
Committee Report

CONSENT CALENDAR

February 19, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Fish and Game and Marine Resources
to which was referred HB 276,**

**AN ACT permitting swimming at a fish and game
department cartop boat launch access area. Having
considered the same, report the same with the following
resolution: RESOLVED, that it is INEXPEDIENT TO
LEGISLATE.**

Rep. Larry Laflamme

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Fish and Game and Marine Resources
Bill Number:	HB 276
Title:	permitting swimming at a fish and game department cartop boat launch access area.
Date:	February 19, 2019
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill was introduced to allow swimming at certain public boat access areas where swimming is now prohibited. The Fish and Game Department received correspondence from the U.S. Fish and Wildlife Service stating that allowing swimming at these areas would jeopardize federal funds that are used to maintain these access points. It would constitute an interference with the authorized grant purposes which is not allowed under the terms of the grants. These grants amount to more than \$420,000 annually.

Vote 17-3.

Rep. Larry Laflamme
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Fish and Game and Marine Resources

HB 276, permitting swimming at a fish and game department cartop boat launch access area.
INEXPEDIENT TO LEGISLATE.

Rep. Larry Laflamme for Fish and Game and Marine Resources. This bill was introduced to allow swimming at certain public boat access areas where swimming is now prohibited. The Fish and Game Department received correspondence from the U.S. Fish and Wildlife Service stating that allowing swimming at these areas would jeopardize federal funds that are used to maintain these access points. It would constitute an interference with the authorized grant purposes which is not allowed under the terms of the grants. These grants amount to more than \$420,000 annually.
Vote 17-3.

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: FISH & GAME & MARINE RESOURCES

BILL NUMBER: HB 276

TITLE: PERMITTING SWIMMING AT A FISH AND GAME DEPARTMENT
CARTOP BOAT LAUNCH ACCESS

DATE: 2/19/19 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

THIS BILL WAS INTRODUCED TO ALLOW SWIMMING AT CERTAIN PUBLIC BOAT
ACCESS AREAS WHERE SWIMMING IS NOW PROHIBITED. THE FISH AND GAME DEPARTMENT
RECEIVED CORRESPONDENCE FROM THE U.S. FISH AND WILDLIFE SERVICE THAT STATES
ALLOWING SWIMMING AT THESE AREAS WOULD JEOPARDIZE FEDERAL FUNDS THAT ARE
USED TO MAINTAIN THESE ACCESS POINTS. IT WOULD CONSTITUTE AN INTERFERENCE
TO THE AUTHORIZED GRANT PURPOSES, WHICH IS NOT ALLOWED UNDER THE TERMS
OF THE GRANTS. THESE GRANTS ARE MORE THAN \$420,000 ANNUALLY.

COMMITTEE VOTE: 17-3 C.A.N.

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,
 LARRY L. LAFHAMME
 Rep. Larry L. Lafhamme
 For the Committee

Voting Sheets

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

EXECUTIVE SESSION on HB 276

BILL TITLE: permitting swimming at a fish and game department cartop boat launch access area.

DATE: 2/19/19

LOB ROOM: 307

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year)
- (if offered)*

Moved by Rep. LaPlante Seconded by Rep. Ruprecht Vote: 17-3

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year)
- (if offered)*

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year)
- (if offered)*

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year)
- (if offered)*

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: _____ Motion _____

Respectfully submitted: [Signature]
Rep Mark King, Clerk
Rep Timothy Egan



2019 SESSION

Fish and Game and Marine Resources

Bill #: HB276 Motion: JSV AM #: _____ Exec Session Date: 2/19/19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Harvey, Cathryn A. Chairman	17		
Laflamme, Larry L. Vice Chairman	1		
Dontonville, Roger W.	2		
King, Mark R. Clerk <i>Berach</i>	3		
Read, Ellen D.	4		
Bosman, James B.	5		
Egan, Timothy T.	6		
Eisner, Mary A.	7		
Ruprecht, Dennis M.	8		
Stack, Kathryn	9		
Von Plinsky, Sparky	10		
L'Heureux, Robert J.	11		
Klose, John F.	12		
Spillane, James A. <i>Hopper</i>		1	
Comeau, Ed C.		2	
Howard, Raymond J.	13		
Khan, Aboul B.	14		
Craig, Kevin B. <i>Wuelper</i>		3	
Love, David C.	15		
Kotowski, Frank R.	16		
TOTAL VOTE:	17	3	

Hearing Minutes

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

PUBLIC HEARING ON HB 276

BILL TITLE: permitting swimming at a fish and game department cartop boat launch access area.

DATE: February 12, 2019

LOB ROOM: 307

Time Public Hearing Called to Order: 1:03pm

Time Adjourned: 2:38pm

Committee Members: Reps. Harvey, Laflamme, King, Dontonville, Read, Bosman, Egan, Eisner, Ruprecht, Stack, Von Plinsky, L'Heureux, Klose, Spillane, Comeau, Howard, Khan, Craig, Love and Kotowski

Bill Sponsors:
Rep. Comeau

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Q Rep Comeau Permits swimming at 55 car top boat ramp/launch areas

Q Rep Laflamme Do you mean right to access?

A People have a right to access waterways some people use the launch to get in water. Maybe rather than no swimming.

Q Rep Bosman Is there any liability for state to allow this

A no

Q Rep Dontonville Is aware of these areas. Will people be able to hang out by boat launch-impending access to water?

A People should not block Experience shows that people are conscious and helpful

Q Rep Dontonville Will it be become a social place, move congregational?

A All should have equal access, but not using it as beach. Enforcement should occur when folks violate

Q Rep L'Heureaux If we grant this, could folks block boat users?

A A sign that explains is better than a blanket " no swimming"

Q Rep L'Heureaux How would you deal with people blocking ramp, who has priority?

A Priority for boat launch

Q Rep Harvey It can grow from 1 user, to multiple, to beach chairs, etc.

A If someone is causing issue we could call an enforcement officer. Doesn't need to be enforcement issue, needs be common sense

Q Rep Harvey how likely is it a conservation officer will have time to help me w/swimmers blocking?

A It is then being treated as a non issue due to use of signs

Q Rep Bosman Only motorized boats offer safety issue.

A Folks should use beach small ponds it may be the only water access

Q Rep Stack Do you think it fits mostly small areas of water

A Specific bill for car top boat launch

Q Rep Stack Cartop area used for swimming etc when there is no adjacent beach

A yes

Q Rep Eisner How many of 55 areas have adjacent beach areas.

A I don't know

Q Rep Egan Isn't is problematic that folks can swim and also leave towels etc

A Signage should do

Q Rep Spillane would ammendment spelling out the specifics, say, pointing out, people can access, but not block.

A Helpful

Q Rep Craig No 2 boat ramps are the same arbitrary sign age would not be good

A Each area is different

Q Rep Craig A difference between swimmers and lines of cars w/Kayaks

A No one should block anybody

Q Rep Harvey How can I tell one ramp (say town ramp) from a Fish & Game ramp

A Says boat ramp, location, no swimming on F & G sign

Q Rep Eisner Have you talked with F& G about rules

One rule, consistent

Q Rep Read Maybe signs that point out " Do not block"

A would like to change local

Q Rep Kowtowski You've opposed to "no swimming" signs. Would you agree folks get wording of sign

A yes

Q Rep Khan Areas are managed for safe swimmings, lifeguards, maybe that is why swimming prohibited

A signs indicate no lifeguard, maybe areas are not suitable F & G wants no boat ramp for swimming

Q Rep Craig Is there a definition of "swimming" or how far out from the ramp is considered boat launch

A Don't know statutory definitions

Q Rep Harvey Did someone ask you to bring this bill forward?

A yes, there is also a senate bill

Q Rep Harvey Is it your belief that a "no swimming" sign makes it easy to enforce.

A 'd worry that the state can say "no" to waterway access/use

Q Rep Spillane Are floating things more like watercraft?

A This is where confusion lies

Q Rep Read Could rules add clarity?

A That is what this is to solve

Q Rep L'Heureaux If sign swimming it suggests it is safe swimming If someone gets hurt, who liable?

A Folks need to use discernment

Q Rep Spillane Do you know others places where signs say swim at your own risk

A yes

1.*Opposes Colonel Kevin Jordan 129 ramps 55 car tops 2 that are for both. Boat ramps are funded by registration costs, half million from Fed Gov, which we match-these come with restrictions including \$\$\$ can only be used for efforts and activities of Fish & Game "no Swimming" rule is in line with this.

Boat launches have limited room, many Winnepesaukee ramps have full conservation officer overseeing parking. People pick spots, claim them with their belongings. There are already conflicts among fisher folk. Swimming areas never allow boats. Must promote public safety. F & G does not have staff to police 29 boat launches no one can say fishers have more rights than swimmers. Does not want to lose Federal money. No state allows this. Considering access economic challenges and safety

Q Rep Spillane Do we have assurance that we would lose those federal grant money

A Fed standards say "No swimming"

Q Rep Spillane Would a kayak blocking access cost \$

A It could

Q Rep Von Plinsky Other ways to access?

A There are other ways to access points but they are not that good no easy solution

Q Rep L'Heureaux Sign age that allows swimming would wreck federal funds

A true Boat launches bring up a bunch of issues. /

Q Rep Craig What defines a boat launch What dimensions?

A It would be defined by property borders.

Q Rep Craig Can you see conflict in areas with launch areas nearby public beaches

A Numbers of calls concerning conflicts between swimmers and ramp users

Q Rep Read "Do not block" language messes with funding?

A If we allow things that Feds don't we could lose a bunch of funding

2.*Supports Jessica Williams No definition of swimming in NH law. We are talking about access to water. Boat ramp is state property, at high water mark is public. Rules in public boat access state no state liabilities. Swimming is noted as a public activity. Contradicts F & G claims of losing federal funds. 4% of deaths vying swimming, 28% fishing. Maine rules indicate that boaters need to

acknowledge boaters should give way

Q Rep Laflamme Are you insinuating that swimmers have more rights than boaters

A No one has more rights than another

Q Rep Harvey Is it right of way in water?

A yes boaters need to be aware

Q Rep Harvey How does something change from a primary use to a secondary use?

A There are no signs about swimings. Swimming is not allowed.

Q Rep Love Could this be remedied by better defining "boat".

A I'm not sure that would help

Q Rep Love What are you looking for ?

A The issue isn't about me in water

Q Rep Bosman

You state issue is about access

A At smaller ponds ramp could be the only access I wouldn't swim at big boat launches

Q Rep Bosman So you'd like access to water at all ramps

A I might > But that doesn't; seem good

Q Rep Kowtowski Would you like sign age that says "no swimming here under federal law?"

A My right should not be removed because F & G needs federal funds.

Q Rep Dontonville What is your definition of access Leaving ones towel there then going into water is not access. Access is right to water, not right to land where towel lies.

Q What is your definition of access

A You can cross state land to access water. Not sure how to define "access" via time

Q Rep Dontonville Can people sit on my lawn? I live on a pond.

A Not sure how to define

Q Rep Spillane This is getting complex.

Q Rep Laflamme Understanding how ramps are funded would you be willing to pay

A No blanket fee, no user fees

Q Rep Harvey "I'm sure there's more to the story than that" What did you mean

A I think it was during ramp eligibility requirements talk. I meant nothing ominous.

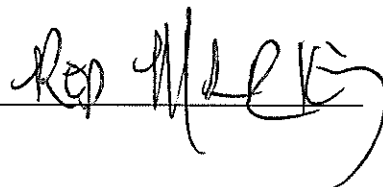
Q Rep L'Heuieaux same bill filed in senate why?

A I didn't file, not sure why that happened

Q Rep Spillane Did you know that some bills are put before House and Senate

A Not aware of that

Respectfully submitted by:: Rep King



HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

PUBLIC HEARING ON HB 276

BILL TITLE: permitting swimming at a fish and game department cartop boat launch access area.

DATE:

ROOM: 307

Time Public Hearing Called to Order: 1:03

Time Adjourned: 2:38

(please circle if present)

Committee Members: Reps. Harvey, Laflamme, King, Dontonville, Read, Bosman, Egan, Eisner, Ruprecht, Stack, Von Plinsky, L'Heureux, Klose, Spillane, Comeau, Howard, Khan, Craig, D. Davis and Love

Bill Sponsors:

Rep. Comeau

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

REP COMEAU: PERMITS SWIMMING @ 55 CARTOP BOAT LAUNCH AREAS.

? REP LAFLAMME - DO YOU MEAN RIGHT TO ACCESS,

A: PEOPLE HAVE A RIGHT TO ACCESS WATERWAYS
SOME PEOPLE USE THE LAUNCH TO GET IN WATER. MAYBE
RATHER THAN NO SWIMMING

REP BOSEMAN: IS THERE ANY LIABILITY FOR STATE TO
ALLOW THIS

A: NO

~~CAC~~



2

Rep Dantouville: Is ~~an~~ ^{an} issue of these areas. Will people be able to hang out by boat launch - Improving access to water

A: People should not block. Experience shows that people are conscious and helpful

Rep Dantouville: Will it become a social place, more congregational?

A: All should have equal access, but not using it as beach. Enforcement should occur when folks violate

Rep LHeureaux: If we grant this, could folks block boat users?

A: A sign that explains is better than a blanket "no swimming"

Rep LHeure: How would you deal with people blocking ramp, who has priority

A: Priority for boat launch

Rep Harvey: If law grow from 1 user, to multiple, to beach chairs, etc

A: If someone is causing issue we could call an enforcement officer

Doesn't need to be enforcement issue, needs to be common sense

~~Rep~~ Rep Harvy: how likely is it a ^{conservation} ~~case~~ officer will have time to help me w/ ~~\$~~ swimmers blocked?

A: It is then being treated as a new issue due to use of signs

Rep Roseman: only motorized boats offer safety issue

A: Folks should use beach - small ponds it may be the only water access

~~Rep Roseman: less safe~~

Rep Stack: Do you think it fits mostly small areas of water

A: Specific bill for car top boat launch

Rep Stack: Car top area used for swimming etc when there is no adjacent beach

A: Yes,

Rep Eisner: How many of 55 AREAS have ADJACENT beach areas

A: I don't know. ~~This would allow people~~

Rep Egan: Isn't it problematic that folks can swim, and also leave towels, etc

A: ~~Yes~~ SIGNAGE DO

Rep Spillane would AMENDMENT spelling out the specifics say pointing out PEOPLE CAN ACCESS/ but not block

A: Helpful

Rep Craig - no 2 boat ramps are the same, arbitrary signage would not be good

A: Each area is different,

Rep Craig - A difference between SWIMMERS AND LINES of CARS w/ KAYAKS -

A: NO ONE SHOULD BLOCK ANYBODY -

Rep Honey: How can I tell one ramp (say town ramp) from a Fish + Game ramp.

A: Says BOAT ramp, location, no swimming or sign.

REP EISEN: Have you talked w/ FTG about ~~the~~ ^{rules}
A: ONE rule, consistent

REP READ: Maybe signs that point out "do not block"
A: Would like to change local

REP KOWTOWSKI: You're opposed to "no swimming"
signs. would you agree folks get warning of sign
A: YES

REP KHAN: Areas are managed for safe ~~swimming~~ ^{swimming}, lifeguards
maybe that is why swimming prohibited
A: signs indicate no lifeguard, maybe areas are not suitable
FTG waves ~~are~~ ^{are} ~~not~~ ^{not} suitable for swimming

REP CRAIG: Is there a definition of "swimming"
how far out from the ramp is considered BOAT launch
A: Don't know statutory definitions

REP HARVEY: DM someone ask you to bring this
A: YES, there is also a senate bill

REP HARVEY: Is it your belief that a 'no swimming'
sign makes it easy to surface.
A: Is worry that the state can say "no" to waterway
ACCESS / USE

Rep Spillane: Are floating things more like watercraft?
A: That's where confusion lies

Rep Read: Call ~~the~~ rules add clarity?
A: That is what this is to solve

Rep L. HENRY: If sign allows swimming, it suggests it is safe swimming. If someone gets hurt, who liable?
A: ~~Any~~ folks need to use discernment

Rep Spillane: Do you know other places where signs say swim at your own risk
A: YES



OPPOSES: Colonel Kevin Jordan 129 ramps 55 cartops 2 that are for both. Boat ramps are funded by registration costs, half million from Fed Gov, which we match - these come with restrictions, including \$\$\$ can only be used for efforts and activities of Fish + Game.

~~Rep's story of boat~~ "No swimming" rule is in line with this.

Boat launches have limited room, many WinniePasaki ramps have full time conservation officer

OVERSEEING PARKING. People pick spots, claim them with their belongings. THERE ARE ALREADY CONFLICTS AMONG FISHERFOLK. SWIMMING AREAS NEVER ALLOW SWIMMING BOATS. MUST PROMOTE PUBLIC SAFETY. F+G DOES NOT HAVE STAFF TO POLICE 129 BOAT LAUNCHES. NO ONE CAN SAY FISHERS HAVE MORE RIGHTS THAN SWIMMERS. DOES NOT WANT TO LOSE FEDERAL MONEY. NO STATE ALLOWS THIS. CONSIDERING ACCESS: ECONOMIC CHALLENGES + SAFETY

2 Rep Spillane: Do we have assurance that we would lose those federal COMAR MONEY.

A: FED STANDARDS SAY "NO SWIMMING"

Rep Spillane: Would a kayak launching access cost A

A: It could

Rep Van Pelt: Other ways to access?

A: THERE ARE OTHER ACCESS POINTS BUT THEY ARE NOT THAT GOOD
NO EASY SOLUTION!

Rep C'HEVEAUX: ~~It~~ Signage that allows swimming would wreck federal funds

A: TRUE. BOAT LAUNCHES BRING UP A BUNCH OF ISSUES

Rep CRAIG: What defines a boat launch, what dimensions?

A: It would be defined by property owners.

Rep CRAIG: Can you see conflict in areas with launch and nearby public beaches

A: Numbers of calls concerning conflicts between swimmers and ramp users

Rep READ: "Do not block" language messes with fishing?

A: If we allow things that FEOS don't use could lose a bunch of fishing.

~~Rep HARVEY: Harmonization of laws is~~

~~the~~

Supports JESSICA WILLIAMS: No definition of swimming in NH law. We are talking about access to water. Boat ramp is state property, at high water mark is public. Rules in public boat access state no state liabilities. Swimming is noted as a public activity. Contradicts F+G claims of losing federal funds. 4% of boats using swimming, 28% fishing

MANUE RUS INDICATE THAT BOATER NEED TO ACKNOWLEDGE BOATERS SHOULD GIVE WAY

REP. LITFAME

Q: ARE YOU INSINUATING THAT SWIMMERS HAVE MORE RIGHTS THAN BOATERS.

A: NO, NO ONE HAS MORE RIGHTS THAN ANOTHER.

REP HARVEY: IS IT RIGHT OF WAY IN WATER -

A: YES BOATERS NEED TO BE AWARE

REP HARVEY: ~~DOES THE~~ HOW DOES SOMETHING CHANGE FROM A PRIMARY USE TO A SECONDARY USE

A: THERE ARE NO SIGNS ABOUT SWIMMING. SWIMMING IS NO ALLOWED.

REP LOVE: COULD THIS BE REMEDIATED BY BETTER DEFINING BOAT

A: I'M NOT SURE THAT WOULD HELP

REP LOVE: WHAT ARE YOU LOOKING FOR?

A: THE ISSUE ISN'T ABOUT BE IN WATER,

REP BOSMAN: YOU STATE ISSUE IS ABOUT ACCESS.

A: AT SMALLER PAVES RAMP COULD BE THE ONLY ACCESS. I WOULDN'T SWIM A BIG BOAT LAUNCHES

Rep Bosman: so you'd like ACCESS to WATER at all ramps
 A: I might. But that DOESN'T SEEM good

Rep Kowtowski

2. → ~~Q~~ Would you ~~THESE~~ like SIGNAGE that says "no swimming here under federal law"

A: My rights should not be REMOVED BECAUSE F+G NEEDS FEDERAL FUNDS

Rep Dantouville: LEAVING ONES TOWEL THERE THEN GOING INTO WATER IS NOT ACCESS. ACCESS IS RIGHT TO WATER, NOT RIGHT TO LAND WHERE TOWELS ARE

WHAT IS your DEFINITION of ACCESS:

A you CAN CROSS STATE LAND TO ACCESS WATER. Not sure how ^{to} DEFINE "ACCESS" VIA TIME, 0

Rep Dantouville: CAN PEOPLE SIT on my LAND? I live on POND. Not sure how to DEFINE

Rep Spillane: THIS IS GETTING COMPLEX. ~~IS THE PROBLEM THAT~~

Rep Laflamme: UNDERSTANDING HOW RAMP ARE FUNDED, would you be WILLING to PAY

A: NO blanket FEE, ^{NO} USER FEES

Rep LANEY: "I'm sure there's more to the story than that" What do you mean

A: I think it was army ramp Eligibility requirements talk. I meant nothing obvious.

Why? Rep L'HEUREUX: Same bill ~~was~~ filed in SENATE.

A: I don't file, not sure why that happened

Not before HOUSE
↳ SENATE

Rep SPILLANE: Do you know that some bills are

A: Not aware of that.

Testimony



New Hampshire Fish and Game Department

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500
(603) 271-3421
FAX (603) 271-5829

276

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wildnh.com
e-mail: info@wildlife.nh.gov
TDD Access: Relay NH 1-800-735-2964

New Hampshire Fish and Game Department Testimony in Opposition of House Bill 276

An Act Allowing Swimming at non-motorized Boat Launches House Fish and Game and Marine Resources Committee February 12, 2019

Madam Chair Cathryn Harvey and members of the House Fish and Game and Marine Resources Committee. For the record my name is Kevin Jordan and I am the Chief of Law Enforcement for the New Hampshire Fish and Game Department. The New Hampshire Fish and Game Department and the Fish and Game Commission voted to **Oppose House Bill 276.**

We currently maintain 129 total boat access sites within the state. Fifty-five are non-motorized, seventy-two are trailer accessible and 2 sites accommodate both, non-motorized and motorized. These sites all have limited parking and even though we have tried many different ways to expand parking and access at these sites parking and access continue to be challenging. At a number of our sites we have in fact been forced to post officers during the boating seasons in the parking lot to address parking limitations and traffic concerns. This places a significant challenge to us to provide officers for this duty with the constant demand for our services around the state and our current staff shortage. This change in the law would affect all of our launches not just access to the Connor Pond site where the complaints have been communicated. I am convinced people would begin swimming at all of our locations as most people would believe New Hampshire boat launches are now open to swimming.

The Connor Pond site was purchased using monies from the Statewide Public Boat Access Fund under RSA 233-A:13 which are derived from boat registration fees. The site is maintained using matching federal dollars through the Wildlife and Sport Fish Restoration Act Grant. These are dedicated accounts used solely for the acquisition, construction, maintenance and operation of new or existing sites. State and federal laws prohibit us from diverting these funds to any other purpose other than the administration of duly authorized activities of the Fish and Game Department. We would lose these federal support dollars. The loss of these federal funds would significantly limit our ability to purchase or maintain these sites.

Safety would be another concern I would have in allowing people to swim at boat launches. These are areas where cars and trucks are pulling into or backing up. There are trailers involved in some sites. All sites can experience motor use on the back of boats to include large gas driven outboard motors to electric motors or small motors being used at car top locations.

REGION 1

629B Main Street
Lancaster, NH 03584-3612
(603) 788-3164
FAX (603) 788-4823
email: reg1@wildlife.nh.gov

REGION 2

PO Box 417
New Hampton, NH 03256
(603) 744-5470
FAX (603) 744-6302
email: reg2@wildlife.nh.gov

REGION 3

225 Main Street
Durham, NH 03824-4732
(603) 868-1095
FAX (603) 868-3305
email: reg3@wildlife.nh.gov

REGION 4

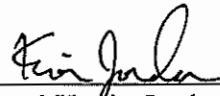
15 Ash Brook Court
Keene, NH 03431
(603) 352-9669
FAX (603) 352-8798
email: reg4@wildlife.nh.gov

All these motors utilize an underwater propeller. We will have children swimming at these launches without lifeguards or anyone to regulate or direct people to prevent a sudden accident or the refusal of people to give up prime locations on a warm day to allow for a boat to be put in or brought out.

New Hampshire is not the only state debating this issue. After some research I have found many other states have debated these same or similar issues and concerns. Currently I could not find any other state that allows unrestricted swimming at any of the various states' boat launches.

While I certainly can agree with how important public access is to the state and its citizens. In my current position I work to promote and protect these rights. However, I do feel the safety of the general public and the economic challenges we face to provide these access sites must be considered. I feel both of these factors would be the reasons to not change our current position regarding swimming at boat launches. No other state has allowed it and I do not feel New Hampshire should allow it to occur.

Madam Chair I would like to thank you for allowing me to testify before the Committee today regarding HB 276 and I would respectfully urge the Committee members to vote in **OPPOSITION of HB 276.**



Colonel Kevin Jordan
Chief of Law Enforcement
NH Fish and Game

Introductions

My interest in public water access began at Conner Pond in Ossipee, New Hampshire, the town in which I reside, pay property taxes, and raise my children – it's also where I choose to swim or find a bit of respite from a busy life, too often rushed by work and responsibility. Nearby Bayle Mountain is a great, short up-and-down hike easily done before or after work. The trail is heavily bouldered and the summit permits clear views to the My name is Jessica Williams - Mother, small-business owner, employer, and public servant. I currently sit on the Board of NH Hearing Care Providers appointed by Governor Sununu and Executive Council as well as a member of the NH DOT Highway Layout Commission, appointed by former Governor Maggie Hassan. I am a Lakes Region native and graduate of Kingswood Regional High School (1999). I have owned a home in Ossipee since 2004 and do my best to stay informed, attend town meetings when time allows, and take pride in voting on election day. I am standing before you today in support of both SB160 and HB276 which seeks to legislate change regarding current Fish and Game administrative rules pertaining to swimming. Yes, that's right – SWIMMING.

Who cares about a little pond in the woods?

Conner Pond is part of the Ossipee ring dike complex, an ancient volcano that collapsed in on itself 122 million years ago, leaving behind a near-complete, nine-mile diameter ring now known as the Ossipee Mountains. These volcanic eruptions and geologic and glacial activity formed both the Ossipee Aquifer and Conner Pond (among others in the area). In fact, the Ossipee Aquifer is the largest stratified drift water aquifer in the State of NH and because the soils are highly permeable, protection of this vital resource is critically important to all of us. This is important to note, not just to stimulate interest in the area, but to show, despite sitting on some of the most important water in the state, Ossipee locals have very little access to public water in general. At Conner Pond, like many small ponds around the state, NH Fish and Game owns the ONLY access points to these bodies of water as private land around water proliferates.

The squeaky wheel

It was nearly two years ago when I had an initial run-in with a woman named Susan while swimming in Conner Pond. It was my first time accessing the water from the Fish and Game owned public access facility, as it had been several years and prior to the development of the boat access site. I would later discover Susan is not the owner of the abutting property, but regardless, her behavior would have one believe she owns the whole pond! This woman took it upon herself to photograph my children in their bathing suits, my vehicle, and then to finally confront me regarding the 'No Swimming' signs that I had disregarded in my haste to cool off. Susan told me I was not allowed to access the water from the property unless I had a boat, which seemed as ridiculous to me then as it does now. However, despite some playful joking about my body being a personal watercraft, I decided the following week to find out the rules for myself.

I called NH Fish and Game and eventually spoke to Mr. Garrett Graaskamp who is the Coordinator of the Statewide Access Program. It was my understanding from that conversation that if I did not **block** access to the boat launch area, that I was free to enter the water and swim as I pleased. Great, I thought, how sensible! I could not have been more wrong.

Boiling point

Fast-forward to the summer of 2018 – the heat is stifling; the summer tourists are swarming the public beaches in Wolfeboro. Ossipee tried and failed for a public beach so really, the only option nearby is a sad, little bit of dirty sand on Duncan Lake, which is about fifteen feet deep. Do you know what happens to the fish in Duncan Lake when it's hot for several days in a row – they die and go belly up. You know what else? Dead fish stink. If that weren't bad enough to keep you away, even if you did try to go, you'd never find a parking spot on a day like that because there can't be room for more than 20 vehicles. I bet you already know what happened next?

Conner Pond is spring fed, cool, and clear. If there is no wind, you can hoot a bit and hear your voice echo four times. This acoustic event is particularly fascinating to my son, Keller, who is ten. It's also a great opportunity for a quick lesson in physics regarding the speed of sound and how the sound waves are reflected, causing an echo. We also like the loons and to swim into the middle of the pond, feeling the water get colder and colder closer to the center. On this particular day, I was very hot, but had yet to swim. The neighbor Susan was squawking again; yelling at the family in a raft of inner-tubes to be quiet – their laughter objectionable to her hostile temperament. By this time, I had done a bit more digging into NH statutes regarding swimming, NH Fish & Game administrative rules, public water access, the public trust doctrine, etc. I even called NH Marine Patrol and the US Coast Guard to find out just what IS the definition of a boat? I informed the complainant that the public can sing, whistle, giggle, or splash in the water because it's public water. Susan threatened to call F&G. A few minutes later, Susan informed us a conservation officer was on his way. I was hopeful to have a productive conversation regarding the rule, especially since I had covered my bases and called the year before. It seemed reasonable that on a scorching summer day, that people should be able to use a state-owned facility to access public water. Wrong, again.

What a surprise it was to see not only the Office Canfield, but the camera crew for the television show, *Northwoods Law*. I objected when Office Canfield told the people they were not allowed to swim there – public water is for the public; how can swimming be a violation in this instance? It seemed unreasonable to ask these people to leave and his erroneous comment, "there are plenty of public beaches" proved he was unaware of the issues in Ossipee. Certainly, it seemed ridiculous to me that only people with boats should have to access to the water and even more absurd that it's unsafe to swim in a small, rural pond because people are

putting canoes and kayaks into the water. I voiced my opinion and it's available for viewing on the episode titled, Boiling Point (S11:E11)

What does public water access really mean?

The series of events that followed are what bring me here: I went to the Ossipee Board of Selectman, I spoke to other residents and peers, I contacted Executive Councilor Kenney, I attended two NH Fish and Game meetings, I spoke privately, in-person with Garrett Graaskamp, and Colonel Jordan both in person and on the telephone, I researched all existing statutes, looked for precedent in this state and others, I read the Federal grant applications for the apportioned grants used to acquire and improve these facilities, I sifted through the last three years of F&G meeting minutes, I went to the registry of deeds... Short of filing a 91-A (Right To Know) request, I've done everything I can to understand how I may have missed something – I wanted to prove myself wrong. Now, keep in mind, I've been told I'm wrong by NH Fish & Game and I'm certain they will tell you the same thing today. At their January 29th, 2019 Special Commission Meeting, Commissioner Stohl moved to oppose HB276, 2nd by Commissioner Carr and then unanimously opposed by the Commission and the Executive Director, Glenn Normandeau. I imagine there will be similar opposition to SB160 as well.

What's the law got to do with it?

What I present to you here are my findings of fact. My feelings on the matter are irrelevant without any footing in reason or logic. If we created law based on a mere feeling or suspicion of injustice, we would have far more laws than we already do. I do not take it lightly to ask each of you to consider legislation just for the sake of getting my own way. This is not about what I want for myself, but what is best for the greater good? What is just? What is legal? Has an agency erred? It is my intent with the remainder of this testimony, which has grown quite lengthy, to break down the statements and arguments I have been given or heard from people with authority and refute them with existing statutes, facts, and statistics.

1. Swimming at a car top boat launch is unsafe.

Can you prove it? Is this based on fact or is it purely a matter of conjecture, speculation, someone's opinion? Where is the proof? Who collects this information and how is it disseminated? What agency did you consult to come to this conclusion?

Answer:

Swimming poses a much smaller risk for death or injury than fishing, which is far more dangerous statistically according to the US Coast Guard Annual Recreational Boating Report. In fact, in 2017, fishing was attributed to 28% of deaths and 11% of injuries of all boating accidents. In comparison, for the same year, 4% of deaths and 1.5% of injuries were related to swimming.

How then, given these facts if so concerned with the safety and welfare of the public, especially children, would NH Fish and Game ethically encourage fishing at all if it carries such a high-risk of potential injury or death?

Also, it is law that Marine Patrol must record all deaths, injuries, and property damage to the Department of Safety. It should not be very difficult to get access to the boating data for the state.

2. Anglers pay for these facilities with their fishing licenses and therefore, have priority of use of these facilities. You pay to play!

Answer:

In NH, according to the Biennial Report, signed by Executive Director Normandeau, in 2015, the commission sold 111,013 resident fishing licenses. Assuming each resident did not purchase more than one license, this represents just over 8% of the NH population. Certainly, Fish and Game would never assume that 8% of the population should get special treatment at a public access area because they bought a license to fish.

In fact, it states in 271:20-a Definition of Public Access. –

I. Public access to public waters means legal passage to any of the public waters of the state by way of designated contiguous land owned or controlled by a state agency, assuring that all members of the public shall have access to and use of the public waters for recreational purposes.

II. Public access also means that no barriers or other impediments shall exist in the roads and ways leading to any of the public waters.

Now, a couple of important things here, “assuring” is not “ensuring” and I would argue this should be amended, but even so, if you assure the public, you ought to be acting in good faith and follow through with what you are assuring.

3. Swimmers litter and make a mess of boat access facilities.

Answer:

Again, please prove that swimmers litter more than boaters or anglers. Do anglers not smoke or leave behind broken hooks and fishing line? I have been unable to find any agency or commission that is responsible for recording littering violations, however, there are two existing statutes of record (163-B:1 and 207-36:b) that could be enforced.

4. You may only use the facility if you are entering the water with a boat.

Answer:

In Chapter 233-A:1, III. "Public access" means legal passage to and of the public waters of the state by way of designated contiguous land owned or controlled by a state agency, assuring that all members of the public shall have access to and use of the public waters for recreational purposes, as defined in RSA 271:20-a, I. Furthermore, 233-A: IV states "Public boat access area" means an area adjacent to a public body of water which is owned or controlled by the state, accessible to the public, and has been designated by the fish and game department as a boat launching area under the statewide public boat access program. This last chapter says "accessible to the public" but puts no condition on what access means. It does not read, "accessible to the public exclusively by boat."

To take it one step further, 271:20-a defines public access:

I. Public access to public waters means legal passage to any of the public waters of the state by way of designated contiguous land owned or controlled by a state agency, assuring that all members of the public shall have access to and use of the public waters for recreational purposes.

II. Public access also means that no barriers **or other impediments** shall exist in the roads and ways leading to any of the public waters.

Is the potential of being cited as a misdemeanor not an impediment? If there is no other viable access point to the water, is it an impediment to the public to be threatened with a citation?

5. It's legal to swim in public water, you just can't access it from a Fish and Game controlled boat launch.

Answer:

Chapter 483-A:1 states, "New Hampshire's lakes are one of its most important natural resources; vital to wildlife, fisheries, recreation, tourism, and the quality of life of its citizens. It

is the policy of the state to insure the continued vitality of New Hampshire lakes as key biological, social, and economic assets, while providing that public health is ensured for the benefit of present and future generations. The state shall encourage and assist in the development of management plans for the waters as well as the shoreland to conserve and protect valued characteristics, including recreational, aesthetic, and those of community significance, so that these valued characteristics shall endure as part of lake uses to be enjoyed by the citizens of New Hampshire.”

It continues to define in Chapter 483-A:2, IV. "Valued characteristics" means the uses and values that lakes provide including, but not limited to: passive and active recreational activities such as swimming, fishing, and use of appropriate watercraft; aesthetic values such as scenic beauty, wilderness experiences, and educational opportunities; public uses such as drinking water supplies and flood control; ecosystem values such as providing ecological diversity and wildlife habitat; economic values such as revenue generated for the local, regional, and state economies; and social experiences and the opportunity to use our lakes for public enjoyment.

Swimming is listed here as a legal and reasonable use of public water. Finally, in Chapter 483-A:3, “It is also the intent of the legislature that, through said program, the scenic beauty and recreational potential of lakes shall be maintained or enhanced, that wildlife habitat shall be protected, that opportunity for public enjoyment of lake uses be ensured, and that littoral interests shall be respected.” Here we see the words ensure. Not assure. ENSURE. Another important word is littoral interests. The word littoral refers to the shoreline of a lake or ocean. If this language says that my littoral interests must be respected, does not that mean that I can picnic or lounge about on the shore of any public body of water?

In the management section of this Chapter (483-A:5,e) it states, “Public access shall be provided and maintained appropriate to suitable uses of the lakes.” If a state agency owns the only access point on a lake, is that agency or commission required to allow the public to access that land for the legal, reasonable, permitted use of the body of water, in this case, swimming?

6. Mandatory apportioned Federal grant funds restrict the activities allowed at Boat Access Facilities. Swimming interferes with the intended use of these facilities.

Answer:

The eligibility requirements to receive Federal funds do not prohibit swimming or a swimmer parking at a boating access facility. In section 7.14, A of the Fish and Wildlife Service Federal Financial Assistance program requirements it states, “If the primary purpose of the project is to benefit recreational boaters, and other uses are clearly incidental or secondary, ASFR may fund the projects using recreational boating access funds.”

These boating access funds are to improve or create boating access areas for the purposes of recreational boating. No where does it state that parking for boaters must be ensured, just that they

should be able to put their boat in the water. Now, it may be highly inconvenient to not have an easy parking spot, but that is not the purpose of the Federal grant money.

NH Fish and Game asserts that I could receive a citation for parking my vehicle in a Fish and Game controlled boating access parking lot if I do not have a boat I am bringing to the water's edge. However, I have asked if I park my vehicle on the road and walk onto the property, may I then use the facility to access public water. The answer was withheld.

To close, I am asking you to consider the negative consequences of limiting access to public waters and lands. If the public is not ensured access to these places, how do we expect people to care about their environment if they cannot connect with it? The State holds in trust, for the benefit of the public, these access points and it is the State's responsibility to uphold current laws. An agency or commission should not be able to restrict access if there is no legitimate public safety issue or when the language of a grant is misinterpreted or too widely applied to administrative rules. Supporting HB276 and SB160 poses no risk to the public and will only increase equitable access for all members of the public, not just those with a license to fish or hunt. The funding issues of the NH Fish and Game are not the responsibility of the public to bear, however, that is another conversation that will be had again until the problem is solved. The spot at Conner Pond in question, now occupied by NH F&G has been a local swimming hole long before a boat access facility was constructed and it will continue to be such a place for as long as the public demands it.

Swim free or die, New Hampshire!

Respectfully submitted,

Jessica Williams

Bill as Introduced

HB 276 - AS INTRODUCED

2019 SESSION

19-0527

04/10

HOUSE BILL **276**

AN ACT permitting swimming at a fish and game department cartop boat launch access area.

SPONSORS: Rep. Comeau, Carr. 5

COMMITTEE: Fish and Game and Marine Resources

ANALYSIS

This bill permits swimming at certain public boat access areas.

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [~~in brackets and struckthrough~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT permitting swimming at a fish and game department cartop boat launch access area.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Public Boat Access; Swimming Permitted. Amend RSA 233-A by inserting after
2 section 14 the following new section:

3 233-A:15 Swimming at Certain Public Boat Access Areas. Swimming shall be permitted at any
4 public boat access area which is restricted to launching non-motorized or cartop watercraft such as
5 a canoe, kayak, rowboat, sailboat, inflatable boat, paddleboard, or other watercraft that is hand-
6 portable to the water's edge and is able to be launched with or without a developed boat launch
7 area.

8 2 Effective Date. This act shall take effect 60 days after its passage.