



# State of New Hampshire

## Department of Safety

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

JOHN J. BARTHELMES  
COMMISSIONER OF SAFETY

## DECISION & ORDER

In the Matter of:

### Barber's Pole, in Lake Winnepesaukee, Tuftonboro, New Hampshire

Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules Saf-C 409, a public hearing was scheduled under the authority of RSA 541 between the months of June and September and held on Friday, July 21, 2010 at 1:00 p.m. at the Tuftonboro Meeting House, Route #109-A, Tuftonboro, New Hampshire. Mr. Curtis N. Duclos conducted the public hearing as designee on behalf of Commissioner John J. Barthelmes.

#### PROCEDURAL HISTORY:

The Department of Safety received a petition dated May 10, 2010 signed by at least twenty-five (25) co-petitioners, supporting the request.

The petitioners applied for a hearing pursuant to RSA 270:12 to address concerns providing the specific reasons within an attached petition of names signatory thereto. The petition requests the Department of Safety establish a No Wake Zone within Barber's Pole<sup>1</sup>, Lake Winnepesaukee, in Tuftonboro, New Hampshire.

The procedure for adoption of such rules is in section RSA 270:12 of Title XXII governing navigation, harbors, and coast survey in the State of New Hampshire.

<sup>1</sup> The area described in this petition has varied spelling of Barber's Pole. I have used what the Petitioners listed.

## **PETITION:**

The Petitioners seek imposition of a "No Wake Zone" (NWZ) within the area described as located between the southeastern tip of Little Birch Island and lot #17 on the mainland, to a point between lot #284 on Cow Island and lot #3 on the mainland in Lake Winnepesaukee located in Tuftonboro, New Hampshire.

## **OPENING REMARKS:**

Everyone present was informed:

- The public hearing is recorded;
- the recording would be preserved for seventy-five (75) days and an explanation of the procedure by which to receive a copy of the recording;
- the opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
- they could review the legal notice clipping from the newspaper, along with the original petition and any other documents;
- how and where to submit written comment that must be received within seven (7) days from the hearing date by the Department of Safety specifying end of business on Friday, July 23, 2010; and,
- the appeal procedure in accordance with RSA 541:3.

The Notice of Hearing and the Petition along with all supporting documents were displayed for review by interested persons. Notification of the public hearing was published in The Union Leader, on July 1, 2010.

## **EXHIBITS RECEIVED AT PUBLIC HEARING:**

None

## **STATISTICS:**

On July 21, 2010, three (3) persons testified and twelve (12) persons signed to record themselves in support of the petition. One (1) person testified, and one (1) person signed to not speak, but be recorded against the petition. Hon. John A. Veazey, State Representative provided a history of the area known as Barber's Pole. Prior to and/or after the hearing, fifty-seven (57) people sent via mail, e-mail or facsimile public commentary. The hearing was closed to public comment at the conclusion of the business day on Friday, July 23, 2010.

## **OFFICIAL NOTICE:**

- The Barber's Pole Decision and Order issued on June 30, 2008.
- Petition dated May 10, 2010.

## **SYNOPSIS OF TESTIMONY:**

**Mr. Robert Brian Hennessey** spoke in favor of the petition. He testified that this is the fourth attempt to pass a "No Wake Zone" (NWZ) in the last twenty-seven (27) years. He said this petition is consistent with other existing NWZ locations in Lake Winnepesaukee, such as near Pine Island, Bear Island, the NWZ located between Governor Island and Eagle Island, and the NWZ near Chase Island. Mr. Hennessey pointed to a video recording he and his son had produced about two years ago testifying that boat traffic can get really crazy in that area, noting that there is only three hundred ninety (390') feet between the buoys and the shore. He said that boats mooring in that area along with rafts and the Millie B tour boat reduce the area of safety significantly along with wakes affecting the shoreline. Mr. Hennessey mentioned that while he and his grandson were filming and at certain times, the area is scary on certain days. Mr. Hennessey testified that the DVD was not submitted at the previous hearing, though had been presented as a part of the appeal to the commissioner.

**Mr. Walter Johnson** spoke in opposition to the petition. He is a twenty year resident of Wolf Island. He testified that there is space of one hundred fifty (150) feet between boats going in opposite directions where they would not need to go a 'no wake' speed. After hearing the previous speakers issue with a boat traveling within twenty feet at a higher than no wake speed, he said there are existing laws to enforce such a violation and advocates for more enforcement in this area. He lives near "Hole-in-the-Wall" and that area has a NWZ and a non-NWZ. He has noticed a reduction in boating traffic from two years ago and also points to an enacted speed limit, so the boats should not be traveling through Barber's Pole at such high speeds.

**Ms. Abigail Adams** spoke in favor of the petition. She noted that things are different this year due to the economy. Ms. Adams said that swimmers are afraid to swim especially on the mainland side of Bear Island also saying there is a tremendous amount of erosion from the passing boats. She testified the Marine Patrol is stretched very far; a no wake buoy, similarly as a traffic speed limit sign is honored, would act to slow boaters down in this area. She also said that people with homes on Little Birch and Squirrel Island are afraid to leave their lights on at night for fear of the being the next magnet on the lake because of boaters going so fast and running into the island.

**State Representative John A. Veazey**, provided a history of the land and the water uses of the surrounding area known as Barber's Pole of eighty years ago. He described the timber floating through this

area and drawing down the dam at certain times of the year and removal of three large boulders from the area of 'Hole in the Wall'. Representative Veazey said the lake belongs to the people of the State of New Hampshire and [it] is a recreational lake. The lake is not just for people using high performance boats, there is enough water on the lake for those who want to go fast, mentioning a number of areas. Representative Veazey pointed out that Director Barrett is not opposed to the present petition.

**Ms. Deborah V. Cary** spoke in favor of the petition testifying that she used to swim across this area, but more recently is using a canoe. However, she pointed out even canoes are not identified readily by boats traveling through this area.

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**SYNOPSIS OF EXHIBIT LETTERS / E-MAIL SUBMITTED AT THE HEARING:**

None submitted.

**COMMENTARY RECEIVED PRIOR TO END OF BUSINESS ON JULY 23, 2010**

**The information in this section, unless otherwise noted, is verbatim commentary submitted with evident spelling errors amended. The salutation and closing along with addresses, emails, telephone numbers and personal information is redacted. All of the emails and letters are saved in a Portable Document Format (PDF) may be disclosed, if applicable and in accordance with law.**

**Abigail Adams** supports the petition. I write in support of the Now Wake Zone proposed for the Barber Pole channel on Lake W. The hearing was on July 16. I urge you to consider that the area is narrow and heavily traveled. This year there has been much less boat traffic on the lake in all areas because of the economy. However, we all hope that this economy improves and with it will be more boating on the lake I have lived on the Barber Pole shore for 27 yrs and the congestion in the Barber Pole Channel has become a very dangerous thing. Boats charge through at 45 mph and are not aware of their surroundings and I have witnessed many near misses with smaller boats and kayaks. I have fished at the buoy 17 all of these years with my grandkids but have been frightened by boats zipping by me closer than 150 feet as they try to pass a slower boat ahead or meet a boat coming towards them. To keep this a lake that families can enjoy, we have to preserve the lake for diverse water activities and not just those that depend on speed. It is a beautiful area to boat through, and going slower will make it safer and no less pleasurable!

**David T. Barrett**, Director, Division of Safety Services after receiving the petition reports that the Marine Patrol is not submitting an opinion on this request.

**Evan J. Boris** supports the petition. With the Barber Pole nearly halfway in the middle of the passage, speeding boats are often forced into violating the 100 ft no wake zone of bordering islands. This makes normal lake activities like swimming, kayaking, canoeing, and fishing quite hazardous. The narrow channel has become a highway of boats surging past each other with little regard for cross traffic, smaller boats, water skiers', or erosion of island property. It has become increasingly hazardous and disruptive as decades progress and larger boats dominate the lake. The no-wake-zone is an important check to protect wildlife, lake life, and a sense of peace in this precious narrow passageway. From young children to loons and great heron, life here needs to be restored to a safer pace. Let the boats speed through the Broads, just a short distance ahead; but, make them slow for a brief couple moments as they pass this narrow gauntlet.

**Neil Boris** supports the petition. I would like to urge you to put a No Wake Zone in place near between Squirrel Island and the Tuftonboro neck shore in the region of the Barber's Pole. This area of the lake is extremely busy with boat traffic and I have grave concerns about several factors from erosion to the potential for an accident. Please put safety first. (No attached letter was received)

**Vanessa Boris** supports the petition. I regret that I won't be able to be at the hearing on July 16 in Tuftonboro to state my views in person. I am a co-owner of Squirrel Island, directly across from buoy 17 at the Barber's Pole. My family has owned the property since the 1860's and in my lifetime we've seen significant changes to boat traffic in the area. I am absolutely in favor of a no-wake-zone. It is very difficult for us to access the island from the Tuftonboro mainland because we have to cross the equivalent of at RT 93 or other superhighway. The boat traffic in mid-summer is intense. We often negotiate our way to or from the island with 5 or 6 boats coming towards us in either direction. These fast moving boats do not always follow the "rules of the road" to allow us our right of way (perhaps because they are traveling so fast that they don't see us.) And they often travel at high speed much closer than 150 feet distance to the shore that they should respect. The situation is truly chaotic and dangerous. I think it's miraculous that someone has not been seriously injured. A no-wake-zone would help a great deal. Boats would slow down enough to travel safely through a very narrow passage. This area is as narrow as other areas of the lake that have no-wake-zones in place. In addition, I'd like us as property owners, be able to enjoy the

rights that we have in previous generations. We used to be able to swim around the island on the east on south sides that face toward the Barber's Pole. It's much too dangerous for us to do that now. And we can't safely use our canoes or kayaks either.

Finally, a no wake zone would help slow the erosion of the island. With the huge wakes that some of the larger boats and ferry's produce, the waves have caused significant erosion of the land. We really appreciate your careful consideration of this matter, and hope that it will be possible to create a no-wake-zone at the Barber's Pole for the safety and enjoyment of our and future generations.

**Nancy Brown** supports the petition. Families like ours who pay a premium in taxes on waterfront property do so because we value safe, easy access to Lake Winnepesaukee for swimming and boating. This can be seen on any summer day along the Barber Pole, the narrow passage between Squirrel, Little Birch and Cow Islands on one side and Tuftonboro Neck on the other. But when large waves created by motor boats swamp young swimmers and kayakers and their grandparents near the water's edge it's time to take action. Therefore we strongly support the proposed No Wake Zone for the Barber Pole. We understand that such No Wake zones have been established in other similar circumstances on Lake Winnepesaukee. It is urgently needed in the Barber Pole.

**Michael Burke** opposes the petition. This email is in regards to the proposal for a No Wake zone in the Barber's Pole area of Lake Winnepesaukee. I just found out about this proposal today but I understand that there was a public hearing on this matter held on July 16 in Tuftonboro and that today is the deadline for public comment. I am opposed to the implementation of a No Wake zone in the Barber's Pole area. My family has owned a cottage on the mainland side of the Barber's Pole since 1977 and we've never felt that a No Wake zone is necessary in this area. The existing rules and regulations governing the operation of watercraft on the lake are sufficient to ensure safe boating in this area. When boaters abide by the existing rules and regulations, particularly the 150 foot rule, a No Wake zone becomes unnecessary. For example, when there is heavy boat traffic in this area of the lake, boaters going through this area will slow down to no wake speed in the event that they are within 150 feet of another boat or land. As in any area of the lake, whether it be in the area of the Barber's Pole or in the wide open area of the lake known as "the broads", you will always have boaters who do not slow down (whether it be due to ignorance of the rules and regulations or by sheer defiance to comply). My point being, it would seem to make more sense to enforce / educate regarding the rules and regulations than to simply implement No Wake zones whenever people have encountered boaters not slowing down in

accordance with the 150 foot rule (i.e. I have experienced numerous times over the years in which my boat has been passed from behind, in very wide open spaces, by another boat in which the other boat did not move 150 feet or more away from my boat. While a No Wake zone in these wide open areas would prevent that problem from happening, it certainly wouldn't make for common sense nor would it prevent similar 150 foot violations from occurring elsewhere).

As my family has been at this location on the lake since 1977, we can tell you that there are very few days of the boating season in which there is heavy boat traffic in the Barber's Pole area. And when there is heavy boat traffic, the vast majority of boaters slow down to No Wake speed in accordance with the 150 foot rule. My family enjoys water skiing and tubing, which there is plenty of open space for in the area of the Barber's Pole. To implement a No Wake zone in this area would prevent us from being able to tube or ski from the area of our cottage and instead we would be required to load up our boat with skis and tubes, drive the boat out into the middle of the lake, and then ask people, many of whom are first time skiers, to put the equipment on in deep water and start from that location, as opposed to being closer to our cottage where another individual can easily assist them. We can also tell you that our shore front, dock and boat do not experience damage due to boat traffic in this area. Additionally, the implementation of a No Wake zone will result in the lake water becoming more stagnant which I believe will deteriorate the quality of the water in terms of freshness and unnatural growth of weeds etc.

In conclusion, I am very concerned that instead of promoting the enforcement / education of boating rules and regulations, the approach these days seems to be to implement a new law which doesn't address the overall problem. And, in this specific case, a No Wake zone would be a detriment to the area of the Barber's Pole from both a quality of water perspective as well the enjoyment of the residents who live in that area, particularly as there is very little boat traffic in the area of the Barber's Pole on an overall basis.

**William and Irene Burke** oppose the petition. We have been a homeowner since 1977 in this area. We just by chance this morning found out that a hearing was held on July 16th relative to the above. I just called each of our neighbor homeowners and not one of them had been informed of the July 16th meeting as we were not informed. We also found out by chance this morning that we had only until 4PM today to contact your office to express our opinions.

The area mentioned above is perfectly fine as it is-we have never seen any shore erosion, no hazards of boat traffic no danger of any wake from boats passing since the distance from the mainland to Cow

Island is substantial the quality of clear water in this area is excellent with no buildup of any floating material, To our knowledge everyone in this area is totally opposed to this absolute unnecessary suggestion by whomever made the request. We are certainly opposed to it since for the last 34 years there has never a problem.

**Richard Casale** opposes the petition. Please let this message express my opposition to the proposed no-wake zone in the area between Cow Island and Tuftonboro Neck known as the "Barber's Pole". There are several reasons for my opposition including the recent speed limit law, the 150' safe passage law and the fact that this area is wide enough to accommodate substantial traffic. Better enforcement of existing laws/rules should be practiced, rather than imposing more rules/laws and no-wake areas. Furthermore, if this area was to become no-wake, more high-speed traffic would be driven to the passage between Little Bear Island and Long Island in the vicinity of Flashing Light # 10. I own property on Little Bear Island just to the south of Flashing Light # 10 and the traffic is already quite heavy. Imposing the no-wake would be detrimental to the area near my property. In addition, the passage between Long Island and Little Bear is more narrow than the passage in question near the Barber's Pole, so if anything, the passage between Long Island and Little Bear should be made no-wake, as it was back in the 1970's.

**Christy Clarke** supports of the petition. I'm writing in support of legislature that would make the Barber Pole area of Lake Winnepesaukee a No-Wake Zone. My family and I have spent summers on Tuftonboro Neck since I was a little girl and now my own children are enjoying our family's cottage on the lake. Although we love the lake, and relish our time in and on the water, the thorn in our side when we're there is the noise and speed of the boats that travel through this small channel. I also worry for the kids' safety when they swim and kayak around in front of our house because the wake from the large speedboats poses a serious risk. We travel quite a bit around the lake and I've noticed several channels that seem even wider than the Barber Pole area which are already zoned for No-Wake. It's high time that this legislature be passed so that the Barber Pole can be a safe a fun area for families and all types of boats.

**William and Heidi Deacon** are in support of the petition. I am part of the Little Birch Island family and use this property many days in the summer and fall and am concerned every time I visit there about my safety as I swim and that of my children who swim and kayak right around our dock and island. Even staying close to the island we feel in danger of boaters and ski craft riders who may not see us as they

travel past us at what seems to be high speeds. There have been many close calls of boaters and ski craft that graze past the tip of our island where we often swim. But most importantly, I feel in grave danger as I kayak in the early morning to the mainland across the Barber's Pole to our slip (our mainland access point on Banfield road) by the fishermen and their high speed boats that literally fly through the Barber's Pole area in the early hours when there is often mist rising. I paddle for my life when I hear their roaring/whining engines knowing that even if they see me they may not have time to avoid a collision. The proposal up for review is to create a no-wake-zone that begins at the tip of Birch Island and goes all the way through the Barber's Pole (past Squirrel Island and the little tip of Cow Island that's nearest to Squirrel.) I am in favor of the no-wake zone because it's clear that the islands are eroding and it's truly dangerous to swim off the Birch Island dock and to cross the channel in our small crafts on days when the boat traffic is heaviest and especially mornings in the fall when it is not. Please consider this no-wake zone for the enjoyment but mostly the safety of our families and children so that there will be no regrets of having done this before anyone gets hurt

**Christopher Durall** supports the petition. Having spent considerable time in and around the Barber Pole area on Lake Winnepesaukee, I am overwhelmingly in favor of a no wake zone (NWZ). Boat traffic is forced through a very narrow area, less than 400 feet wide. Even though the NH legislature recently passed the new speed limit law, this is just too fast for this area. There are safety concerns during the day as well as at night. My 8 year old daughter, who is not a very strong swimmer yet, has a very hard time swimming near our dock when boats race through this channel. Additionally, the wakes not only wreak havoc with docked boats, but they have also caused considerable shore erosion along our waterfront. I genuinely urge you to support this NWZ.

**Kathleen and Edward Eagan** oppose the petition. We have summered on the Barber Pole for 35 years and have had no problems with speed. Boats slow down when they pass through here. There have been no accidents or troubles. We are sorry we were not notified about the proposal. It is not needed.

**Patricia Fernald** supports the petition. We are in favor of passing the No Wake Zone at the Barber Pole on Lake Winnepesaukee. Please count me in as a supporter. You can contact me as a long-time resident of Tuftonboro, NH. We are firmly in support of the Barber Pole No Wake Zone. We have been longtime residents of Tuftonboro, NH and see the benefits of reduced speed in this area.

**The Fernald family** supports the petition. Our family has lived and boated on Lake Winnepesaukee for over 100 years. We believe having the No Wake Zone at the Barber Pole is important for the safety of all concerned. Please pass the Barber Pole No-Wake Zone for all concerned.

**Elizabeth Hall Frago** supports the petition. While I have summered along this shore for over fifty years, my husband and I are now here nine months of the year. To say that we have seen a huge change along the shoreline here at our section of the lake is an understatement. The erosion along the Barber Pole is so pronounced from heavy boat traffic during the summer, and it is just overwhelming on the weekends. This is a very narrow part of the lake that boats use to get to from the Pick Point area of the Broads to Moultonborough Bay and beyond. It is by no means the only way to get to M-boro bay from the Broads, but judging from the increase in traffic over the years, a very popular way. Even though it is narrow they fly through at full speed, and sometimes easily over the speed limit now on the lake. I have my boating certificate and am well aware of the 150' rule, but you will often see two large( over 22 feet) boats passing each other in a barely 300 foot area of water. You can easily imagine without being on site how the waves just pound, especially Little Birch and Squirrel Island, the very close land which due to a light buoy are the nearest land to the "channel". Also Little Birch faces squarely at the Broads with the house just feet from the front part of the island. As a young girl in the 50's I had a friend who lived on that island, and I would spend the night--- personally I would not be too happy about sleeping there now, for if a boat misses the slight jog into the channel at the beginning of the Barber's Pole heading north, they would have an excellent chance of landing right into the house. There is no doubt with the erosion caused by heavy wave action and the very narrow channel for numerous boats, a NWZ is a certainly needed.

**Barbara Fraser** supports the petition. Please pass the NWZ for the Barber Pole area as this is such a precious and fragile part of our beautiful Lake Winnepesaukee. We are losing so much so fast and here we have a chance to save our shoreline before it is too late. My own shore line on Winter Harbor is being eaten away every summer by fast boats and soon trees that line the shore will fall into the lake and be gone forever.

**Deb and Al Gagne** support the petition. I have a home on Cow Island and use this passage all the time. I would NOT like to see a no wake in this area. It is an important through way that is heavily used. The problems i see there are more people who don't stay with the flow of traffic (so to speak) or those who cut off or come to close to

fishermen. I don't think that a no wake there would help but more likely would create frustration in an important channel.

**Al and Gail Gerrish** support the petition. We live during the summer on the Wawbeek shore just up the shoreline from the barber Pole. We strongly support the no wake zone for that area.

**Bill Glassman** supports the petition. As a full time resident of Moultonborough and a user of Lake Winnepesaukee from April through October, I would like to offer my voice against the petition to create a no-wake zone within the Barber's Pole region. It is a bad precedent to extend the law beyond the current 150 feet from shore. Passing this will only encourage other weekenders to petition for similar rules. There are indeed times where it becomes chaotic in this area, but that time represents less than 10% of the navigable time. Probably much less than 10%. The other 99%+ of the time, this area is like any other part of the lake. It is also a main route from the north-east quadrant of the lake to the main body. Slowing down traffic when there is no other traffic is an unfair and burdensome restriction during normal periods. Rules like this – and no-rafting rules – would be practical if they were only in effect during the problem periods. That would be weekend from 10-4 on weekend and holidays, in July and August. Legislating for the peak periods, in my opinion, is wrong. It affects people unfairly during the off-peak periods. I encourage the department of safety to deny this petition.

**Bruce Glassman** supports the petition. My family has frequently visited Squirrel Island near the proposed No Wake Zone between the island and the shore of Tuftonboro Neck near the Barber's Pole on Lake Winnepesaukee. I strongly support the effort to create the No Wake Zone as the safety of my children and erosion of Squirrel Island are of great concern. You must maintain this area as a no wake zone. Children could be injured and the noise level is too high if motorized boats are travelling at unsafe speeds.

**Mary Hennessey** supports the petition. I have spent a great deal of time at the Barber Pole and it is indeed time to act! Please support the NWZ. Boat traffic is frightening, wakes are huge(damaging boats), and erosion is a major concern. It is my understanding that approximately 14:1 signed in in favor of the NWZ. You will probably get many emails from people outside of this area who just want to go fast. Please listen to the residents of the Barber Pole who know the real story.

**R. Brian Hennesey** supports the petition. I wanted to weigh in regarding the Barber Pole NWZ. The area in question is similar or smaller in width than many of the other NWZ's on the lake. Please review the DVD made 2 years ago of the traffic in the Barber Pole. With the often present fishing boat at the buoy and rafts/moored boats/swimmers/ kayaks off the islands the legal width for passage is often 50' or less. The islanders are concerned for the possibility of a night time hit on their island similar to others we have seen. Yes the bad economy has contributed to less boat traffic this year but when the economy improves we'll be back where we started. My understanding is that 13 to 1 signed in in favor of the NWZ, the one opposer being not from the Barber Pole. Two years ago the sign in showed 22 to 0 in favor of a NWZ. Please don't let this important opportunity pass.

**Ron Hibink** supports the petition. As a Little Birch Islander I want to voice my support for a No Wake Zone through the Barber's Pole area. Having spent nearly 50 summers on the island I have observed many, many instances where boats come in much closer than the 150 foot requirement. Two years ago we resorted to buying a yellow rope of 150 feet to stretch out off of Little Birch Island and then placing an orange buoy at the end of it. This was a way to help boaters visualize what 150 feet looks like, since many people have difficulty visualizing such a distance.

Even after placing this buoy at that distance off of Little Birch, many boaters still came inside the orange buoy. Naturally their wake and the wakes of many large craft have created considerable erosion on Little Birch Island, causing trees along the shore line to topple into the lake.

I have little doubt that a no wake zone will ease the erosion problem and make the Barber Pole area safe for all types of water craft.

**Thomas Hibink** supports the petition. I am co-owner of Little Birch Island and a New Hampshire taxpayer who stands staunchly in favor of a no wake zone for the Barber's Pole area of Lake Winnepesaukee. Over the past decade, our safe and peaceful part of the lake has become more comparable to a median strip on the Autobahn Boats designed for the ocean speed by, doing so all too often within 150 feet of shore, of swimmers, and of canoers and kayakers. I have personally made many complaints about specific boats to the marine patrol, but their low budgets and small staffs make it near impossible for them to catch the frequent violations. All this has created a situation where we now feel it necessary to keep children even closer to shore, seeing the lake as a hazard rather than a pleasure. We used to regularly swim across to the mainland as a form

of recreation and exercise. But now we always send a canoe to accompany swimmers. Earlier this summer I was in the canoe, with swimmers in the water, and had to frantically wave down a boat that was barreling towards us, seemingly oblivious even to our bright yellow canoe. This is unacceptable. We are also seeing serious erosion of our property on the Barber's Pole side of the Island. This represents a tangible and significant loss to our family. A no wake zone makes sense for the Barber's Pole. The passage between Little Birch Island and the mainland is quite narrow (narrow enough to swim), just around 1800 feet. A no wake zone makes a great deal of sense for the land, the lake, and those of us who make it our home every spring, summer, and fall.

**Ananya Hixon** supports the petition. I have spent time on Winnepesaukee all of my life. Please support efforts for a NWZ through the Barber Pole area. This measure is needed to promote safety, prevent shore erosion, and to mitigate huge wakes, which are damaging boats.

**Mark and Joanne Huyler** supports the petition. We are writing to urge your support for the NWZ in the Barber Pole. The area is narrow, congested, and basically unsafe and the residents have petitioned several times in the past for this. We have boated through this area and agree this is an unsafe situation.

**Dave Johnson** supports the petition. I have witnessed first hand traffic patterns in the Barber Pole area of Winnepesaukee and a NWZ is a measure that is long overdue. Please support the efforts of the people in this area to promote safety.

**Karen Johnson** supports the petition. I have spent time at Barber Pole area of Winnepesaukee and 45 MPH for boats through this narrow area seems way too fast. The proposed NWZ is similar in size and area to other NWZ's on the lake and I urge you to support this measure.

**Lynda and Walt Johnson** opposes the petition. I attended the public hearing associated with the above No Wake zone proposal, on July 16<sup>th</sup> and would like to comment further in opposition to the No Wake proposal. There was no real case made that a no wake zone would increase public safety on the lake in this area. The residents stated that they have been attempting to get this resolution passed for 27 years which makes me wonder how much of this is really about safety and how much about wanting their part of the lake "private." One woman wants to be able to swim the channel. It would be foolish to swim in the channel on the Fourth of July weekend. But, there are

many other quiet opportunities to do this swimming. You should not close down one part of the lake for one person for a whole season based on several busy weekends. Lake rights are for all those who use the lake.

One person submitted a video taken two years ago. This was before the new speed lake speed limit legislation. I have not seen the video and did not hear the time of day or date it was shot. This is critical information. Everyone can point to busy times near their cottages but these busy times are not all the time. It was mentioned that a big, fast (?) boat passed within 20 feet of a smaller boat. There are already laws on the books that address this issue, the 150 foot rule and headway speed when passing a smaller boat. More enforcement of these rules are needed, rather than another No Wake zone. I have kayaked from Little Bear through this debated area. If I stay on the Mainland side, I stay between the Barber Pole and the shore. If I kayak on the Cow Island side, I can wander through Little Birch & Squirrel ending up in the quiet Orchard Cove. I never see or experience the tremendous volume of traffic discussed. The reported "shore line erosion" is limited by the rocky shore. Rocks in their cove prevent strong wakes. My cottage is at the end of the no wake zone at Hole in the Wall. Yes, sometimes my boats are bouncing as faster boats "hit it" when they leave. It's all part of lake living, and sharing the waterways.

**The Kirby family** supports the petition. This is in support of an NWZ along the Barber Pole which we use as our main source of transit from Orchard Cove on Cow Island to our deeded access on the Barber Pole (Lot 39 Barber Pole Rd.). We favor an NWZ for reasons of safety, and hope you will support this, particularly in light of the fact that there are several other similar areas on the lake that already have an enforceable NWZ in effect. (Such as Bear Island).

**Tom Light, Jr.** supports the petition. I am a co-owner of Little Birch Island and have been enjoying the lake for each of my 55 years. There are several reasons that I am asking you to create a NWZ through this section of the barber's zone.

There are many reasons to support a NWZ, but the most important is safety. Many boats funnel through this narrow passage making it especially dangerous. My family needs to cross the Barber's Pole to get to our island and crossing in our 14' motor boat can be difficult and dangerous on high traffic days. I find myself waiting for an opportunity to cross that avoids speeding boats, but they often come upon me before I get across despite this. Crossing in canoe or kayak is even more dangerous. It seems that some boaters don't know or care that their wake, especially when stacked up with other wakes,

can capsize a small boat. Boats have come very close (within 50 feet) to me at high speed. Although I have not had a boat come dangerously close to me while I am swimming, I do see them cut the corner by the south end of Little Birch and cross over water where we do swim. I have young cousins and soon will have grandchildren boating and swimming off the island and I do not want one of them injured due to the careless behavior of reckless boaters. Accidents have happened on our lake, and I do not want to witness or read about a fatal accident on the Barber's Pole. This is a very busy thoroughfare on the lake and it needs to be safe.

A second, though less critical reason, is shoreline erosion. The eastern shore of Little Birch is showing some loss and there is significant erosion on the north shore in the cove due to the repeated entrance of waves into that cove. For thousands of years, that shoreline knew nothing but ripples and now small waves are frequent. You can see where soil has washed out from behind blueberry bushes on the shore and there are many trees which have been undermined and are leaning into the water. There is plenty of lake that is open and free of obstacles. There is no reasons that this small section of the lake can't be made safe.

**Anne and Jerry Light** support the petition. As Little Birch residents, we request a no wake zone on the Barber Pole, due to erosion, danger for swimmers and small craft.

**Brett Light** supports the petition. I am writing to express my sincere support of a no-wake proposal from the edge of Little Birch Island to the edge of Squirrel Island near the barber Pole buoy. As an owner of Little Birch Island I have been concerned for years about the safety of my family as we recreate in this area. Every single weekend we have boats flying past our dock pushing heavy beams of waves crashing on our shores. Our dock has been built and re-built almost years due to the abuse it has taken. However our concerns are mostly for personal safety as well as the issue of erosion caused by the wave actions on our shores. Points we need you to consider are:  
High traffic funneled through a narrow 390 foot area. With rafts off of Squirrel and L. Birch and the 150' safe passage rule, the legal area to pass can be as little as 90'. We swim in these waters every day and we watch as boaters fly through, not even looking where they are going. We have small kayaks, rowboats, canoes and scull rowers we use frequently. These small recreational craft are low to the water and hard to see over a high bow. We are forced to stick tight to the shoreline for safety. Is that fair that for fear of our lives we have to limit our recreational activities?

Our mainland slips are across the barber Pole channel. We have a small skiff and engine. We always practice safe boating skills and we follow the rules of the road. I wish I could say that all boats observe these rules but they do not. I'm angered as we are threatened and challenged by larger boats who just don't want to slow down. In some instances I have seen 30+ foot cruisers pass within 20 feet of our small skiff at top speed, casting a 5 foot wave against our 12 foot skiff. We often have elderly parents or young kids in these boats. We don't mind getting a little wet from time to time but it's insane to think that we wont some day be swamped by one of these waves if we can't maneuver around them.

In some cases we have large boats passing at high speed on either side of us at once. We wait as much as we can until it is clear but many times these boats are moving so fast or barreling around a corner and approaching us before they can even respond appropriately. Whether they know how to respond or give way or not is something we often don't find out until they are past us.

Fatal accidents have happened...one on Diamond Is. 2 yrs ago. Other accidents have happened at night on Parker, Eagle, and Rattlesnake Islands. The only lighted buoy in that area is the barber Pole. There is nothing on the east side of that channel to demarcate where the water shallows close to Little Birch and Squirrel Islands. At night it is an accident waiting to happen. I shudder to think about night crossings to the mainland (despite that we use required lighting on our boat and we use a flashlight to signal to any boats in the vicinity our presence). Large boats simply do not slow down and they do not watch for other boats or obstacles.

Serious erosion which was acknowledged by the Dept. of Safety 12 yrs. ago at a previous hearing for our NWZ is an issue. Currently our western most shoreline is being undercut by erosive action and some of our trees may be close to being undercut and falling into the lake. We have an arborist come our regularly to assess our trees to keep them healthy but we are powerless to stop this erosion. The only action that would help is to stop the unnecessary waves from fast boats. There is a no wake zone between Governor's Is. and Eagle Is. that was established after a night time accident there 3 yrs ago. The distance between these islands is similar to that in the Barber Pole, which sets a precedent for establishing a no wake zone for the barber Pole area.

The distance between Farm and Chase Islands at Nineteen Mile Bay is similar to that of the Barber Pole and they have a NWZ there, making two precedents for a NWZ at the barber Pole.

The Marine Patrol has understandably indicated that they cannot be everywhere at every time but we have all noted that boats do indeed slow down for marked no wake zones independent of whether a patrol boat is in sight. We have for years been calling in reports of speed and distance violators to the marine patrol hotline but no action has been taken to prevent these incidents beyond a ticket here or there. In some cases, the marine patrol has watched these violations and not even responded.

I urge you to give serious consideration to our concerns and prevent an accident or death before it occurs off the shores of Little Birch or Squirrel Island. Surely, these accidents in other parts of the lake could have been prevented. Here is your opportunity to save a life. We pray you will take this opportunity and do the right thing so everyone can enjoy Lake Winnepesaukee for years to come.

**Jeremy Light** supports the petition. I am a member of the family that owns Little Birch Island on Lake Winnepesaukee in New Hampshire. I am in favor of having a no-wake zone imposed in the strait between the Barber's Pole and the above island. Over the last 40 years I have watched the boat traffic increase, as well as the rate of speed (speedboats, cigarette boats, etc.) of marine traffic that travels through the above location. Due these current conditions, the use of our island is limited to the leeward side of the island during heavy boat traffic, with erosion & threats to aquatic life (Loons, etc) being constant. With young children swimming & boating adjacent to this marine traffic, there is a currently a safety concern. I feel that the current 150' boundary for marine traffic off our island is insufficient with the rate of speed that some of these boats travel. Most of our family members take part in the use of non-powered vessels (canoes, kayaks, dory's, etc.), and this is limited when powered vessels in the area may be traveling in excess of 40 knots. The current marine traffic condition in the lake is clearly unsafe for us at this at this time and I am hoping that you will consider our concerns. Our family has been on this island for over 150 years and we are hoping to preserve its use for future generations.

**Jerome and Anne Light** supports the petition. We (Little Birch Island residents) favor the 'no wake 'zoning at the Barber Pole, due to high traffic through the narrows, Erosion is a concern as well as safety of swimmers and canoe/kayakers. We would hate to loose a family member or anyone as a result of high speed boaters. We need to get back and forth to our mainland slip with small craft.

**Karen Light** supports the petition. I am a member of the family that owns Little Birch Island on Lake Winnepesaukee in New Hampshire since the early 1900's.

I am in favor of having a no-wake zone imposed in the strait between the Barber's Pole and the above island. Over the last 50 years I have watched the boat traffic increase, as well as the rate of speed (speedboats, cigarette boats, etc.) of marine traffic that travels through the above location.

Due these current conditions, the use of our island is limited to the leeward side of the island during heavy boat traffic, with erosion & threats to aquatic life (Loons, etc) being constant. With young children swimming & boating adjacent to this marine traffic, there is currently a safety concern. I feel that the current 150' boundary for marine traffic off our island is insufficient with the rate of speed that some of these boats travel. Most of our family members take part in the use of non-powered vessels (canoes, kayaks, dory's, etc.), and this is limited when powered vessels in the area may be traveling in excess of 40 knots.

The current marine traffic condition in the lake is clearly unsafe for us at this at this time and I am hoping that you will consider our concerns. Our family has been on this island for over 150 years and we are hoping to preserve its use for future generations.

**Peter and Ann Lindblad** supports the petition. Living in Tuftonboro and having seen boating patterns through the Barber Pole section of Lake Winnepesaukee I support measures to bring back some semblance of order to this very congested and sometimes dangerous area of the lake. Huge wakes have damaged boats tied to docks and hastened shore erosion. Furthermore, allowing 30 MPH speeds through this narrow area at night is clearly unsafe. Please support making a NWZ through the Barber Pole

**Betsy Fernald Maier** supports the petition. Please understand the importance of slowing boat traffic down through this very narrow area of the lake. Please vote for a No Wake Zone at this location.

**Robin Mason** supports the petition. Having spent some time both on land and boating through the Barber Pole, I support a NWZ for this area. There is far too much traffic to allow speeds of 45 MPH through this congested area. I urge you to support this measure as well.

**Richard Murray** supports the petition. Please support efforts to establish a no wake zone through the Barber Pole area of Lake Winnepesaukee. I have familiarity with the area and allowing boats to

go through this 390' wide area between buoy and islands at 45 MPH is wrong. Safety is a huge issue in this area and previous attempts to improve the situation with marine patrol presence has failed.

**Tyler Phillips, Sr.** supports the petition. My family owns a Camp on Tufonboro Neck, south and west of buoy 17 in the Barber Pole Channel. We have owned this Camp since 1907. The matter of a No Wake Zone through this narrow channel has surfaced several times through the years and we have always spoken out in it's favor, and have given testimony in this regard at every Hearing conducted by the State.

Here's why:

1.) The channel is long and narrow. It is also treacherous. When the lake is even slightly low, those who choose to ignore the buoy, racing by to the west of it, find their propellers at the lake's bottom. Even with the State's excellent boater education program, many boaters choose to churn by boats ahead of them, causing confusion and near-collisions. **None of this would occur were there reduced speed in a properly marked No Wake Zone.**

2.) The channel has long been a favorite fishing spot, as both Bass and Perch seem to like the shallow rock mound to the channel's edge. Years ago, kids would go out fishing at dawn and dusk in that area. No more. Motor boats roaring through at speed have come close to swamping kids (and adults) in canoes, rowboats....even other anchored motorboats. Not to mention kayaks passing crossing the channel to Cow, Little Birch and Squirrel Islands. Sailboats finding themselves with dropped wind or sudden wind shift in the lee of these islands, have no resources to react suddenly to a thundering onslaught of rushing-through power boats. **Once again, these serious conditions would be eliminated were there a properly-marked No Wake Zone.**

3.) I need to point out another, though ancillary issue. *There are other routes of travel for folks wishing to go north and south!* If one checks any chart of Lake Winnepesaukee its clearly obvious that going to the west of Cow Island, instead of east, through Barber Pole, there's easy, uncongested routing to Moultonborough, Center Harbor, and Meredith to the north, Wolfboro to the south. **Quite simply, there are other routes....we're not proposing anything that deprives one of clear transport alternatives.**

I unfortunately am unable to attend the 7/16 hearing on this important matter. I am hopeful my brother, co-owner of our Camp, will be able to come up from Philadelphia for it, and testify to the need for enactment of this No Wake Zone proposal.

**Richard Stone** opposes the petition. I am sending this to you to express my opposition to this proposed no wake area. Current laws if obeyed and enforced prevent any problems through this area. If allowed this would put quite a burden on the area between little bear island and the mainland. Then what a no wake there? I realize the barber poll area can be very congested on weekends and if I lived near this area might get upset from time to time when a big cruised plows through the area at max wake speed. Perhaps Marine Patrol could put a little extra patrols in this area and pull folks over to explain what they are doing and how to do it right. For the 12 weekends a year, this area gets heavy use it seems silly to me for this to be implemented.

**Clinton Wolcott** supports the petition. I want to express my support for the no wake zone in the Barber Pole area on Lake Winnepesaukee. My sister and I have a family camp on that spot and there is no doubt that the fast boat traffic is both a hazard and a nuisance. I am leaving for my summer trip to the lake tomorrow morning. It would great if next year I could look forward to an actually peaceful vacation.

**Lisa Wright (on behalf of Chris, Owen & Eric Wright)** supports the petition. My husband has been spending Augusts at the Barber Pole since he was a boy and we now go there with our two children to stay with family each August. We understand that a No Wake Zone has been proposed for that area and that a hearing was held today on that proposal. We would like to express support for the creation of a No Wake Zone for the Barber Pole.

The passage area there is quite narrow and cannot safely carry boat traffic at the same speed as in the open parts of the lake. As it is, it can feel quite dangerous to cross that area in a canoe or kayak (especially for our 10- and 12-year old boys) because boats cannot always be seen until they are close. I understand that there are No Wake Zones in some other similarly-sized passages on the Lake.

Nothing can guarantee that an accident won't happen, but I believe that the creation of a No Wake Zone will greatly reduce the likelihood that the Barber Pole will be the site of the kind of devastating accident that can happen when boats travel at speed through narrow areas.

## **DISCUSSION:**

In gathering findings of fact, I reflect on and consider the following:

### **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).

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This fact-finder reviews the listed statute(s) and rule(s) as authority for this petition in addition to the list of authority placing 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 first speaker said that this [hearing] is the fourth petition seeking a speed restriction over a time span of twenty-seven years. In analysis of this instant request, I have also reviewed all documentation from the previous decisions to weigh the present arguments proffered.

This fact finder gives weight to the number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition in determining findings. However, the decision in regard to this petition does not rest on the voices raised either in favor of, or in opposition to the petition. The comments made are weighed against the criteria set forth in the law and rules governing the scope of this hearing. The petitioners presented information through testimony and exhibits generally clarifying the statements, contained in the Petition. Opposing commentary argues that the existing laws, if enforced, will not require reducing speed in this area of the lake. The testimony provided the fact-finder general information in support of the petition and included a abbreviated history of three prior petitions not granted.

The Director of Safety Services reported for the most recent hearing conducted on June 30, 2008 that a review of the file history disclosed a petition submitted in 1988 showing that a number of letters, as well as a petition sent to the Department of Safety requesting a no wake zone. The Marine Patrol did a site inspection providing former Director Robert Danos with a memo recommending

against such a restriction. Director Barrett in his 2008 review comments that the officer reported "The placement of a no wake sign or the institution of a no wake zone would be unreasonable in that all the boat traffic would be re-routed through the Hole in the Wall or up between Little Bear Island and Long Island which would increase existing traffic in the above mentioned area." In addition, a handwritten note from former Director Danos, shows that he elected to have spot checks done. There does not appear to have been a hearing for any further attention to this matter.

In 1997, a new petition was sent and a public hearing held by the Department of Safety. There was representation from those in favor, as well as persons against the petition. The decision signed by Commissioner Flynn denied the petition stating " ... Based on the observations of the Marine Patrol, the problems in this area can be addressed through greater enforcement of existing boating laws. Patrols in the area will be increased particularly during the higher traffic times. The petition to establish a no wake zone is, therefore, denied."

After the 2008 hearing, this reporting fact-finder recorded that Director Barrett said the Marine Patrol did not recommend granting the No Wake Zone for the reasons stipulated in 1988 as well as the reasons given in 1997. He said the infractions are an enforcement matter. People who violate the existing safe passage law will also violate a no wake zone regulation if it suits them. [I take Official Notice of the Decision and Order issued June 30, 2008 (appended)].

With this history considered (*Supra*), this fact-finder turns to the testimony presented in favor, or in contradiction to this 2010 petition. Those in favor essentially stand on the arguments presented in 2008 including a video produced in 2008 of boaters traveling through Barber's Pole. The video, presented in support of an appeal of the 2008 denial was not persuasive; greater weight in the Commissioner's denial was placed upon the infractions being violations of existing laws. The distinction this fact-finder can discover within this instant petition as opposed to the previous outcomes is the withdrawal of the continuing challenge by the Division of Safety Services, Marine Patrol. With the aforementioned in mind, the logic discussed by the persons submitting commentary spoke to most people obeying street signs if placed for safety reasons; therefore, signage (Buoy) placed in Barber's Pole will similarly be recognizable whether or not a law enforcement presence is in evidence. Elimination of law enforcement's objection removes an impediment to granting the petition. With this step now amended, I turn to the instant hearing to review the testimony and commentary. The petitioners rely heavily on the same point of view from the last hearing including presenting a two-year-old DVD

consisting of brief video clips of alleged boating infractions. In addition, there were adverse comments, but this year commentary from persons opposing the petition provided reasoning to consider by this fact finder. The persons opposed, argue that existing law makes any change unnecessary; what I do not find in the comments is any use of this area that would be restricted or removed, such as waterskiing or tubing. I incorporate from the 2008 decision findings #1 through #11. The scenario from the 2008 hearing has been presented with the same emphasis here, relying on: public safety; maintenance of residential, recreational, and scenic values; variety of uses; environment and water quality; number of people affected; and the availability and practicality of enforcement, but not threatened and endangered species. This petition, if granted, will control, but will not greatly restrict the varied uses for all the residents of the State of New Hampshire and the enjoyment of the public waters within Barber's Pole.

**After carefully reviewing and considering all of the evidence and testimony received in conjunction with the law, and what the petition seeks to accomplish, published findings are as follows (*infra*).**

#### **FINDINGS OF FACT:**

1. That pursuant to RSA 270:12, at least twenty-five (25) people petitioned John J. Barthelmes, Commissioner of the Department of Safety to conduct a public hearing to regulate motor boat usage in the area of Barber's Pole located within Lake Winnepesaukee in Tuftonboro, New Hampshire.
2. The Petitioners request the Department of Safety adopt a rule to impose a No Wake Zone within the area described as between the southeastern tip of Little Birch Island and lot #17 on the mainland to a point between lot #284 on Cow Island and lot #3 on the mainland in Lake Winnepesaukee, in Tuftonboro, New Hampshire.
3. Official notice for the hearing was published in a newspaper of statewide circulation, The Union Leader, Manchester, New Hampshire on July 1, 2010. Notification was sent to the town officials of Tuftonboro. Press releases were also disseminated to the general media.
4. A public hearing was scheduled and conducted on Friday, July 16, 2010 on the issue and was carried out pursuant to RSA 541, RSA

270:12 and Administrative Rule Saf-C 409 at the Tuftonboro Meeting House, Route 109-A, Tuftonboro, New Hampshire.

5. Public comment was received in reference to a diversity of use including swimming and general boating; including: canoes, sailboats and variously described motorboats, but not waterskiing or tubing.
6. Public comment was received generally referencing the number of people affected, either directly or indirectly, by adopting or not adopting the rule(s); and the availability and practicality of enforcement of the rule(s), emphasizing the boaters slow down only when there is a Marine Patrol Officer present.
7. Public comment was received regarding the effect which adopting or not adopting the rule(s) would have upon the public safety or water quality.
8. Public comment was received with general inference to the maintenance of residential, recreational and scenic values.
9. Little public comment was received regarding threatened and endangered species.
10. The New Hampshire Marine Patrol enforces the law governing the public waters within Barber's Pole in Tuftonboro, New Hampshire, and navigational laws are enforced through that agency by the Division of Safety Services.
11. The law requiring the slowing speed of watercraft as defined presently within RSA 270-D:2, without an official speed limit in the form of a official signage in the form of a buoy, or buoys does not provide adequate safety taking into consideration the number of people affected.
12. There is not sufficient availability and practicality of enforcement without a Marine Patrol Officer's presence for swimmers or the persons using small motorized or non-motorized vessels. In addition, the wakes presently contribute to damaging the shoreline. Warning buoys providing a No Wake speed along this route within Lake Winnepesaukee will improve public safety; maintenance of residential, recreational, and scenic values; variety of uses; and, environment and water quality.

Commissioner Barthelmes I recommend that the following Conclusion of Law and Disposition be approved based upon the Findings of Fact listed within this report.

Respectfully,

**[ Signed ]**

C. N. Duclos,  
Administrator



### **CONCLUSION OF LAW:**

Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules, Saf-C 409, the submitted information within the petition, thoroughly considered, along with the public commentary received demonstrates that the petition is in the public interest and shall fulfill the purpose of law. There is adequate proof allowing a No Wake Zone encompassing Barber's Pole in Tuftonboro, New Hampshire

### **DISPOSITION:**

The Petition to establish a No Wake Zone in the area known as the "Barber's Pole" on Lake Winnepesaukee in the Town of Tuftonboro is granted. Rulemaking shall commence forthwith.

**[ Signed ]**

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*).

**[ Signed ]**

C. N. Duclos, Administrator

**Date of mailing:** July 30, 2010

The following are being sent a copy of this Order

Petitioner Designee  
(*To be distributed to petitioners*)

Town Administrator  
Tuftonboro, New Hampshire  
**VIA EMAIL:**  
[selectmen@tuftonboro.org](mailto:selectmen@tuftonboro.org)

Director David Barrett,  
Division of Safety Services  
Department of Safety

cc: File

Persons providing an email address and had requested a copy .