

State of New Hampshire
Department of Safety

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

JOHN J. BARTHELMES
COMMISSIONER OF SAFETY

DECISION & ORDER

In the Matter of:

**Camp Starfish Cove in Lake Monomonac
Rindge, New Hampshire**

Attorney Christopher Casco, Administrator, Bureau of Hearings, conducted a public hearing as designee for Commissioner John J. Barthelmes, Commissioner of Safety.

HISTORY:

The Department of Safety received a petition requesting the establishment of a No Rafting Zone within Camp Starfish Cove, in Lake Monomonac, Rindge, New Hampshire. The petition was submitted by Mr. William Seidman in accordance with Saf-C 409.01 and was received in July, 2013. The petition presented the reasons by which the request was put forward stating that rafting in this small cove area that includes three islands and mainland that is owned by Camp Starfish, a summer camp for troubled children, has become a tremendous problem for the camp and property owners. Five to ten boats anchor, raft, and tie ropes onto bushes in what constitutes a small sandbar area. The occupants disembark the boats and enter onto the sandbar, often entering the islands which are private property of the camp, and is posted no trespassing. The area then is used as a public beach where people barbeque, play loud music, and drink alcoholic beverages. At times these individuals behave in a rowdy manner, urinating and defecating in the area and disturbing the peace of the campers, staff, and other property owners. In addition, unleashed dogs often

accompany people on the rafting boats and enter onto the land which disturbs the nesting wildlife, including loons and herons.

Pursuant to RSA 270:12, RSA 270:43 and the New Hampshire Code of Administrative Rules Saf-C 407 and Saf-C 409, a public hearing was conducted on Friday, August 30, 2013 at 10:00 a.m. at the Rindge Town Office located at 30 Payson Hill Road, Rindge, New Hampshire.

OPENING REMARKS:

Everyone present was informed:

- ➔ The public hearing was recorded;
- ➔ The recording would be preserved for seventy-five (75) days and an explanation of the procedure by which to receive a copy of the recording;
- ➔ The opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
- ➔ They could review the legal notice clipping from the newspaper, along with the original petition and any other documents;
- ➔ How and where to submit written comment that must be received within seven (7) days from the hearing date by the Department of Safety;
- ➔ That proper abutter notification had been made by certified mail; and
- ➔ The petition and hearing notice were posted on the Department of Safety web site at least 2 weeks before the public hearing on July 29, 2013.

STATISTICS:

Nine (9) people spoke in favor of the petition. No one appeared against the petition. Twelve signed to not speak, but enter their support to the proposed No Rafting Zone. Written comment was submitted prior to/and or after the hearing from 4 people (1 letter signed by 2 people), all in support of the petition. Sgt. Robertson of the New Hampshire Marine Patrol conducted an investigation and prepared a 6 page report with his findings.

Prior to and/or after the hearing no comment was received in opposition to the petition. The hearing was closed to public comment at the conclusion of the business day on Monday, September 9, 2013.

EXHIBITS:

Eight photographs of the area depicting the rafting activity in question and a wooden sign (photographed for the record) that had been nailed to a tree on Camp Starfish property covering a no trespassing sign that said: "Nude Beach Take Notice." In addition, a picture depicting land erosion was submitted within the comment period, and finally, a map of the proposed no rafting zone for a total of 11 exhibits.

SYNOPSIS OF LETTERS RECEIVED:

Three letters in strong support of the petition were submitted. They described that rafting has caused erosion and loss of trees on the islands. Also, this activity causes trash to be thrown and noise that is at times, "outrageous," which disturbs property owners.

OFFICIAL NOTICE:

Official notice is taken of the Petition submitted by Mr. William Seidman as it references the requested prohibition of rafting along with the thirty six (36) signers.

SYNOPSIS OF TESTIMONY:

William Seidman, Petitioner, spoke in support of the petition. After the hearing, within the comment period, he submitted a detailed statement to supplement his testimony. He is an abutter and property owner in this small area of water, the Camp Starfish Cove of Islands where he proposes a no rafting zone. Camp Starfish owns the 3 islands and mainland in this area. The boats anchor and raft and tie up using branches on camp property. This area between the islands and mainland then is transformed into a public beach where loud partying occurs to include drinking alcoholic beverages, loud music, use of profanity, urinating and defecating, entry onto the camp property by people and dogs which causes trash and glass to be left on that property. The trash and glass on the property has restricted the camp's use of its property.

Moreover, rafters wash boats using chemicals, leaving waste in the water. Boats often do not obey the no wake signs and drive at high speeds which causes safety concerns. The boat traffic created by rafting boats limits the use of this area by the camp and residents as they are unable to use boats, kayaks, and canoes, or swim during the time of rafting activity which occurs from mid-morning until after dark.

Also, staff members of Camp Starfish testified and provided significant details about the negative impact that rafting has had on the camp's activities. The children who attend Camp Starfish have severe emotional, behavioral and learning problems. The camp often takes them out of traumatic home environments and is intended to provide a relaxing, therapeutic atmosphere. The camp likes to use the islands as a reward to take campers to. Due to the rafting activity they have been unable to use the islands. For example, this year the camp had 260 campers and they were only able to take 32 to the islands. In order to use the islands, a considerable additional amount of staff time has been required in order to inspect the islands for glass and to ensure that there is no improper behavior occurring at the time the campers are brought to the island. An example of improper activity that occurred was the placement of the "Nude Beach Take Notice" sign that was placed on a tree on an island and was placed over a no trespassing sign. Some campers saw the sign and asked about it. In addition, when camp staff have attempted to discuss the situation with the boaters they have reacted in a hostile manner. There are also instances of public urination that occur that are damaging to campers because some of them have been victims of sexual abuse. The camp has boats and boating trips are an activity the rafting impairs as they have had to limit boat trips during times of rafting. Finally, Camp Starfish has a one on one staff to camper ratio, the only camp in the country to have this, and when they have to send a staff member to an island to inspect it and clean trash it presents a staffing problem.

Moreover, several property owners spoke about the negative impact of the rafting, supporting many of the reasons for the ban discussed by the Petitioner. Some of the residents have been in the area for decades and have only suffered from the negative impacts of rafting the past several years. Also, a representative of the Monomonac Lake Association testified in support of the petition, representing the interests of 300 households on the lake.

DISCUSSION:

In gathering findings of fact, the following legal authority is given consideration and is provided for reference.

RSA 270:12. Operating Restrictions.

- I. The commissioner of safety shall, after receiving a petition signed by 25 or more residents or property owners of each affected town or towns in which a lake, pond or river is located and after notice and hearing, at which it appears that the public interest requires, adopt rules governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area

of 35 acres or less; provided, that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75 through 270:132. Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August, and September following the date of the petition.

- II. Notwithstanding the provisions of RSA 270:12, I, any hearings regarding the closing or restricting of any body of water to seaplanes shall be addressed to and heard by the commissioner of safety or his designee. Prior to issuing a decision, the commissioner shall consult with the director of aeronautics, rail, and transit, department of transportation.
- III. Persons petitioning the commissioner requesting a change of use or restriction of the use of any public waters shall notify, by certified mail, all abutters with deeded waterfront property or deeded water access rights of the proposed change or restriction and the department shall post the petition on its official website at least 2 weeks prior to a public hearing scheduled by the department.
- IV. In this section, "abutter" means any person who owns property immediately adjacent and contiguous to the area on which the change of use or restriction of use will take place. If the change of use or restriction of use is located in an area which by its configuration would cause the change or restriction to affect noncontiguous properties, owners of those properties are considered as abutters. The term does not include the owner of a parcel of land located more than 1/4 mile from the limits of the proposed change or restriction.

Saf-C 409.04 Criteria for Review.

(a) The commissioner shall, after the hearing, adopt rules of the type authorized by RSA 270:12 if it appears that, consistent with RSA 270:1, II, the rule shall provide for the safe and mutual enjoyment of a variety of uses, taking into consideration the factors in (b) below.

(b) In determining whether to adopt such rules the commissioner shall consider the following:

- (1) The size of the body of water or portion thereof for which action is being considered;
- (2) The effect that adopting or not adopting the rule(s) would have upon:
 - a. Public safety;
 - b. The maintenance of residential, recreational and scenic values;

- c. The variety of uses of the body of water or portion thereof;
- d. The environment and water quality; and
- e. Threatened and endangered species;

(3) The number of people affected, either directly or indirectly, by adopting or not adopting the rule(s); and

(4) The availability and practicality of enforcement of the rule(s).

The Commissioner of the Department of Safety, pursuant to RSA 541-A, and New Hampshire Code of Administrative Rules Saf-C 407 and 409 (*et seq.*) defines and regulates the practice of rafting of boats. RSA 270:43 Rules; Enforcement further defines designation of prohibited locations or times during which the size of rafts is limited and a minimum distance is required between the boats and rafts in accordance with the provisions of RSA 270:44.

The Petitioner provided concern for public safety, the maintenance of residential, recreational and scenic values, the environment and water quality. Testimony describing noise levels, reduced sanitation practices, and observed poor conduct practiced by those in the cove rafting showed a concern for the continued use of the cove for rafting by the petitioners. In addition, the negative impact that this conduct has on Camp Starfish was presented.

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition are given weight in determining findings, however, greater significance is given to the specific laws that govern the practice of rafting and the variety of uses by the public of Lake Monomonac. The Commissioner of Safety balances the petition and governing law with the variety of uses of the lake. Within RSA 270:1 the language for deliberation speaks to competing uses for the enjoyment of the waters; regulating that use for the benefit of all users, keeping in mind what may diminish the value to be derived from them. In addition, the public waters of New Hampshire shall be maintained and regulated in such way as to provide for the safe and mutual enjoyment of a variety of uses, both from the shore and from water-borne conveyances. The law places the responsibility on the Commissioner of Safety to consider: the variety of special uses appropriate to our lakes, public safety, protection of environment and water quality, and the continued nurture of New Hampshire's threatened and endangered species. The intent of the legislature to recognize in RSA 270:42-46 that the cumulative effect of boats

congregated as "rafts" differs from that of the same number of boats scattered, and therefore, requires specific appropriate regulation.

The exhibits and public comment at the hearing each provided the fact-finder specific information in reference to the size and configuration of the area being considered. The petition presented a map of the area and described it as a small area. In addition, the area was described as not being visible from most of Lake Monomonac, which isolates this area from the rest of the lake.

All of the persons present were in favor of the petition. The persons who spoke are property owners. Most significantly, staff members from Camp Starfish testified about the negative impact that this activity has had on their camp. It is fair to say that rafting has frustrated their use of the property.

The unlawful trespass of persons onto private property is a law enforcement issue requiring contact with the local police department and cannot be enforced through this petition directly, although such activity will be minimized if rafting is prohibited. Specific safety concerns such as the observed unlawful boating faster than lawful in a no wake zone in violation of existing law is clearly an enforcement issue that shall be addressed by Marine Patrol enforcement as they patrol the cove and the public waters by way of the current standards.

The New Hampshire Marine Patrol, through Sgt. Robertson's report, indicated that they have received complaints of disorderly conduct, excessive drinking, urinating, defecating and a general disregard for others in the area going back to 2010. He patrolled the area throughout the 2013 boating season and found that once he launched a patrol boat the rafters would leave the area, travelling back over the border to Massachusetts or to residences in New Hampshire. He attempted to educate the rafters on civility and common courtesy and to enforce any disorderly conduct that occurred in his presence. As he continued to gain experience in this area, he learned that additional action was needed to address disorderly conduct in Camp Starfish Cove. During a patrol of the area Sgt. Robertson encountered an individual with children and a dog with a boat tied off who were picking blueberries on Camp Starfish property. A male from the boat stood right under a no trespassing sign and displayed a complete disregard for the fact that he was on private property stating that "everyone hangs out there on hot days." Such demonstrates a complete disregard for the property rights of the camp and NH law prohibiting criminal trespass.

As a result of his investigation, Sgt. Robertson concluded that rafting frustrates Camp Starfish's use of its property and that a rafting prohibition will provide Marine Patrol with a necessary enforcement tool in this area to address this behavior.

Based upon the testimony and totality of public comment considered, balanced with the intent of the legislature established within the reviewed laws, the Commissioner needs to measure the variety of uses that Lake Monomonac provides. That measurement includes the noise level, unsanitary observations, and, sometimes boisterous behavior. In addition, the Petitioner provided proof of erosion and damage to animals, loons, herons and turtles although no scientific evidence was introduced. The testimony of these concerns, however, is properly given weight because it was provided by long time residents of the area. Accepting the petition shall introduce a permanent ban to the public use of rafting now practiced in that area. That area, however, is relatively small and the islands and shoreline in question are owned by Camp Starfish, which has posted all of that land as no trespassing.

The Petitioners provided persuasive reasons under the law that meet a preponderance standard to allow the Department of Safety to issue a permanent rafting ban.

After carefully considering all of the evidence, exhibits, testimony and all public comment presented, Findings of Fact are issued.

FINDINGS OF FACT:

1. That pursuant to RSA 270:12, twenty-five (25) or more residents or property owners petitioned John J. Barthelmes, Commissioner of the Department of Safety to conduct a public hearing to regulate motor boat usage by a ban on rafting within Camp Starfish Cove in Lake Monomonac, Rindge, New Hampshire.
2. The specific area requested was identified as The Camp Starfish Cove of Islands as shown on Town of Rindge Property Map 15 on Exhibit 11.
3. That official notice for the hearing was published in a newspaper of statewide circulation, The Union Leader, Manchester, NH on July 31, 2013.
4. The petition and notice of hearing were posted on the Department of Safety web site pursuant to RSA 270:12-III

for more than 2 weeks before the hearing date on or about July 29, 2013.

5. The Petitioner notified all abutters by certified mail and provided the return receipts before the hearing pursuant to RSA 270:12-III and RSA 270:12-IV and in compliance with the statutory requirement.
6. That a public hearing was held at 10:00 AM on Friday, August 30, 2013 for public comment regarding the issue and was conducted pursuant to RSA 541, RSA 270:12, RSA 270:43 and Administrative Rule Saf-C 407, and Saf-C 409 at the Rindge Town Office, 30 Payson Hill Road in Rindge, NH.
7. That the petition seeks to adopt a rule to prohibit rafting within Camp Starfish Cove, Lake Monomonac in Rindge, New Hampshire, as identified on Rindge Property Map 15, Exhibit 11.
8. That the effect which adopting or not adopting the rule(s) would have upon the public safety is considered. The law requiring banning watercraft from rafting or limiting the location and times is as defined within RSA 270:12, RSA 270:43, RSA 270:44 and administrative rule, Saf-C 407, Saf-C 409 is taken into account and given great weight. Not adopting the rule will have a substantial negative impact on Camp Starfish and surrounding property owners.
9. Not adopting the rule will have a negative impact on public safety by permitting disorderly conduct, congestion in a small area that impairs the navigation of other boats, kayaks and canoes and presents a danger to swimmers. In addition, boat operation in violation of no wake laws has occurred in Camp Starfish Cove during times of rafting.
10. That testimony was received from longtime residents to support that there has been erosion on land in this area although no scientific evidence was presented to establish that it was caused by rafting. This is given some weight in support of the petition because a resident of the area testified to this fact and produced a photograph of erosion in the area. Exhibit 10.
11. That public comment was received in reference to recreational and scenic values including concern for

pollutants from boats and persons on the boats entering the waters within the cove.

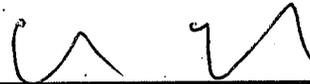
12. That testimony was received referencing the maintenance of residential values requiring picking up litter directly attributable to rafters by Camp Starfish and residents, and residents being unable to have guests to their property.
13. Also, Camp Starfish has not been able to use their island property as was demonstrated by the fact that in 2013 they were only able to take 32 of 260 campers to the islands. They also were only able to take some of their campers on boat rides.
14. Some of the no trespassing signs of Camp Starfish have been taken down and burned.
15. That some boaters rafting in the cove have little or no consideration for others trying to share the area of public waters. Specifically, including loud noise levels, littering and improper sanitation practices of those rafting in the cove.
16. That public comment was received referencing the variety of uses of the waters within Camp Starfish Cove on the environment and water quality. The number of people affected, either directly or indirectly, by adopting or not adopting the rule(s) was discussed from the standpoint of the persons concerned for the fiscal impact for property values to land adjacent to or near the shoreline, a distance of approximately 70 yards. Shoreline property owners' use of their property has been limited due to the behavior of those rafting. Human waste, trash, and chemicals from boat washing have had a negative impact on water quality.
17. There was testimony concerning negative impact on animals including loons, herons, and turtles although there was no evidence as to whether these are threatened or endangered species.
18. The availability and practicality of enforcement of the rule(s) was presented. Law enforcement presence is available and ongoing but in need of assistance.
19. That the Department of Safety, Division of Safety Services Marine Patrol enforces the statutes and rules governing the

public waters within Camp Starfish Cove, Lake Monomonac located in Rindge, New Hampshire, and navigational law is enforced through that agency, but they have been unable to adequately perform this job due to the flagrancy and degree of disruptive and unlawful behavior which includes criminal trespass on private property, public urination, defecation, destruction of property, littering, disorderly conduct, and a conscious disregard for others in the area.

20. That based on the facts presented, law enforcement in this area will be enhanced if a rule is adopted.

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

Respectfully,



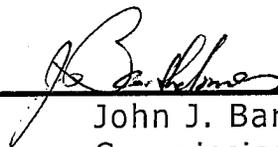
Christopher Casco, Administrator
Bureau of Hearings

CONCLUSION OF LAW:

The evidence demonstrates that the petition is in the public interest fulfilling the purpose of law. There is sufficient attestation that the petitioners have met a burden of proof by a preponderance of the evidence showing cause that a "No Rafting Prohibition" be adopted pursuant to RSA 270:12 and Administrative Rules Saf-C 407; 409.

DISPOSITION:

It is hereby Ordered that the petition be **GRANTED**. Rulemaking will be initiated to implement this decision.



John J. Barthelmes
Commissioner of Safety

RSA 541:3 Motion for Rehearing.

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

I certify that a copy of the order has been forwarded to the below named via first-class mail or electronic mailing (as applicable).



Christopher Casco, Administrator

Date of mailing: 9/25/13

A copy of this order was sent to the following:

Petitioner Designee
Mr. William Seidman
(To be distributed to co-petitioners)

Colonel Robert Quinn, Director
NH State Police/Division of
Safety Services

Town Clerk/Administrator Rindge,
New Hampshire

CC: File

[A copy was sent to those submitting an E-mail address]