



**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:

**Round, Fish & Flag Coves on Lake  
Winnepesaukee  
Meredith, 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 Round, Fish, and Flag Coves, on Lake Winnepesaukee, Meredith, New Hampshire. The petition was submitted by Ms. Cheri Pierce in accordance with Saf-C 409.01 and was received by NH Marine Patrol on August 9, 2013. The petition presented the reasons by which the request was put forward stating that rafting has substantially increased milfoil, caused large quantities of trash to be deposited in the coves such as cans and bottles, and disturbed loons, heron, osprey, muskrats and mink due to noise, and gasoline from barbeques.

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 Monday, September 30, 2013 at 2:00 p.m. at the Meredith Community Center located at 1 Circle Drive, Room C, Meredith, 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 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;
- ➡ The petition and hearing notice were posted on the Department of Safety web site at least 2 weeks before the public hearing on or about September 11, 2013; and
- ➡ The appeal procedure in accordance with RSA 541:3 and RSA 541:6.

## **STATISTICS:**

Eight (8) people spoke in favor of the petition. No one appeared against the petition. One person signed to not speak, but enter their support to the proposed No Rafting Zone, although that same person also testified. Written comment was submitted prior to/and or after the hearing from thirteen (13) people, all in support of the petition.

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 Tuesday, October 8, 2013.

## **EXHIBITS:**

1. A PowerPoint presentation with 23 slides

2. 1 page of information with definitions
3. Letter concerning milfoil treatments from Aquatic Control Technology dated 8/23/13
4. Map of area

#### **SYNOPSIS OF LETTERS RECEIVED:**

Thirteen letters in strong support of the petition were submitted. They described that rafting has caused numerous problems in this 3 cove area. One writer suggested that there is an alternative place to raft in the area of Stonedam Island, a short distance away, where rafting will not disturb property owners. The letters articulate many of the same concerns raised by the Petitioner and provide further justification for an administrative regulation on rafting. It was also highlighted that there is already a no wake zone from Ledge Island into the 3 coves due to the need to protect this area.

#### **OFFICIAL NOTICE:**

Official notice is taken of the Petition submitted by Cheri Pierce as it references the requested prohibition of rafting along with the forty six (46) signers.

#### **SYNOPSIS OF TESTIMONY:**

Deborah Pierce, hereafter Petitioner, spoke in support of the petition. Her family has owned their property in Flag Cove since 1945. She presented a detailed presentation documenting all of the reasons for the petition. Rafting has caused numerous, longstanding problems in this small, narrow, shallow 3 cove area on Lake Winnepesaukee in Meredith. The problems presented may be broken into three broad categories: safety concerns; environmental concerns; and nuisance concerns. The safety concerns include that rafting creates a hazardous condition for swimmers due to large numbers of moving boats in a narrow, shallow area. Also, rafting creates unsafe navigation because boats and people swimming of off rafting boats in the water block already narrow navigation lanes, and sail boats have insufficient space to tack. Rafting boats block the view of oncoming boat traffic. The environmental concerns include stress on an important ecosystem where loon nesting occurs. Also, rafting has contributed to a significant milfoil problem in the coves. Pulling up anchors repeatedly exacerbates the milfoil problem. In addition, boaters use chemicals to clean boats which are dumped into the lake. Moreover, large numbers of rafting boats present sanitation concerns due to the lack of sanitary facilities on the boats, which causes human waste to be dumped into the lake.

Moreover, the rafting boats present a nuisance due to loud music, cooking, drinking, and use of profanity. In the past people rafting have insulted and leered at

people on shore which causes people on shore, particularly young women, to be uncomfortable. Also, people from boats have trespassed onto property. There has been an increase in trash with rafting, which is found floating and sunken into the water. Such trash includes cans, bottles, diapers, fishing lures, and discarded water toys.

A nearby cove on Lake Winnepesaukee, Black Cove in Meredith is similar in width and is less populated. It is more open to the lake, and a rafting restriction was approved and is contained in Department of Safety Administrative Rule Saf-C 407.03(a)(12). This is cited as precedent in support of this petition.

In addition, several residents supported the Petitioner's presentation. No one spoke in opposition to the rafting restriction.

### **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 safety concerns, environmental concerns, and nuisance/disorderly conduct concerns as the basis for the petition, as documented in the Synopsis of Testimony above. Such concerns were supported by the testimony of several property owners.

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 Winnepesaukee. 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 a 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 the 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. Therefore, the law allows restrictions on rafting in areas where such is needed to ensure public safety, protection of the environment, water quality, and endangered species.

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 petitioner presented a map of the area and described it as a small area. The presentation further described that the maximum water depth is 12 feet. In fact, much of the water area in the 3 coves is less than 6 feet deep and within 135 feet of shore as represented by the blue on page 10 of Exhibit 1. In addition, the area was described as being small and without sufficient space to accommodate the large number of boats that gather and raft in the area. The navigable areas are typically a size of 150 to 200 feet wide with the widest area, other than Fish Cove lagoon, being 400 feet from shore to shore.

The Petitioner indicated that at times, as many as 21 boats have been observed for hours in the congested area of Flag Cove. The boats cause navigational problems due to insufficient space to allow other boats to pass through the area. Also, the large number of boats operating in the area presents safety concerns for swimmers both from surrounding properties and from the rafting boats, and other small watercraft competing for use of the same limited area.

All of the persons present were in favor of the petition. The persons who spoke are property owners. Most significantly, the speakers are property owners who have lived in the area for many years and have observed a substantial increase in rafting and its negative impacts.

The Petitioners provided persuasive reasons under the law that meet a preponderance of the evidence standard to allow the Department of Safety to issue a permanent rafting ban because such will provide for the safe and mutual enjoyment of a variety of uses of this water, taking into consideration the relevant factors.

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 Flag, Round and Fish Coves on Lake Winnepesaukee, Meredith, New Hampshire.
2. The specific area requested was identified as the larger cove comprised of Flag, Round, and Fish Coves with the proposed boundary being the 3 buoys that lead into this 3 cove area and Ledge Island.
3. That official notice for the hearing was published in a newspaper of statewide circulation, The Union Leader, Manchester, NH on September 16, 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 September 11, 2013.

5. The Petitioner notified all 76 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 2:00 p.m. on Monday, September 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 Meredith Community Center, 1 Circle Drive, Room C, in Meredith, NH.
7. That the petition seeks to adopt a rule to prohibit rafting within Fish, Round and Flag Coves, Lake Winnepesaukee in Meredith, New Hampshire, as identified on Exhibit 4, a consolidated tax map with Bizer navigation chart overlay.
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 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, and presents a danger to other users like swimmers and operators of small watercraft.
10. That testimony was received from longtime residents to support that there has been a significant increase in milfoil in the area that has required substantial treatment and that rafting has contributed to the proliferation of milfoil in the coves which impairs the environment and water quality.
11. Milfoil, an invasive plant, is prevalent in these coves due to the shallow, warm water, and nutrient rich sediment which provides an ideal growing location.
12. Moreover, the repeated removal of boat anchors that rafting requires exacerbates the existing milfoil problem.

13. That public comment was received in reference to recreational and scenic values including concern for pollutants from boats and barbeques, including gasoline and chemicals from people washing boats.
14. That testimony was received referencing the maintenance of residential values requiring picking up litter directly attributable to rafters by cove residents, and residents' ability to use their property as they wish being impaired due to disorderly conduct of those rafting. In the past there have been confrontations between people rafting and property owners.
15. That some boaters rafting in the coves have little or no consideration for others trying to share the area of public waters. Specifically, this includes loud noise levels, littering and improper sanitation practices of those rafting in the coves. Most of the boats rafting do not have sanitary restroom facilities, and therefore, the water is used as a restroom which results in waste in the water.
16. That public comment was received referencing the variety of uses of the waters within Round, Fish and Flag Coves 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. Testimony was provided that in a nearby area on Lake Winnepesaukee where rafting is common has caused property values to drop substantially.
17. There was testimony concerning negative impact on animals including loons, heron, osprey, muskrats and mink.
18. The Loon Preservation Committee indicated that there are nesting loons and loons tending young or brooding in the area, although human impacts to loons does not specifically include boat rafting. Boat traffic and human activity are concerns, and therefore, the presence of large numbers of boats and people may have a negative impact on loons.
19. The availability and practicality of enforcement of the rule(s) was presented. Law enforcement presence is available and ongoing but in need of assistance because

these coves are isolated from the larger portions of the lake.

20. That the Department of Safety, Division of Safety Services Marine Patrol enforces the statutes and rules governing the public waters within Fish, Flag and Round Coves, Lake Winnepesaukee located in Meredith, New Hampshire, and navigational law is enforced through that agency. The testimony presented indicated that the patrols provided are insufficient to address the problems caused by rafting.
21. 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,



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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.



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John J. Barthelmes  
Commissioner of Safety

**RSA 541:3 Motion for Rehearing/ RSA 541:6 Appeal.**

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.

Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

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



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Christopher Casco, Administrator

**Date of mailing:** 11/6/13

A copy of this order was sent to the following:

Petitioner Designee  
Ms. Cheri Pierce  
*(To be distributed to co-petitioners)*

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

Town Clerk/Administrator  
Meredith, New Hampshire

CC: File

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