this department, calling or writing for an appointment to review or request copies in accord with Saf-C 203.14 Fee Schedule and Pre-Hearing Access.

Telephone (603) 271-3486

Email Safety-hearings@dos.nh.gov

Department of Safety, Bureau of Hearings
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