

UPW04-02 dec
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State of Vermont
WATER RESOURCES BOARD

**In Re: Mirror Lake (Pond No. 10)
in the Town of Calais, Vermont
Docket No. UPW-04-02 (VT Proposed Rule 04P027)**

DECISION

In accordance with the provisions of 10 V.S.A. § 1424, a petition (Petition) was duly filed by more than ten freemen (Petitioners) on April 28, 2004 with the Vermont Water Resources Board (Board) requesting the Board to adopt the following amendment to the Vermont Use of Public Waters Rules for Mirror Lake:

The operation of vessels powered by an internal combustion motor is prohibited.

The Petitioners proposed, in the alternative, a uniform speed limit of 5 m.p.h. applicable to the entirety of Mirror Lake.

The Board denies that part of the Petition seeking to prohibit internal combustion motors because this would eliminate a long-standing normal use of Mirror Lake without sufficient showing that such a result is necessary or warranted to adequately address the underlying recreational use conflict.

Although the proposed rule is denied, the Board recognizes, based on written comments and testimony received at the public hearing, that additional regulation is warranted due to an ongoing conflict between motorized and non-motorized uses of the pond. As noted in the findings below, this conflict has increased in intensity over a period of years. The Board has, therefore, decided to amend the existing rules regulating the use of Mirror Lake to reflect the alternative proposal that was embedded in the Petition and in the compromise proposals that were offered by opponents and supporters of the Petition.

The amendments¹ now proposed for adoption are the following:

- a. Vessels powered by motor shall not exceed a speed of five miles per hour.
- b. A "no-wake" zone shall apply to the entire pond.

¹ Vessels owned or operated by agencies of the State of Vermont are bound to comply with these rules except in cases where law enforcement, emergencies or the performance of official duties require otherwise. VUPWR, Appendix A-24(1)(b).

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The Board's final proposed amendments result in striking the current rules² regulating the use of Mirror Lake and substituting the above two rules for the reasons set forth herein.

Procedural Background

The current rules regulating the use of Mirror Lake, noted in footnote two, were adopted in 1978 in response to another petition that sought a ban on the use of internal combustion motors on Mirror Lake. In re Mirror Lake, Docket No. UPW-78-02. In response to that 1978 petition, the Board decided to adopt a less restrictive approach that would not eliminate any normal use of the pond.

The current Petition was filed with the Board on April 28, 2004 seeking to amend the Vermont Use of Public Waters Rules for Mirror Lake by prohibiting the operation of all vessels powered by an internal combustion motor.

On May 11, 2004, the Board voted to file the proposed amendment with the Interagency Committee on Administrative Rules (ICAR).³ On June 21, 2004, ICAR approved the proposed amendment and, on June 25, 2004, the Board filed the proposed amendment with the Secretary of State for the purpose of receiving public comment.

Newspaper notice was first published on July 8, 2004, establishing August 3, 2004 as the public hearing date and September 7, 2004 as the deadline for filing written comments regarding the proposed amendment. The Board held the public hearing in Calais, Vermont on August 3, 2004. After considering the comments made at the public hearing and the written comments filed with the Board, the Board deliberated on September 13, 2004 and October 5, 2004.

Based on its review of the record, the Board makes the following findings and draws the following conclusions. A response summary is included at the end of this decision to address alternative proposals and substantial arguments supporting the rule originally proposed that were rejected by the Board. 3 V.S.A. § 841(b).

² The Vermont Use of Public Waters Rules (VUPWR) currently include the following lake-specific rules relating to the use of motors on Mirror Lake:

- a. Vessels powered by motor shall not exceed a speed of five miles per hour within the two bay areas south of Hall Point.
- b. For the remainder of the pond, vessels powered by a motor shall not exceed a speed of ten miles per hour.

VUPWR, Appendix B-7 (2004).

³ This rule was filed with a companion proposed rule regulating the use of public waters on Lake Willoughby in the Town of Westmore. Together, they constitute the Board's 2004 proposed amendments to the Vermont Use of Public Waters Rules, VT Proposed Rule 04P027.

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Findings

1. Mirror Lake, commonly known as No. 10 Pond, is located in the town of Calais, Washington County, Vermont, and constitutes public waters of the State of Vermont within the meaning of 10 V.S.A. § 1422(6).
2. Mirror Lake is a natural pond with a long, narrow configuration and a surface area of 85 acres. Its average depth is approximately 43 feet and its greatest depth is 106 feet. The pond's greatest length is approximately 2250 feet and its greatest width is approximately 1450 feet.
3. Natural topography and historical circumstance have left Mirror Lake largely undeveloped. Except for three camps and four year-round homes located on the pond and a road that borders its western edge, the pond is surrounded by steep, forested hills.
4. Mirror Lake is fed by adjacent Forest Lake (Nelson Pond), a larger pond (133 acres), where water skiing and high-speed boating are not prohibited. VUPWR, Appendix A-6.
5. Mirror Lake is a deep, cold, clear pond that offers a variety of low-impact recreational activities.
6. The water quality of Mirror Lake is classified as B. Class B ponds are managed to support habitat for aquatic biota, fish and wildlife, aesthetic and recreational values, and potential public and agricultural water supply. Vermont Water Quality Standards, § 3-04 (2000).
7. The waters of Mirror Lake are free from Eurasian milfoil and zebra mussels and mostly free from aquatic vegetation. Mirror Lake can be characterized as mesotrophic. Its average spring phosphorus concentration is 11 ug/l. Having moderate nutrient concentration, the pond has little, if any, algae growth.
8. Mirror Lake supports populations of rainbow trout, lake trout, small mouth bass, yellow perch, rainbow smelt, chain pickerel, brown bullhead, pumpkinseed sunfish, and several non-game fish species.
9. The Department of Fish and Wildlife actively manages Mirror Lake by maintaining a public boat launch, annually stocking yearling rainbow trout, routinely monitoring fish population, and enforcing fishing regulations.
10. Trawling is a common and preferred technique used to target rainbow trout and lake trout in Mirror Lake. Most anglers use small outboard motors for this purpose.
11. Common Loons are frequently seen on Mirror Lake and Nelson Pond. Comments

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from the Loon Recovery Project indicate that Mirror Lake provides ideal habitat for this endangered species but no nesting has been observed despite the placement of a nesting platform.

12. Internal combustion motors are prohibited on nine lakes / ponds located in close proximity to Mirror Lake.⁴ Eight of these range in size from 21 acres to 46 acres and one is approximately the same size as Mirror Lake. Internal combustion motors are allowed on six nearby lakes / ponds of similar size to Mirror Lake.
13. Vermont prohibits the use of internal combustion motors on all lakes, ponds, and reservoirs where they were not a normal use (e.g., used on a regular, frequent and consistent basis) before January 1, 1993. VUPWR § 3.5.
14. The Board adopted the existing rules setting speed limits on Mirror Lake in 1978 in response to another petition that sought a ban on the use of internal combustion motors on the pond. VUPWR, Appendix A-13; *see also* Docket No. UPW-78-02 and related correspondence.
15. The rules adopted by the Board in 1978 established low-speed operation of internal combustion motors as a normal use of Mirror Lake.
16. The normal and predominant uses of Mirror Lake include swimming, fishing (primarily low-speed trawling), canoeing, kayaking, wildlife observation, and enjoyment of the pond's tranquility and aesthetic values.
17. Motor boating at other than low speeds is not a normal or predominant use of Mirror Lake, but has grown in intensity over the last few years.
18. None of the Mirror Lake homeowners / residents have boats powered by internal combustion motors.
19. Part of the conflict between motorized and non-motorized uses of the pond stems from a minority of boaters who do not obey current speed limits, thereby intruding upon the safety and enjoyment of swimmers, trawlers, canoeists and kayakers.

⁴ VUPWR, Appendix A. Internal combustion motors are prohibited on Buck Lake in Woodbury (39 acres), Coits Pond in Cabot (40 acres), Cranberry Meadow Pond in Woodbury (28 acres), Hardwick Lake in Hardwick (92 acres), Molly's Pond in Cabot (38 acres), Sodom Pond in Calais / Montpelier (21 acres), Tuttle Pond in Hardwick (21 acres), West Hill Pond in Cabot (46 acres), and Worcester Pond in Worcester (35 acres). In addition to 7 lakes over 100 acres in size, internal combustion motors are allowed on the following lakes of a size similar to that of Mirror Lake: Curtis Pond in Calais (72 acres) Greenwood Lake in Woodbury (96 acres), Marshfield Pond in Marshfield (69 acres), North Montpelier Pond in Montpelier / Calais (42 acres), and Valley Lake in Woodbury (88 acres).

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20. State Police boats do not routinely visit Mirror Lake.
21. Efforts by Mirror Lake residents to have the current speed limits enforced have proven unavailing either because State police are unable to respond to complaints or the unlawful behavior has ceased by the time an enforcement officer has arrived.
22. Signs intended to inform the public of Mirror Lake's regulations are ineffective due to their inadequate size and location.

Discussion

The Board is governed in its consideration of the proposed amendment by the applicable provisions of 10 V.S.A. §§ 1421-1426 (Protection of Navigable Waters and Shorelands), the Vermont Use of Public Waters Rules (2004), the Water Resources Board Rules of Procedure (2001), and the applicable provisions of the Vermont Administrative Procedure Act, 3 V.S.A. §§801-849. In making this decision, the Board also considers its prior decisions addressing the regulatory issues raised by petition.

When making a decision to regulate public waters, the Board must consider a number of factors, including the physical characteristics of the waters involved, the uses of adjacent lands, the waters' suitability for various uses, public safety, the interests of current and future generations, and the need to provide an appropriate mix of water-based recreational opportunities on a regional and statewide basis. 10 V.S.A § 1424(b) and (c). *See also*, VUPWR § 2.2.

When regulations are required to resolve conflicting uses, the Board must attempt to accommodate all normal uses,⁵ using the "least restrictive approach practicable." VUPWR §§ 2.2, 2.6 and 2.7. *See also*, 10 V.S.A. § 1424(c). Undisputed testimony supports the Board's conclusion that the normal uses of Mirror Lake include swimming, fishing (primarily low-speed trawling with boats powered by internal combustion motors), canoeing, kayaking, wildlife observation, and enjoyment of the pond's tranquility and aesthetic values. These uses have co-existed on Mirror Lake for decades but, as the 1978 petition demonstrates, conflict among them has also been present for many years. Although the Board is persuaded by testimony and written comment that this conflict has intensified, the Board rejects the argument proposed by the Petitioners that the conflict can only be resolved by eliminating a normal use of the pond.

The Board denies the rule proposed by the Petitioners, prohibiting internal

⁵ Normal uses of Vermont's public waters are those uses that occurred on a "regular, frequent and consistent basis" before January 1, 1993. VUPWR § 5.2. Normal uses include recreational activities such as fishing, swimming, boating, enjoyment of aesthetic values, quiet solitude of the water body, wildlife habitat and wildlife observation. *Id.* § 2.3.

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combustion motors, because it is not consistent with the Board's interpretation of the provisions of 10 V.S.A. § 1424 or the requirements of Vermont's Use of Public Water Rules. Application of a 5 m.p.h speed limit and a "no wake" zone to the entirety of Mirror Lake will avoid eliminating a long-standing normal use and is the least restrictive means available to address the conflict.

The Board also believes that with these regulations in place, a safe and quiet water experience can be enjoyed by both motorized and non-motorized users of Mirror Lake. The fundamental conflict between these uses of the pond appear to stem from illegal and disrespectful behavior of a few boaters. The Board concludes that abuse of the regulations will be inhibited by a uniform speed limit, a no-wake requirement, and heightened public awareness of the regulations. In this regard, the Board will provide speed limit and no-wake signs of suitable size and will encourage their placement in appropriate locations. To further this effort, the Petitioners, individually and/or through the formation of a lake association, could also take measures to promote the quiet nature of Mirror Lake's environment.

When conflict among uses involves the operation of vessels, the Board must also attempt to resolve the conflict by either regulating the manner in which the vessels are operated or by separating the conflicting uses. *Id.* at § 2.9. When each of the conflicting uses is a normal use, the Board should give priority to separating those uses. *Id.* at § 2.10. Due to Mirror Lake's relatively small size, configuration, many of the activities involved (trawling, long-distance swimming, kayaking/canoeing) require use of the entire pond. The Board, therefore, believes that designating areas of the pond for specific uses is impractical. Similarly, the Board rejects the idea of designating specific days of the week for motorized and non-motorized uses as impractical, difficult to enforce, unduly restrictive, and unnecessarily complex. By adopting rules that restrict the *manner* in which vessels are operated, the Board is accommodating all normal uses while using the least restrictive approach available. VUPWR §2.6 and §2.7.

When the Board does not adopt a petition's proposed rule but recognizes that regulation is necessary to address conflicting uses, the Board generally suggests in its decision what form of regulation may be appropriate. The Board rarely adopts rules on its own motion in place of those that were proposed and publicly noticed. In re Waterbury Reservoir, UPW 93-02. However, in this case, the Board determines that further regulation of Mirror Lake is desirable and that adoption of the proposed regulations is appropriate because these regulations fall within the ambit of the rule that was originally proposed and published. In reaching this conclusion,⁶ the Board determines that published notice of the proposal to

⁶ Three factors should guide an agency's determination of whether it is appropriate to adopt rules that are not the same as the rule originally proposed. These factors are: (1) The extent to which all persons affected by the adopted rule should have understood that the published proposed rule would affect their interests; (2) The extent to which the subject matter of the adopted rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule; and (3) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule had it been adopted instead. Bonfield, Arthur Earl, *State Administrative Rule Making*, §6.7.2 (1986).

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ban all internal combustion motors from Mirror Lake provided sufficient notice to any person whose interests may be affected by restrictions on the *manner* in which these motors can be operated on Mirror Lake. Adoption of these rules is also appropriate in this case because the Petition requested the Board to impose a 5 m.p.h. speed limit to the entire lake if the Board denied the requested prohibition. In addition, both the speed limit restriction and the no wake requirement were offered as compromise proposals throughout the hearing and in writing by opponents and supporters of the Petition.

Response Summary

In reaching its decision in this matter, the Board rejects the following oral and written comments.

Speed limit regulations are often ignored, are not enforceable, and do not address the growing number and size of power boats used on the pond. Many boaters do not respect the current speed limits or the right of others to enjoy the tranquility of the pond and its surroundings.

The Board agrees that enforcement is difficult due to lack of resources and believes that heightened public awareness of the regulations and of the quiet nature of Mirror Lake's environment will help ensure compliance with the rules governing Mirror Lake in the future. In this regard, the Board will provide speed limit and no-wake signs of suitable size and will encourage their placement in appropriate locations. To further this effort, the Board encourages the Petitioners, individually and/or through the formation of a lake association, to heighten public awareness and promote respectful and quiet use of the pond by all.

As stated in the discussion above, the Board believes that applying a 5 m.p.h. speed limit and a no-wake zone to the entire pond avoids unnecessarily eliminating a long-standing normal use and is the least restrictive approach available.

A ban on internal combustion engines would not eliminate low-speed boating and trawling because electric motors are available for those who wish to use a motorized vessel.

Although use of quieter and slower electric motors would address many of the Petitioners' concerns, the Board believes that the requested prohibition would eliminate use of the pond by the anglers who enjoy trawling on Mirror Lake or force them to purchase and use electric motors in order to continue their enjoyment of the pond. As discussed elsewhere, such a result is unnecessarily restrictive.

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The use of internal combustion engines endangers swimmers because the noise from this type of motor, even at low speed, prevents the boater from hearing verbal warnings that the boat is dangerously close to a swimmer.

The Board believes that a uniform 5 m.p.h. speed limit will ensure the safety of swimmers by giving boaters and swimmers time to communicate and avoid close contact with each other. The rules being proposed by the Board reasonably address public safety concerns and are consistent with the provisions of 10 V.S.A. § 1424 and the Vermont Use of Public Water Rules that require the Board to manage the public waters in the least restrictive manner possible so that the "various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state."

"Quiet waters" are difficult to find in the region. Because of its size, access, and unique natural qualities, including its topography, Mirror Lake is an outstanding place for canoeists, kayakers, swimmers and others who enjoy the quiet sounds of nature. The noise and fumes produced by gasoline-powered boats intrude upon the enjoyment of these well-established normal uses.

The Board believes the proposed rules are the least restrictive approach because they (1) avoid eliminating the long-standing "normal" use of motor boats trawling the pond at low-speed and (2) make a reasonable accommodation for other normal uses of the pond that are dependent upon peace and beauty. By extending the 5 m.p.h speed limit to the entire pond and imposing a "no wake" requirement, the Board believes a safe and quiet water experience can be enjoyed by both motorized and non-motorized users of Mirror Lake.

The health of Mirror Lake and, consequently, the health of all who use or depend upon it, is threatened by the pollutants emitted by internal combustion motors.

The Board acknowledges that pollution caused by two-stroke engines warrants concern. However, the Board is persuaded that boat traffic on the pond is not heavy and that the two-stroke engines are gradually being replaced by cleaner and more efficient technology.

Wakes and noise from internal combustion engines prevent the common loon from nesting around the pond and threaten the safety of young wildfowl of all sorts, including the common loon.

The Board finds no credible evidence to support the claim that gasoline-powered boats prevent successful loon nesting on Mirror Lake. Loons become habituated to motors and have successfully nested on waters with higher levels of boating activity than will likely be experienced on Mirror Lake. Additionally, comments submitted by the Vermont Loon Recovery Project state that kayakers, canoeists, and swimmers also pose a threat to loons and their nesting because these recreational users frequently travel very close to the shoreline where they are likely to disturb the birds and their young. The threat

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of possible collision of loons with motorized vessels is substantially reduced by the new rule imposing a uniform low-speed limit on the pond.

The use of internal combustion motors enhances the likelihood that Eurasian Milfoil will be introduced into the pond.

The Board has determined that protection against infestation by milfoil does not justify the prohibition of internal combustion motors on the pond. Written comments submitted by the Agency of Natural Resources convincingly state that there are many potential sources of milfoil infestation that pose an equal or greater threat, including the fact that the use of these motors is unrestricted on Nelson Pond, which feeds into Mirror Lake through a direct watercourse. While the Board shares the Petitioners' concern about milfoil infestation, it has determined, based on the record, that prohibiting internal combustion motors on this basis alone would be arbitrary and would do little to prevent such an infestation.

Restriction on horsepower would be easier to enforce than a restriction on speed.

The Board's policy since the mid-1970's has been to refrain from regulating on the basis of horsepower because such rules tend to be arbitrary. In re South Pond, UPW 88-03. In the Board's experience, public safety concerns or conflicts in recreational uses are generally the result of the manner in which vessels are operated, rather than the horsepower of their motor.

Dated at Montpelier, Vermont, this 7th day of October, 2004.

Vermont Water Resources Board by



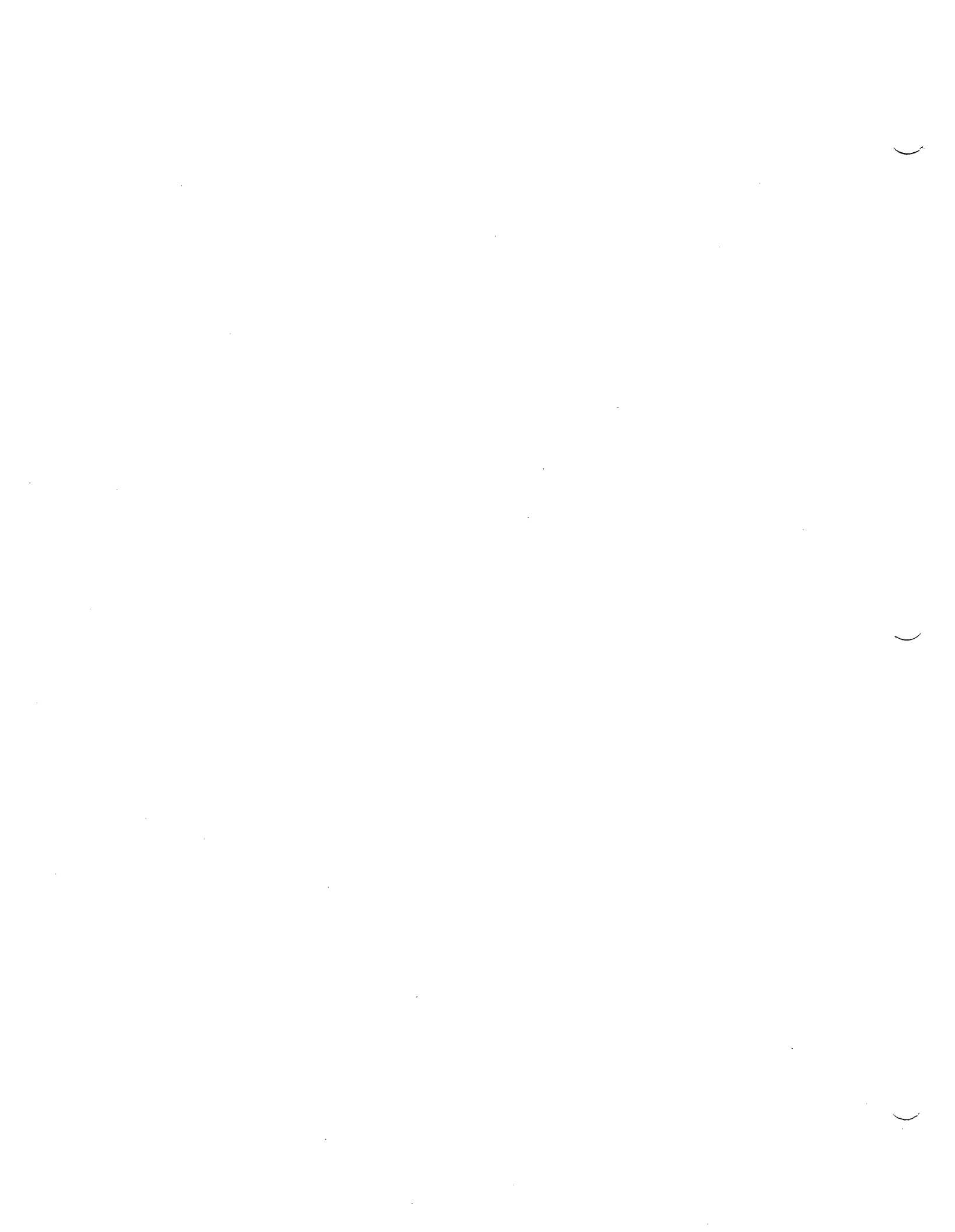
John F. Nicholls, Chair

Board Members Concurring

Michael J. Hebert
John D.E. Roberts
Joan B. Nagy

Board Members Dissenting:

Lawrence H. Bruce, Jr.



CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of OCTOBER, 2004, the foregoing DECISION, regarding Re: Mirror Lake, Town of Calais, Docket No. UPW-04-02 was sent first class mail, postage prepaid to the following:

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Jackie Sprague, President
Federation of Vermont Lakes and Ponds, Inc.
245 CB Road
Hinesburg, VT 05461

Jim Edleman
Vermont Bass Federation
15 John Rowley Road
Milton, VT 05468

Personal Watercraft Industry Association
444 N. Capital Street, NW
Suite 645
Washington, DC 20001

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Mailing Address:
National Life Records Center
Drawer 20
Montpelier, VT 05620-3201



Location:
National Life Records Center Building
Montpelier, Vermont

State of Vermont
Water Resources Board

Tel: (802) 828-3309

DATE: July 9, 2004
TO: Mirror Lake, Town of Calais
FROM: Jon Groveman, Executive Officer 
RE: Notice of public hearing and opportunity to comment on proposed rules regarding Mirror Lake, Town of Calais, WRB Docket No. UPW-04-02

The Vermont Water Resources Board (Board) has received a petition filed under 10 V.S.A. § 1424 seeking the adoption of a rule governing the recreational use of Mirror Lake, Town of Calais, Vermont. The petition asks the Board to adopt the following amendment to Appendix B of the Vermont Use of Public Waters Rule for Mirror Lake:

1. The operation of vessels powered by an internal combustion motor is prohibited.

Complete copies of the petition have been filed with the Town of Calais, the Central Vermont Regional Planning Commission and the Vermont Agency of Natural Resources and are available for review at the Board's office (National Life Records Center Building, National Life Drive, Montpelier) work days between 7:45 a.m. and 4:30 p.m. In addition, the petition is available for review at the Board's web site at <http://www.state.vt.us/wtrboard/>.

The Board is required by statute to hold a public hearing in response to this petition and has therefore proposed the requested rules as indicated above for purposes of receiving public comment. In evaluating the rules requested by the petition in light of related public comment, the Board will be guided by section two of the Vermont Use of Public Waters Rules that it has previously adopted for that purpose under 10 V.S.A. § 1424, (copy enclosed).

The Board has made no judgement about what final action it will take in these matters and will not do so until after careful consideration of all public comment received both at the public hearing and in writing. The Board's decision will be in writing and copies will be automatically provided to all persons on the current distribution list as well as any additional persons who attend the public hearing, who file written comments or who otherwise indicate that they would like to receive a copy.

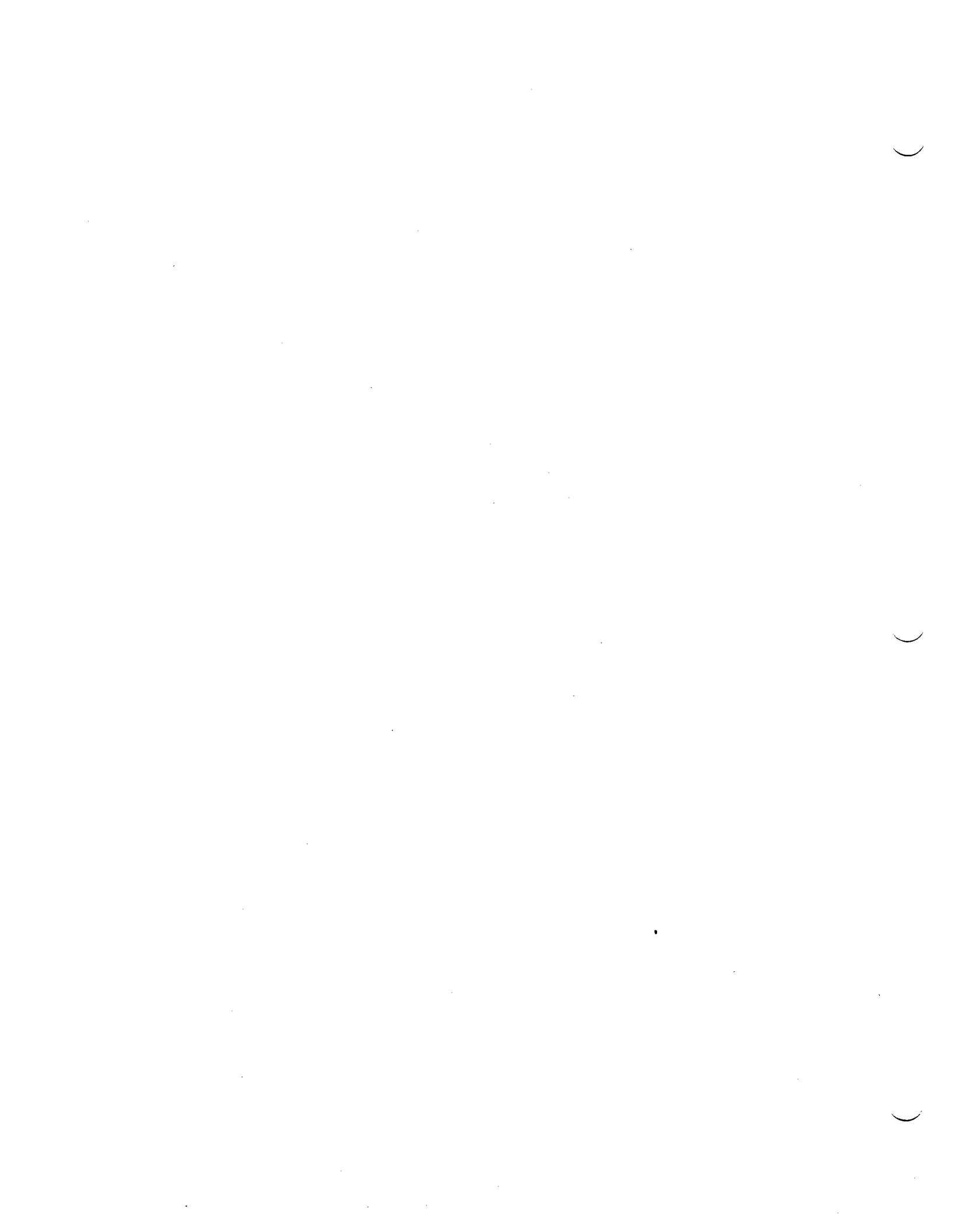
The Board will hold a public hearing for the purpose of hearing testimony on the requested rules for Mirror Lake on Tuesday, August 3, 2004 at the Calais Town Hall, Gosphel Hollow, Calais, Vermont beginning at 7:00 p.m. The Board will also consider written comment received at the Board's Office on or before September 7, 2004. Filings by FAX will not be accepted.

Any written comments or questions regarding this matter should be directed to Daniel Dutcher, Associate General Counsel at the above address or by phone at 828-3063.

Enclosures

- distribution list
- section two VUPW Rules

cc: Attached distribution list



CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of JULY, 2004, the foregoing MEMORANDUM, regarding Re: Mirror Lake, Town of Calais, Docket No. UPW-04-02 was sent first class mail, postage prepaid to the following:

George Clifford
792 #10 Pond Road
East Calais, VT 05650

Town of Calais
c/o Town Clerk
Selectboard
Planning Commission
668 West County Road
Calais, VT 05648

Calais Conservation Commission
c/o Town Clerk
668 West County Road
Calais, VT 05648

Central Vermont Regional Planning
Commission
29 Main Street - Suite 4
Montpelier, VT 05602

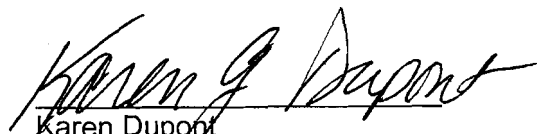
Vermont Department of Public Safety
ATTN: Lt. Alan Buck
2777 St. George Street
Williston, VT 05495

Elizabeth McLain, Secretary
Agency of Natural Resources
Center Building
Waterbury, VT 05671

Commissioner
Department of Environmental Conservation
Agency of Natural Resources
One South - 103 South Main Street
Waterbury, VT 05671

Phil Dodd
Vermont Property Owners Report
PO Box 1564
Montpelier, VT 05601

Denise Wheeler
758 Bayne Comolli Road
East Calais, VT 05650


Karen Dupont
Administrative Secretary
Vermont Water Resources Board
National Life Records Center Building
Drawer 20
Montpelier, Vermont 05620-3201
(802) 828-2870

1

2

3

Distribution List - Use of Public Waters
User Groups

Vermont League of Cities & Towns
c/o Karen Horn
89 Main Street - Suite 4
Montpelier, VT 05602

Jamie & Kim Bolduc
Vermont Personal Watercraft Assoc.
13 Tanglewood Road
Middlesex, VT 05602

Eric Chittenden
Friends of Waterbury Reservoir
P.O. Box 430
Waterbury Ctr., VT 05677

Rep. Steven Adams, Chair
House Fish, Wildlife and Water Resources
18 Rutherford Road
Hartland, VT 05048

Vermont Water Resources & Lake Studies Ctr.
c/o Alan McIntosh
George D. Aiken Center - UVM
Burlington, VT 05405-0088

Virginia Garrison
Department of Environmental Con.
10 North - 103 South Main Street
Waterbury

Lt. Alan Buck
State Boating Officer
Vermont State Police
2777 St. George Road
Williston, VT 05495

Jim Edleman
Vermont Bass Federation
15 John Rowley Road
Milton, VT 05468

Charlie Dickerson
Vermont Boat & Marine Assoc.
P.O. Box 1241
Montpelier, VT 05602

Vermont BASS
c/o Steve Winters
R. #1 Box 340 - Stowe Road/Rte 100
Waterbury Ctr., VT 05677

Bruce Epstein
Green Mountain Water Skiers
P.O. Box 45
Waterbury, VT 05676

Robert Lindemann
Champlain Kayak Club
P.O. Box 484
Waterbury, VT 05676

Rep. William Johnson, Chair
House Natural Resources and Energy
3603 Route 102
Canaan, VT 05903

Jim Leamy
R.F.D. #1 Box 232
Castleton, VT 05735

Commissioner
Forests, Parks & Recreation
8 South - 103 South Main Street
Waterbury

National Wildlife Federation
c/o Kari Dolan
58 State Street
Montpelier, VT 05602

Personal Watercraft Industry Association
444 N. Capital Street, NW
Suite 645
Washington, DC 20001

Vermont Natural Resources Council
9 Bailey Avenue
Montpelier, VT 05602

Michael Bard
Lake Champlain Walleye Association
R.R. #1 Box 8706
Waterbury Ctr., VT 05677

Fred Abraham
Vermont Quiet Lakes Association
R. #1 Box 2080
Waterbury Center VT 05677

Senator Virginia Lyons, Chair
Senate Natural Resources & Energy
241 White Birch Lane
Williston, VT 05495

Phil Dodd
Vermont Property Owners Reports
P.O. Box 1564
Montpelier, VT 05601-1564

Secretary
Agency of Natural Resources
Center Building - 2nd Floor
103 South Main Street
Waterbury

Commissioner
ANR/Dept. of Fish & Wildlife
10 South - 103 South Main St.
Waterbury

Jackie Sprague, President
Federation of Vermont Lakes and Ponds, Inc.
245 CB Road
Hinesburg, VT 05461

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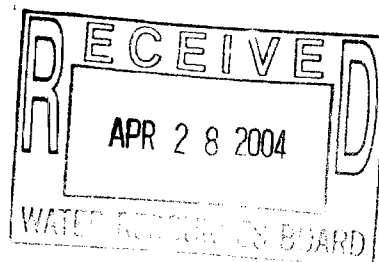
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()

George Clifford
792 #10 Pond Road
East Calais, VT 05650

April 23, 2004

Jon Groveman, Executive Officer
Vermont Water Resources Board
National Life Records Center
Drawer 20
Montpelier, VT 05620-3201



RE: Mirror Lake Petition

Dear Mr. Groveman,

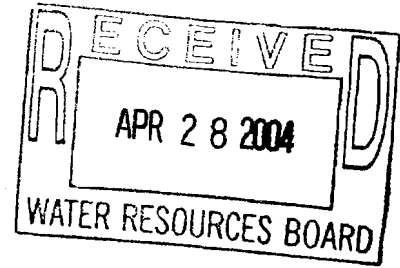
On behalf of the undersigned residents of Calais and Mirror Lake landowners, please find an original and ~~5~~ copies of a Petition for filing pursuant to 10 V.S.A. 1424, together with my Certificate of Service.

Sincerely,

George Clifford

cc: Agency of Natural Resources
Department of Environmental Conservation
Central Vermont Regional Planning Commission
Calais Town Clerk
Department of Public Safety Boating Law Administrator
Calais Conservation Commission

PETITION
Pursuant To 10 VSA Section 1424



The signatories to this document hereby petition the Vermont Water Resource Board to employ their rulemaking power under section 1424 to impose a prohibition on the use of internal combustion engines on the waters of Mirror Lake in the town of Calais in Washington County. As required by the Vermont Resource Board procedural rule 14, the petitioners hereby present the following information:

1. Petitioners: A group of ten or more freemen qualified to file a petition under the provisions of 10 VSA Section 1424.

2. Body of Water: Mirror Lake, also known as Number 10 Pond, in Calais in Washington County.

3. Map: See attached map.

4. Narrative of the Situation: Mirror Lake and Forest Lake (Nelson Pond), less than half a mile apart, can be considered the “twin lakes” of Calais. Both are deep (more than 100 feet), clear, cold lakes offering excellent fishing and recreational opportunities. However, due to a combination of natural topography and historical circumstance, Mirror Lake is still largely undeveloped, while Forest Lake is ringed by camps. This difference has meant that those who value the experience of a lake in its natural state—swimmers, canoers, kayakers, birders, and many fishermen—seek out Mirror Lake. In fact, there are few spots in Central Vermont offering such a rare combination of easy access and pristine beauty. Mirror Lake is considered a treasure, a prime example of what Section 2.11 of the VUPWR calls “water bodies which currently provide wilderness-like recreational experiences and shall be managed to protect and enhance the continued availability of such experiences.”

Unfortunately, the continued availability of this traditional use is under threat by an upsurge in powerboat use in recent years. Too often, Mirror Lake’s natural beauty is marred by powerboats traveling at excessive speeds for such a small lake (86 acres). Mirror Lake currently has in place a speed limit of 5 miles per hour in the bays and 10 miles per hour on the open water. Though currently posted, this speed limit is often overlooked by boaters and has never been enforced. Many who use the lake for swimming, canoeing, and kayaking object to the noise and potentially dangerous operation of powerboats by some operators. The use of larger fishing boats for trolling purposes and large, pontoon-style party boats is an even more disturbing trend that seems to be on the upsurge.

Since powerboaters have a better boating spot on Forest Lake (133 acres), less than half a mile away, banning combustion engines from Mirror Lake would actually *increase* the overall

recreational opportunities: those seeking quiet wilderness time would have gained an ideal destination, while powerboaters would not be inconvenienced. It is our contention that this solution would best express Section 2.2 of the VUPWR, which states as a goal “the need to provide an appropriate mix of water-based recreational opportunities on a regional and statewide basis.” While powerboaters have many choices in the area, other users have few substitutes for Mirror Lake.

Mirror Lake’s beauty is a direct result of its overall health as a habitat. The increasing use of powerboats on the lake negatively impacts this health, and pressure on the lake will continue to grow. This impact touches many wild residents of the lake, but first among these is the common loon. An endangered species in Vermont, loons require deep, unpolluted waters, substantial fish stocks, undeveloped land, and a large enough body of water to accommodate their slow takeoff. That combination is a rarity, which is why only 39 pairs of loons are known to nest in the state, but loons have made Mirror Lake their home for many years (and are one of the draws for a significant percentage of the lake’s users). Banning powerboats would help ensure that loons remain on the lake for future generations of Vermonters to enjoy. Wake from powerboats drowning loon chicks and nests (loons nest right at the edge of water bodies) is a significant danger to the species. This makes the current speed limit of 10 mph on the open lake too high. A look through the VUPWR reveals many lakes with larger size, less environmental significance, and a speed limit of 5 mph for the entire lake. The same should be applied to all of Mirror Lake, no matter what the ruling on powerboats.

Internal combustion engines also directly impact lake health by discharging some fuel directly into the water.

Aquatic nuisances appearing elsewhere in the state, most notably Eurasian milfoil, water chestnut, and zebra mussels, mark another danger to the lake. These species have not appeared in Mirror Lake to date, however, Eurasian milfoil has recently appeared in other popular lakes in the area, such as North Montpelier Pond and Lake Elligo. These nuisances spread most commonly when plant material or mussels are carried on trailers, motors, and propellers from one lake to another. (The smooth, propeller-less hulls of canoes and kayaks are far less likely to carry weeds or mussels between lakes.) Prohibiting the use of powerboats would make it far more likely that Mirror Lake will stay healthy into the future.

We believe that there is no partial regulation or limitation that would appropriately mitigate the consequences of the continued use of internal combustion engines on Mirror Lake, and thus request that the Board adopt a rule prohibiting the use of internal combustion engines on Mirror Lake in Washington County.

5. Affected Parties:

A. Fishermen. Fishermen who do not use combustion engines would be thrilled with the improved fishing and peacefulness. Fishermen who do use combustion engines could use Forest Lake just as easily. They could also switch to electric trawling motors. These nonpolluting, virtually silent engines are becoming the choice for savvy fishermen everywhere because they don’t spook fish and can be turned on or off at will. Widely available and affordable, they would allow any fishermen with powerboats who did not want to switch to Forest Lake to keep using

Mirror Lake. They also solve the speed limit problem, since they can only go a few miles per hour.

B. Swimmers. A major problem on the lake is that the path to the lake from the boat launch takes boaters *directly through* the swimming area. Though most boaters are careful to watch for swimmers, this is an accident waiting to happen. Also, because of the small size of the lake, swimmers often swim across it, where they are less likely to be noticed by boaters. Banning powerboats would significantly improve swimmer safety.

C. Canoers and kayakers. As mentioned, Mirror Lake is popular with these groups because of its pristine surroundings and clear, calm water. The rumble of combustion engines is the only thing marring this wilderness experience. Banning powerboats would make Mirror Lake one of the very best places in Central Vermont to canoe.

D. Landowners. Mirror Lake has only four year-round homes on the lake, plus three camps. Calais's zoning laws, as well as the lack of potentially developable land, ensures that there will never be more. None of the current landowners on the lake own powerboats or have any intention—or means—of having powerboat access from their property. All are in favor of a ban on combustion engines.

E. Ice fishermen. Mirror Lake is a popular ice fishing destination. This group would be unaffected.

6. Conflicts: Since powerboaters on the lake all truck in their boats from elsewhere and use the boat launch, there is no easy way of resolving the conflict locally. The only individuals who might have their lifestyle negatively impacted by this change in usage rules would be someone who (1) uses a powerboat; (2) is unwilling to use Forest Lake or one of the many other lakes in the area offering powerboat access (perhaps because of a favorite fishing spot on Mirror Lake?); and (3) is unwilling or unable to switch to an electric trawling motor. It seems likely that such individuals would be few and far between.

7. Contact Person: All of the undersigned are joint petitioners, however, George Clifford will serve as the official contact at the following address:

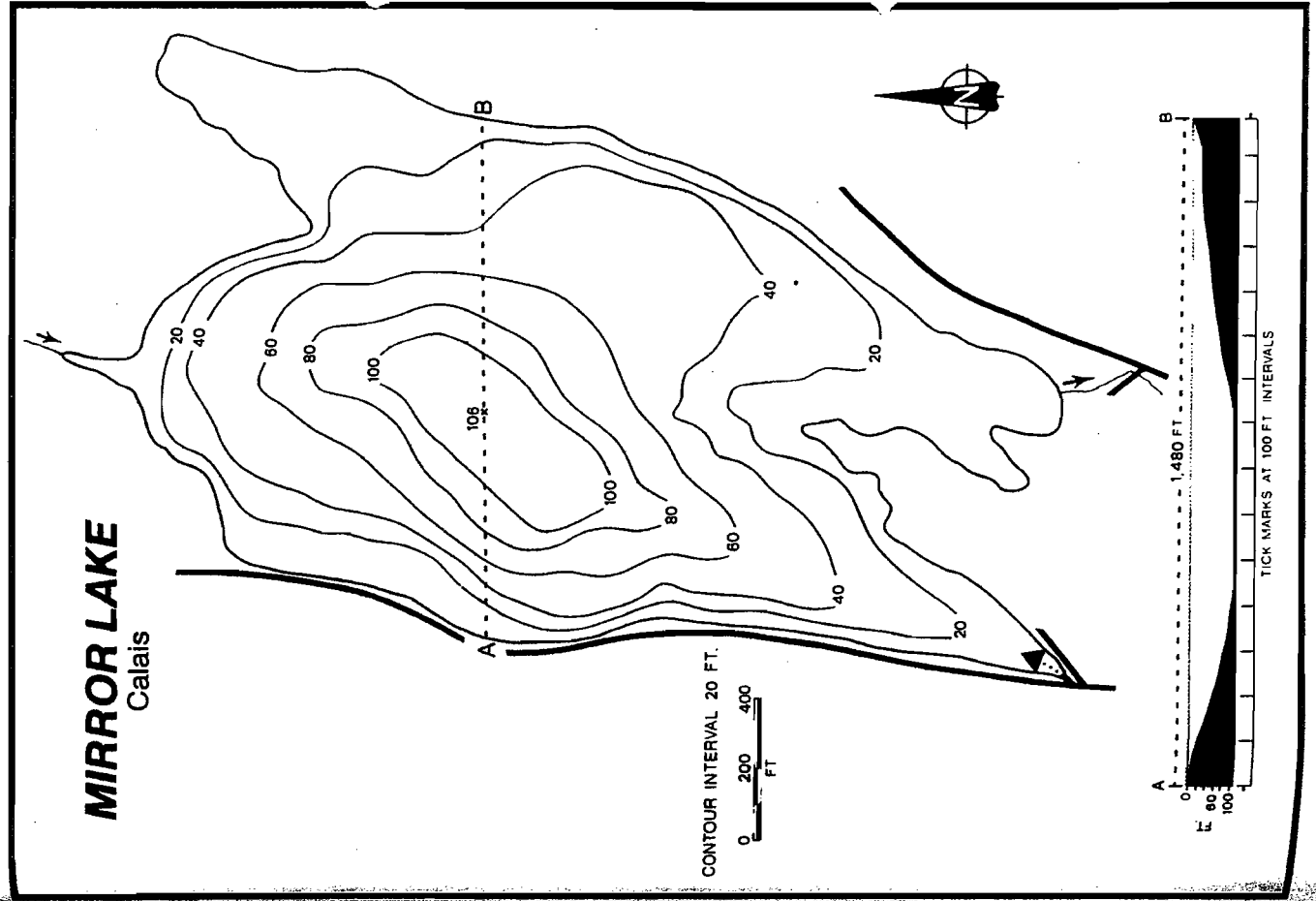
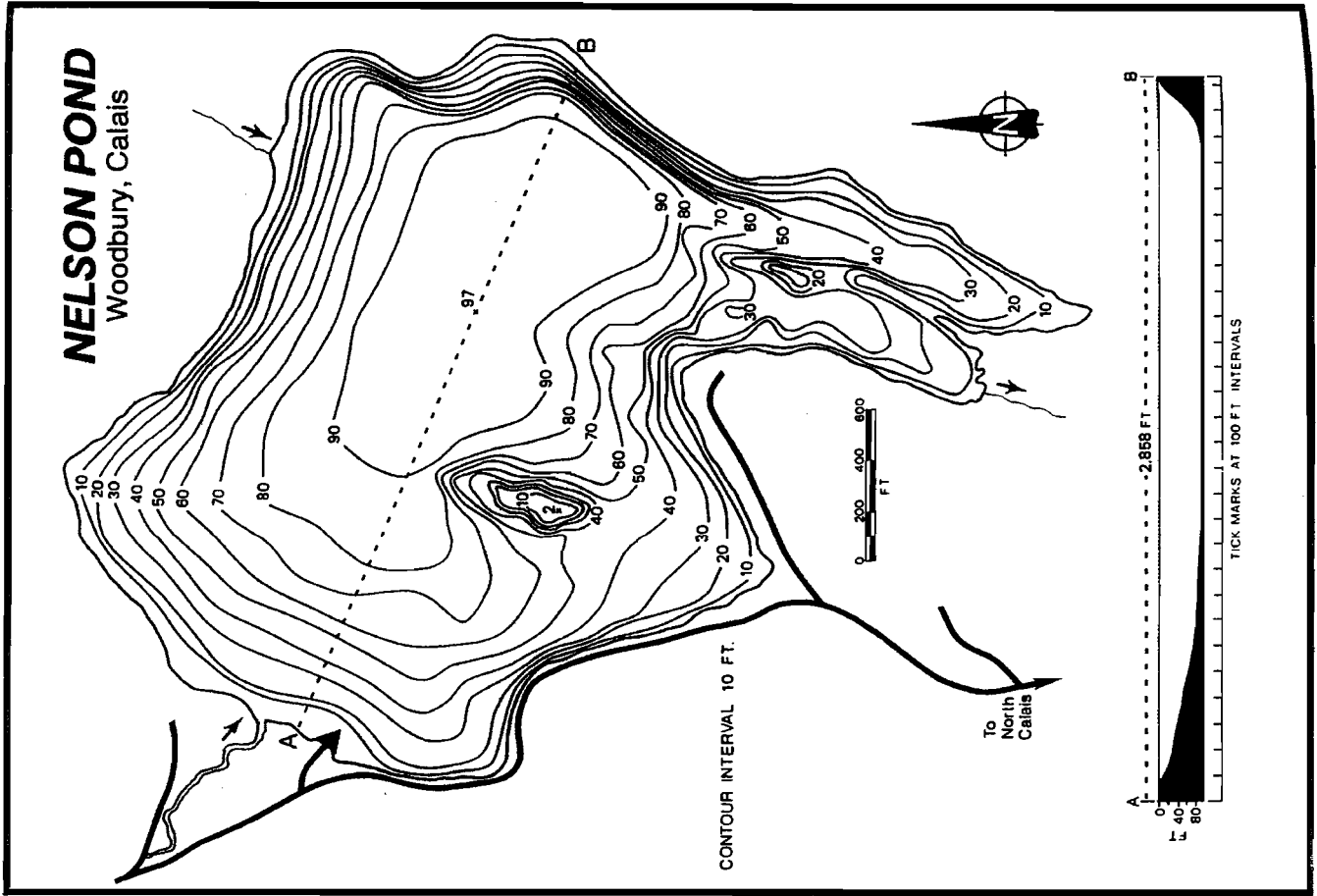
George Clifford

782 Number 10 Pond Road

East Calais, VT 05650

802-456-1399

8. Copies of Documents: Attached.

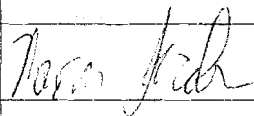
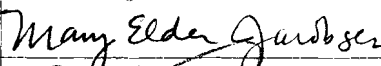

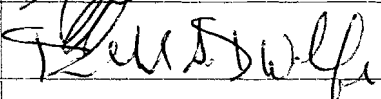
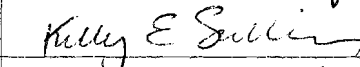
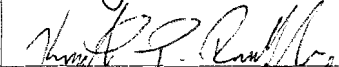
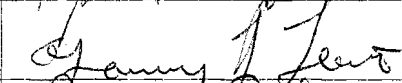

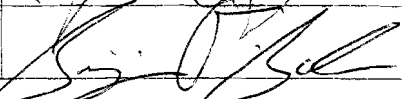


Petition to Prohibit Gas Engines on Mirror Lake

(Number Ten Pond)




Petition Summary and Background: The signatories to this document hereby petition the Vermont Water Resource Board to employ their rulemaking power under section 1424 to impose a prohibition on the use of internal combustion engines on the waters of Mirror Lake in the town of Calais in Washington County.

Action Petitioned For: We, the undersigned, are concerned citizens who urge our leaders to act now to prohibit internal combustion engines on Number Ten Pond (Mirror Lake)

Printed Name	Signature	Town of Voter Registration
Ronan Jacobsen		Calais, VT
Mary Elder Jacobsen		Calais, VT
Bill Foggerson Aver		Calais, VT
Rick DeWolfe		Calais, VT
KELLY SULLIVAN		SARATOGA SPRINGS, NY
Kepton Randolph		Saratoga Springs, NY
Jammy L. Leno		Calais VT
Jane English		Calais VT
Ben Bashore		Calais VT

Printed Name	Signature	Town of Voter Registration
KARIE McWELL		Calais, VT
Myka Coismun		Calais, VT
LAWRENCE HEWITT		Calais, VT
ANTHONY PAGANI		Berlin, VT
Colleen Hewitt		Calais, VT
Louis Wilson		E. Calais, VT
STRATTON FRENCH		Calais, VT
Virginie Rasch		Calais, VT
MICHAEL GIMMINS		Calais, VT
JONATHAN LANGE		Calais, VT
Susan Sawyer		Woodbury, VT
Paul Brown		Montpelier, VT
Curtis Johnson		Calais, VT
Denise Wilder		Calais, VT
Michael Fullerton		Calais, VT
Robert Withley		Calais, VT

Printed Name	Signature	Town of Voter Registration
Olivia Gay	Olivia Gay	Calais, VT
Don Heise	Don Heise	Calais, VT
Charles Hubbard	Charles A. Hubbard	Calais, VT
Gary Fout	GARY FOUT	E. Calais
Mark Powell	Mark Powell	Worcester
David Lathrop	David Lathrop	Montpelier
William Haines	Will Haines	Worcester
LORI BARG	Lori Barg	PLAINFIELD, VT
Brian Slopey	Brian Slopey	Montpelier, VT.
Santaskinos	Santaskinos	North Calais
JOCELYN HERBERT	Jocelyn Herbert	NORTH CALAIS, VT
Annice Christopher	Annice Christopher	N. Calais, VT
Damien Lech	Damien Lech	Calais
CHRIS LaBRASCANO	Chris LaBrascano	Calais, VT
Peter Backman	Peter Backman	Calais, VT
Peter Collins	Peter Collins	Calais, VT

Printed Name	Signature	Town of Voter Registration
LARRY COCHRAN		CALAIS
STEPHANNE SMITH		CALAIS
BARBARA BUTLER		CALAIS

SERVICE AND CERTIFICATION

The Petitioners, in addition to filing an original and five copies with the Water Resources Board, certify that a complete copy of the Petition has been filed with each of the following:

The Secretary of the Agency of Natural Resources
The Commissioner of the Department of Environmental Conservation
The Central Vermont Regional Planning Commission
The Calais Town Clerk
The Department of Public Safety Boating Law Administrator
The Calais Conservation Commission

