

COMMISSION TO EXAMINE THE EFFECTS OF WAKE BOATS IN THE STATE OF NEW HAMPSHIRE, (HB 137, Chapter 77:1, Laws of 2019)

Monday, June 1, 2020 10 AM Remote via GoToMeeting.

I. Call to Order:

Chair Smith called the meeting to Order. A statement was read regarding the remote meeting process and procedures. The Roll Call was taken and 13 members were present. Two additional joined after roll call and all 15 were in attendance.

- a. Members Present: Chris Bischoff (alone), Pam Price (alone), John Whalley (alone), Maggie Ford (alone), Winston Sims (alone), Representative Gunski (alone), Tom O'Brien (alone), Representative Smith (alone), Senator Ward (alone), Peter MacCallum (alone), David Mankus (alone), David Neils (alone), Shane Carey (one person in the office but they are unable to hear the meeting), Captain Dunleavy (alone), and Scott Behner (alone).

II. Approve the Minutes from March 2, 2020

The following corrections were made to the minutes:

IV r, should read-Water Sport Industry Association.

Guests-Nick Fairall

VIII Nick Fairall, former US Olympian Snow Ski Jumpers, currently an adaptive sport and trick slalom skier who placed 4<sup>th</sup> in Adaptive Waters Ski and Wake Sports Worlds 2019. He lives in Andover and participates in wake sports.

Motion to approve the minutes with correction, Senator Ward, Second Maggie Ford. The roll was called and the motion passed 13-0. Winston Sims and Tom O'Brien were absent for this roll call.

III. Economic Impact Presentation-Peter MacCallum and John Whalley

Slide presentation reviewed. In 2018 the boating industry was a \$1.2 Billion industry in NH, employing 6700 individuals. MacCallum's Boathouse has personally seen a 10% increase in business since this time. The Lakes Region Tourism Association, in a letter, noted that tow sports and boating are big drivers for tourism in NH. Of the 150 letters submitted to the Chair, it was 2:1 in favor of tow sports, indicating the love for the sport. John Whalley stated that the Marine Dealers have seen an unexpected increase in boat interest and sales this spring as people are staying at home because of the pandemic. The recreation and time on the water with family offers a chance to get outside.

The presenters were uncertain of the number and trends in paddle craft sales. Data presented is from manufacturer warranty registrations. One third of the jobs are identified as restaurant employees. The absence of data on non-motorized craft was noted. The non-motorized vessels are important also. The campgrounds see more canoes and kayaks from visitors. It was also reported that middle class families are purchasing boats now according to NH dealers.

The Chair reported that 3-4 additional letters were received since the tally. She will forward all letters to any Commission member who would like them. A letter from Keith Mayotte was read. He encouraged the Commission to base their findings on the facts presented to them, and not on the letters which are opinions.

#### IV. Shoreland and Lake Sunapee Protective Association Presentation (LSPA)-by June Fichter

The letter and slide presentation were circulated earlier for review. Pam Price, a 29 year property owner on Lake Sunapee, said the LSPA map of Lake Sunapee identifying areas that would do well to have wake boat restrictions, was misleading. She showed a picture of a wake surfer, taken Friday from her home, well away from shore in a bay that is 35' deep. This boat, barely seen in the picture was the lone vessel on the water at the time in an area that had no reason to have wake boat restrictions. The majority of the identified areas on the map already had no wake zones. Maggie Ford, who also lives in the Sunapee region, pointed out that the circle was meant to be a closed cove. This is an area that has a no wake restriction and surfers do not go to. The 250 foot setback, referenced in the report, appears to come from the Wave Energy report from Cliff Goudey, however Chris Bischoff noted that the setback may have been incorrectly cited. The WSIA Wake Responsibly Poster included in the Fichter presentation recommends those engaging in wake sports keep "200 feet away from shoreline, docks or other structures."

#### V. Raymond Family Letter

Testimony from Stephen, Emily and 9-year-old Samantha Raymond was circulated earlier and highlighted all of their enjoyment on the water as a family wake-boarding and wake-surfing. Efforts to hear from the Raymond family were unsuccessful in the remote environment.

#### VI. Final Report

A draft report was circulated earlier. Discussion.

Pam Price-When reviewing our legislative mandate we have learned from the presentations that any vessel can spread AIS, AIS and shore erosion are related to multiple factors, wind can be more persistent thus more significant than wakes with erosion, boating is popular in NH, of the 150 letters only 4 speak to property

damage and 5 to swimmer/boater safety, and that the majority of complaints to Marine Patrol are related to safe passage (150' rule). Ballast boats are no different than any other boat. She voiced strong opposition to legislation to allow local control to restrict certain boats, or activities. She reviewed the public trust doctrine. The State of New Hampshire holds in trust all the public waters for the use and benefit of the people of the state. One of the key provisions is the "reasonable use" of those resources. As a steward of public waters, the state safeguards the right by avoiding piecemeal on-water regulation. There is a no wake petition process which can be used if needed. Any further move to local control would violate the public trust doctrine by allowing possible variations from one lake to another, and within one lake. Also, recommended adding the dealers as a point of contact for education under section V.

Tom O'Brien- Ballast boats, popular with those who use them, are appropriate in places but not in others (i.e. shallow areas, small lakes). Supported the local control option to allow those on the lake to make the decision. Due to the unique design of ballast boats it is hard to drain and dry. The industry needs to take responsibility and design filters and a means to decontaminate the tanks. More than education is needed. Supports defining the vessel in statute.

Chris Bishoff-Reported that the Water Sports Industry Association (WSIA) has signed an agreement with an AIS specialist, Richard Kolb, to work with manufacturers to control AIS. Manufacturers agreed in February this was necessary. Also, as a first step, in 2021 an engine flush adaptor will be on boats for decontamination. The next step will be a design to flush and drain ballast tanks. WSIA distributed Wake Responsibly education signs to Tim Dunleavy as part of their national campaign to influence boater behavior. The industry is working hard to make steps. The manufacturers now realize they need to work on issues like AIS because of work done by this Commission and others.

John Whalley-Said education key. Boats pulling a recreational tube in circles can create problems but changed their behavior when the issue was discussed.

Ruth Ward-The presentation on waves showed that there is no difference between boat waves (ballast or other boat). The spread of AIS is a concern but the industry is working on this now. All boats can spread AIS.

Shane Carey-The local option may be influenced by incorrect information. He noted that a neighbor thought shore debris was due to ballast boats when it was due to wind. The perception may be different from reality. Education is key. A local process puts neighbor against neighbor, lake by lake and nothing gets accomplished. Education and safe passage laws are key. We need to use the laws we have currently.

Tim Dunleavy-Our water ski laws should be updated in a few key areas to include wake sports. Currently the law is silent on the need for the surfer to wear a PFD

or to have an observer in the boat. Also, there may be areas where after market bags are not appropriate, boats that were not manufactured for the activity such as outboard motor boats. Most on the Commission appear to support the need for a PFD for the surfer, and a review of boats where after market ballast might be inappropriate. WSIA supports an observer or a mirror for spotting. The vessel does not have to be defined if you discuss activity. A definition would be needed if you restrict the boat. It was noted that no other state defines the boat in statute. There are no laws currently regarding swimming from shore, and the need to have an accompanying boat if venture from shore. It is the responsibility of the boater to watch for swimmers. Suggestions for updating the statute will be made by Tim Dunleavy.

Discussion on the size of the wave and erosion. Members noted that ballast can be put in any boat, resulting in similar outcomes, thus singling out one type of vessel as the cause of large waves would skew the discussion-many boats can do the same. The Commission was reminded to stay within our charge and not add things that were not part of that charge.

Peter MacCallum stated we have an opportunity to work together to speak to the issues charged with under the legislation. Opposes a definition because all boats should be treated the same.

John Whalley noted that cabin cruisers can produce large waves also. This spring ice created significant erosion on a beach near a member.

NH Lakes will insist that the final report address ballast and the need to be treated properly to avoid the spread of AIS. Wake boat activity and design needs to in statute. The Chair noted that a section of the report may be split if there is not consensus on an area.

Winston Sims-Use of NH lakes are an entitlement and a privilege. Any and all boats should be required to clean and drain and perhaps required to dry to avoid the spread of AIS lake to lake. Need to consider spread within a lake also. Wake surfing is one type of privilege which may impact entitlements but things change and something else may come up later which needs to be addressed.

The Chair reviewed the sections of the draft report to assign members to complete the report. WSIA-section on what the industry is doing. Marine Patrol-paragraph on recommended legislation regarding PFD's, spotters, and boats that should not have after market ballast. NH Lakes would like a section on the enjoyment, and the risks and concerns with the activity. NH Lakes and the USA Water Ski and Wake Sports NH representatives will work on Invasives. The Chair would like an email if any member has comments on the report and the content. Drafts will be circulated prior to the final meeting.

VII. Guest Comments-

Jodi Grimblas-Represents the water sports industry and opposes defining the vessel, noted skicraft were banned through the petition process. Larger PWCs were kept out of the definition of skicraft by the Legislature. Supports education because many vessels are capable of transporting AIS. Expressed concern that NH Lakes is working to impose legislation and restrictions on the subject of this Commission in another Commission.

Michelle Tremblay, NH Rivers Council and Exotic Aquatic Weeds and Species Committee. –Education can be outreach or social marketing to change behavior. Local petition is a tool but becomes political and should be based upon science. One size does not fit all. One on one confrontations between neighbors don't work to address problems.

Motion by David Neils to extend the Commission reporting date via legislation to November 1. Second Tom O'Brien. Roll Call vote 7-7. Motion fails. The Chair does vote.

Yes-Michael Gunski, Tim Dunleavy, Winston Sims, Tom O'Brien, David Mankus, David Niels, Maggie Ford

No-Pam Price, Scott Behner, Shane Carey, John Whalley, Peter MacCallum, Chris Bischoff, Suzanne Smith

Absent-Ruth Ward

VIII. Next Meeting-June 29, 10 am.

IX. Adjourn-Motion to Adjourn Tom O'Brien, second Maggie Ford. Unanimous. Adjourned at 12:25 pm.