

**STATE OF VERMONT
Water Resources Board**

**In re: Petition for the adoption of rules 10 V.S.A. §1424
Regulating the use of a portion of
Arrowhead Mountain Lake, Towns
of Georgia and Milton**

Decision

On the basis of its record in this proceeding, the Water Resources Board (Board) has decided to grant in part, and deny in part, the petition in this matter. Accordingly the Board will proceed with the adoption of the following rule for a portion of Arrowhead Mountain Lake (the Lake):

- a. Vessels powered by motor shall not exceed a speed of five (5) miles per hour within the northeastern arm of the Lake as shown on the attached map.
- b. Personal watercraft are prohibited from operating within the northeastern arm of the Lake as shown on the attached map except in a corridor within 200 feet of the shoreline between the public fishing access area and the main body of the Lake shown on the attached map.

In reaching this decision, the Board considered and overruled the following arguments offered at the public hearing or in writing:

1. **The Board should adopt the more restrictive rules requested in the petition in order to adequately protect the wildlife habitat values of the northeastern arm of the Lake.**

The petitioners requested that the Board adopt rules that would totally prohibit all watercraft from using the northeastern arm of the Lake except for a corridor between the public access area and the main portion of the lake between April 1 and August 15 and establish a 5 m.p.h. speed limit for the balance of the year. Those supporting the petition argued that such restrictions were needed in order to protect important wildlife habitat, especially bird habitat, in this portion of the Lake. Several anecdotal stories of boaters using canoes, motorboats and personal watercraft to harass wildlife were offered as justifying the total prohibition of all watercraft sought by the petition.

The Board agrees with the petitioners that the portion of the Lake in question is important for its wildlife habitat values particularly for the nesting of waterfowl and other bird species, and that protection of this habitat from excessive human interference can be a proper basis for regulation. However, having

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considered all the testimony in this matter, the Board agrees with the Department of Fish and Wildlife, which has considerable expertise on the subject of wildlife habitat management, that a five mile per speed limit hour coupled with an effective educational effort is the appropriate response, at least at this time. The Board agrees that the extent of regulation sought by this petition is excessive, at least until other less restrictive alternatives have been given a chance to achieve the goal of protecting this important public resource.

This decision is fully consistent with the policies established by this Board in § 2.7 of the Vermont Use of Public Waters Rules (VUPW Rules) which provides that:

When regulation is determined to be necessary, use conflicts shall be managed using the least restrictive approach practicable that adequately addresses the conflicts.

The Board feels the adoption of a 5 mile per hour speed limit, coupled with an educational effort along the lines suggested by the Department of Fish and Wildlife at the August 16, 1995 public hearing (referee finding 10), could prove adequate to address the concerns that prompted the petition. Indeed, unless such less restrictive efforts are tried in good faith and given a chance to succeed, with the active support and participation by those who value the wildlife at the northeastern arm of the Lake, any highly restrictive regulatory approach is likely to fail. If subsequent experience shows that more needs to be done, the Board can consider other approaches.

**2. The Board should not adopt any additional rules for
Arrowhead Mountain Lake.**

This argument took a couple of themes: (1) that the Board should deny this petition as it did the 1994 petition seeking regulation of the entire Lake; and (2) the rule is unnecessary because existing state law (23 V.S.A. § 3311 (c)(1)) probably already requires a 5 m.p.h. speed limit. The Board has overruled both parts of this argument for the reasons indicated below.

The 1994 Arrowhead Mountain Lake petition was very different in both the nature and the geographic scope of the regulation sought. That petition sought a lake-wide prohibition of the use of motors larger than 10 horsepower. In denying that petition, the Board noted that some regulation of the northeastern arm of the Lake might be warranted. The 1995 Arrowhead Mountain Lake petition is much more limited in scope in that it only pertains to a relatively small portion of the Lake, which virtually every-

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one agrees is quite different in character and recreational use from the main Lake. Thus, the denial of the 1994 petition has no direct bearing on the Board's consideration of the quite different 1995 petition.

It is probably correct that much of the area for which the Board proposes to adopt a 5 m.p.h. speed limit is already subject to a 5 m.p.h. speed limit under existing law, 23 V.S.A. § 3311(c)(1).

A person shall not operate any vessel except a sailboard or a police or emergency vessel, within 200 feet of the shoreline, a person in the water, a canoe, rowboat or other vessel, an anchored or moored vessel containing any person, or anchored or moored vessel containing any person, anchorages or docks, except at a speed of less than five miles per hour which does not create a wake.
(emphasis added).

However, the statutory requirement not to exceed five miles per hour within 200 feet of the shoreline may be difficult for boaters to observe because: (1) it requires the boat operator to make an accurate judgement as to how far 200 feet from the shoreline really is; and (2) it also requires the operator to understand that the 200 foot requirement applies to the shoreline of the numerous and ill-defined low lying islands in the northeastern arm of the Lakes. The Board believes that designating a specific area of the Lake as having a five mile per hour speed limit will make efforts to educate motorboat operators and, if needed, to enforce this requirement much easier. For that reason, the Board feels its final proposed rule is an appropriate response to the underlying issues the petition sought to address.

Dated at Montpelier, Vermont this _____ day of November, 1995.



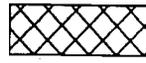
William Boyd Davies
Chair

Board members concurring
William Boyd Davies
Stephen Dycus
Ruth Einstein
Gail Osherenko
Jane Potvin

ARROWHEAD MTN. LAKE

Towns of Georgia & Milton
Chittenden & Franklin Co.
Scale: 1" = 2000'
Area: 826 Acres



-  = Personal Watercraft Corridor (200 Feet from shoreline)
-  = 5 miles per hour speed limit