



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:

Meredith Bay,
In Lake Winnepesaukee,
Meredith, New Hampshire

Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules, Saf-C 409, a public hearing was scheduled under the authority of RSA 541 between the months of June and September and was held on Friday, September 30, 2016 at 5:00 p.m. at the Meredith Community Center, 1 Circle Drive, Room B, Meredith, New Hampshire. Christopher Casco, Esq. conducted the public hearing as designee on behalf of Commissioner John J. Barthelmes.

HISTORY:

The Department of Safety received a petition dated August 5, 2016 signed by at least twenty-five (25) co-petitioners who are residents or property owners, supporting the request.

The petitioners applied for a hearing pursuant to RSA 270:12 to address concerns providing the specific reasons within an attached petition of names signatory thereto. The petition requests that the Department of Safety extend an existing No Wake Zone within Meredith Bay, Lake Winnepesaukee, in Meredith, New Hampshire.

The procedure for adoption of such rules is in section RSA 270:12 of Title XXII governing navigation, harbors, and coast survey in the State of New Hampshire.

PETITION:

The Petitioners seek the extension of a No Wake Zone within the area described as Meredith Bay on Lake Winnepesaukee in Meredith, New Hampshire.

OPENING REMARKS:

Everyone present was informed:

- ➔ The public hearing is 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 specifying end of business on Friday, October 7, 2016; and,
- ➔ the appeal procedure in accordance with RSA 541:3.

The Notice of Hearing and the petition along with all supporting documents were displayed for review by interested persons. Notification of the public hearing was published in The New Hampshire Union Leader on September 6, 2016.

EXHIBITS RECEIVED AT PUBLIC HEARING:

- Petition and supporting documents

STATISTICS:

On September 30, 2016, Eight (8) people testified in favor of the petition and six (6) people signed to record themselves in support of the petition but did not speak. Six (6) people appeared and spoke in opposition to the petition, with an additional (4) four people signing in against the petition who chose not to speak. Prior to and/or after the hearing, one (1) person sent via mail, e-mail or facsimile public commentary in favor of the petition. Five (5) people submitted public comment opposed to the petition. The hearing was closed to public comment at the conclusion of the business day on Friday, October 7, 2016.

OFFICIAL NOTICE:

Petition dated August 5, 2016.

SYNOPSIS OF TESTIMONY:

Mr. John Puccia testified in favor of the petition. He filed the petition on behalf of the residents and property owners of Bay Shore Yacht Club, which is on the shore of the lake in close proximity to the line of the existing no wake zone. He presented safety, damage to boats, poor quality of life due to excessive waves from boat wake, and environmental concerns as the rationale for relocating the no wake zone. The request is to move the line of the no wake zone on the eastern shore from Town of Meredith Tax Map U15 at lot 48A (29 Pleasant Street) to U15 lot 45B (65 Pleasant Street) and on the western shore move the line from tax map U02 lot 7 (18 Bay Shore Drive) to U02 lot 11 (26 Bay Shore Drive). He used maps to describe the change and a map with the proposed lines was included within the petition.

Furthermore, he described an incident where a child was nearly pinned between a boat and the dock due to an incoming, large wake. He read a letter from John Cusick into the record. Mr. Cusick described that he had sustained a knee injury that required surgery due to a wake striking his boat. There has also been property damage in the area. For example, the club has experienced broken dock posts. As to dredging to solve the problem, they are limited to 90 yards and such is insufficient to remedy the problems due to waves. Finally, moving the no wake zone will present a minimal inconvenience to boaters because it will only take an additional 57 seconds to cover the distance from the extended zone.

John Jobera spoke against the petition. He feels that even the existing no wake zone is excessive. There is no more of a problem in the area than in Wolfeboro Bay. He is concerned that granting another petition will eventually result in the entire lake becoming no wake.

Tiffany Richards works as a gas attendant at Meredith Marina. It is dangerous to do her job due to large wake.

Ronald Jacques, the Commodore of Bay Shore Yacht Club spoke in favor of the petition. The no wake zone, as implemented, helped the first couple of years but then the marker lines changed. They have suffered approximately \$15,000 of damage to their docks. The problem is especially difficult on weekends. At the gas docks, the waves

present environmental issues due to spilled fuel in the water caused by boats rocking.

John Coleman is against the petition. He feels that the problem could be solved by placing no wake buoys the entire distance across the bay. If children are taught proper boating rules, they will be safe on board boats even with wake. He has observed the Marine Patrol enforcing the law governing no wake. His position is that too much of the lake is being taken by no wake zones. Existing law requires a boat to travel at no wake when within 150 feet of shore, and that better boater education may solve the problem rather than extending the no wake zone.

Wayne Heiligmann spoke against the petition. The current no wake zone was not accurately depicted on the diagram, which is part of the cause of the problems that the yacht club is experiencing. If the buoys were placed properly, there would be less of a problem. In addition, boaters need to be seaman and know how to walk on a boat when there is wake. He suggested that a boating test and licensing could help train boaters. Also, there is silt coming from the parking lot at Meredith Marina without proper erosion control. He enjoys waterskiing and wake boarding and it will be hard to enjoy his property if the no wake zone is extended.

Eric Sanschagrin spoke in favor of the petition. He has a slip at the yacht club. A couple of weeks before the hearing he was unable to fuel his boat due to large wake. It is the accumulation of boats that presents the problems rather than large, single boats.

Bryan Holland spoke against the petition. He has observed wake without boats being present. It is impossible to prevent wake without making the entire lake a no wake zone. The mail boats create large wake and those boats could come in a different way to limit their impact.

Matt O'Neil runs Meredith Marina. He is in favor of the petition and has run the marina for 13 years. There have been injuries as people have been thrown from boats due to wake. At the gas docks, attendants have been trained to sit on the dock with legs out to hold the boats. Extending the no wake zone will reduce damage.

Charlene Malek is opposed to the petition. This is a busy area and is impacted by boat traffic. Granting the petition will lessen the enjoyment of the lake.

Courtney Walker is in favor of the petition. She works at the gas dock at Meredith Marina. The large waves present a safety issue at the dock. A change in the buoy placement will not take away from the enjoyment of the lake.

Mike Maloof is in favor of the petition. He described an incident where he slammed his head against the windshield of his boat.

Steven Chesebrough spoke in support of the petition. There has been an increase in small craft use like kayaks and paddleboards. Many of those users are inexperienced and don't know the rules. Large wake affects the gas docks. The mail boats, Sophie and Doris aren't the main cause of large wake. There are other large cabin cruisers. The Marine Patrol does a good job enforcing no wake laws but cannot always be there. Education is also important. Rental boaters on the lake don't always follow the rules.

Ashley Holland stated that a jetty could be constructed to alleviate the problem rather than extending the no wake zone.

COMMENTARY RECEIVED PRIOR TO END OF BUSINESS ON October 7, 2016

Several people submitted written comment with one in favor, and several others against the proposed extension of the no wake zone. The person in favor described safety concerns and an incident where a passenger on his boat fell in the boat due to large wake and that he injured his knee as well, requiring surgery.

Those against the petition indicated that they feel it is unnecessary to extend the no wake zone further into the bay. In fact, it was suggested that the current no wake zone should be brought back to where it was before it was created. Others echoed the sentiment that boat wakes are part of having a boat on the lake and are unavoidable. Also, that it would be unfair to extend the no wake zone for a relatively small number of people who use Meredith Marina and Bay Shore Yacht Club. It was also suggested that the club could alleviate the wake problem by dredging their slips to make them deeper which would also correct the problem.

Furthermore, opponents suggested that moving the zone would only push the problem onto other property owners along the shoreline. Finally, making the zone bigger will deprive the public of use of a larger portion of the lake which is inappropriate. Alternative ways of dealing with wake from boats should be considered like using multi way

ties and line snubbers. Boat whips and fenders are also available to limit the impact of wake although the writer who suggested same stated that those may not even be necessary.

DISCUSSION:

In gathering findings of fact, the following legal authority is considered:

RSA 270:1, II Declaration of Policy

“In the interest of maintaining the residential, recreational and scenic values which New Hampshire public waters provide to residents of the state and to the promotion of our tourist industry, and in light of the fact that competing uses for the enjoyment of these waters, if not regulated for the benefit of all users, may diminish the value to be derived from them, it is hereby declared that 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. Such provisions shall take into consideration the following: 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.”

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 under RSA 541-A 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 270:75-109. 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...

RSA 270-D: 2 General Rules for Vessels Operating on Water.

“...Vessels shall be operated at headway speed only, while passing under all bridges. VI. (a) To provide full visibility and control and to prevent their wake from being thrown into or causing excessive rocking to other boats, barges, water skiers, aquaplanes or other boats, rafts or floats, all vessels

shall maintain headway speed when within 150 feet from: (1) Rafts, floats, swimmers; (2) Permitted swimming areas; (3) Shore; (4) Docks; (5) Mooring fields; (6) Other vessels. . . .”

Saf-C 409.01 Request for Hearing.

- (a) Any group of 25 or more persons, any association having not less than 25 members, or any governmental subdivision or agency may, pursuant to RSA 270:12, petition the commissioner for a hearing to determine whether a problem exists which could be alleviated by the adoption, in accordance with RSA 541-A, of the following types of rules:
 - (1) Governing the maximum horsepower of boat engines and outboard motors on all or any portion of the public waters of the state;
 - (2) Prescribing maximum speed limits for the operation of boats on all or any portion of the public waters of the state; or
 - (3) Prohibiting the use of motor boats and outboard motors on public waters having an area of 35 acres or less, except any body of water covered by RSA 270.
- (b) Pursuant to RSA 270:12, this rule shall not apply to those bodies of water covered by RSA 270:75-109.

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 rulemaking action is being considered;
 - (2) The effect which 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 such 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).

Moreover, since this petition relates to a prior public hearing that established a no wake zone, where appropriate, that order is referenced. See Decision and Order: In the Matter of The North End of Meredith Bay on Lake Winnepesaukee, Meredith, New Hampshire, 9/8/00, (Flynn, Commissioner). Also, that order was revisited 2 years

later after petitions to repeal and modify by reducing the no wake zone were filed. Those petitions were denied following a public hearing. See Decision and Order: In the Matter of The North End of Meredith Bay on Lake Winnepesaukee, Meredith, New Hampshire, 8/23/02, (Flynn, Commissioner). That hearing supported that the no wake zone as enacted had considerable positive impact on the area and that there was insufficient justification to repeal or reduce the size of the no wake zone.

The decision on the petition relies not only on the comments made; the comments made are weighed against the criteria set forth in RSA 270:12 and Saf-C 409, and the decision is based on whether there is sufficient evidence after consideration of both testimony, written comment, and the relevant legal criteria. The record evidence should be sufficient to establish that a problem exists that will be remedied by establishing an extension of a no wake zone.

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. The petitioners presented information through testimony in support of their Petition as well as maps. The testimony provided the fact-finder general information supporting the petition.

The fact-finder reviews the listed statute(s) and rule(s) as authority for this petition in addition to the list of authority placing great weight to the instructive language found within RSA 270:1,II (*Supra*); this passage speaks unmistakably to the Declaration of Policy our legislature has placed within the statute. The criteria for the Commissioner of Safety to consider includes the language within Saf-C 409.04 including:

The size of the body of water: The petitioners provided evidence of size of the area in the petition and the prior decision provides additional information.

Public safety: Both sides presented issues that would fall into the category of public safety. Several people described the hazardous situation that exists at the Meredith Marina docks and the boats slips of the Bay Shore Yacht Club. One man sustained a knee injury requiring surgery due to large wake. Another struck his head on the windshield of his boat. In addition, gas attendants described the unsafe situation that exists when they are fueling boats. Opponents suggested that learning proper boating techniques and practices could solve the problem.

The maintenance of residential, recreational, and scenic values:

Commentary from persons for and against the petition presented information in this category. Those in favor believe that a no wake zone will help ensure safety and enjoyment because they will be better able to use their boats at the club, and those using the Meredith Marina docks will be able to fuel in a safer manner, thereby increasing the value and enjoyment of their property. Large boat wake in the past has caused boaters not to be able to fuel.

The variety of uses of the body of water:

There was testimony concerning a variety of activities and competing uses of the bay which includes water skiing and wake boarding. Many small vessels like kayaks use the area.

The environment and water quality:

There was commentary as to the water quality and erosion damage. Erosion has caused shallow water in the Bay Shore Yacht Club. Since they can only dredge for 90 feet, this is insufficient to address the problem.

Threatened and endangered species:

There was no testimony on this factor.

The number of people affected, either directly or indirectly:

The comments focused on the many problems on the shoreline in the area of the Meredith Marina and Bay Shore Yacht Club due to large boat wake. Many people in this area suffer a negative impact and the enjoyment of their property is limited.

The availability and practicality of enforcement of the rule:

Commentary supported that the New Hampshire Marine Patrol enforces no wake laws in Meredith Bay and that they do an effective job. Their resources, however, are limited and they cannot always have officers available when the rules are violated.

This petition, if granted, will not control but will restrict the varied uses for all the residents of the State of New Hampshire and the enjoyment of the public waters within Meredith Bay. After carefully reviewing and considering all of the evidence and testimony received, in conjunction with the law, and what the petition seeks to accomplish, published findings are as follows:

FINDINGS OF FACT:

1. That pursuant to RSA 270:12, at least twenty-five (25) people petitioned John J. Barthelmes, Commissioner of the Department of Safety to conduct a public hearing to regulate motor boat usage in the area of Meredith Bay located within Lake Winnepesaukee in Meredith, New Hampshire.
2. The petition seeks to adopt a rule relocating the boundaries of a No Wake Zone (speed restriction) within Meredith Bay on Lake Winnepesaukee. The petition, dated August 5, 2016 was accepted and scheduled for a hearing.
3. The petition asked for the modification of the existing no wake zone as reflected in Saf-C 5102.96(au) as follows: move the line of the no wake zone on the eastern shore from Town of Meredith Tax Map U15 at lot 48A (29 Pleasant Street) to U15 lot 45B (65 Pleasant Street) and on the western shore move the line from tax map U02 lot 7 (18 Bay Shore Drive) to U02 lot 11 (26 Bay Shore Drive). The overall length of Meredith Bay is 3.1 miles long. The existing no wake zone is approximately $\frac{1}{4}$ of a mile long¹ and takes 2 minutes to traverse at a headway, or no wake speed.² Granting an extension will only result in it taking an additional minute to traverse the no wake zone.
4. The petitioner notified all abutting property owners of the petition by certified mail.
5. Formal public notice for the hearing was published in a newspaper of statewide circulation on September 6, 2016 in The Union Leader, Manchester, New Hampshire.
6. The petition and hearing notice were posted on the Department of Safety web site on or about September 1, 2016 and have remained there.
7. A public hearing was scheduled and conducted at the Meredith Community Center, 1 Circle Drive, Meredith, New Hampshire on Friday, September 30, 2016, pursuant to RSA 541 (et seq.), RSA 270:12 and Administrative Rule Saf-C 409.
8. Moving the boundaries of the no wake zone will increase its size by approximately 200 feet on the side depicted in tax map U02

¹ Finding of Fact #7 (page 6) Decision and order of Commissioner Flynn 9/8/00

² Finding of Fact #9 (page 7) Decision and order of Commissioner Flynn 9/8/00

(western shore), and by approximately 400 feet on the side depicted in tax map U15 (eastern shore).

9. Public comment received indicated that large wake creates an unsafe situation at the Meredith Marina and the Bay Shore Yacht Club. Individuals have been injured on their boats due to incoming waves which is exacerbated by the boundary of the existing no wake zone.
10. Public comment was received in reference to maintenance of residential, recreational and scenic values
11. Public comment was received in reference to a variety of uses including boating, water skiing, kayaking, paddle boarding, and wake boarding. This is an area of heavy boat traffic with competing uses.
12. Public comment was received regarding the effect which adopting or not adopting the rule(s) would have upon the public safety or water quality. Not adopting the rule to extend the no wake zone will result in the continuation of an unsafe situation to many users and property owners of Meredith Bay.
13. Testimony revealed concern for the environment within the cove due to alleged erosion caused by waves coming into the shore and possible fuel spillage.
14. There was conflicting testimony regarding the necessity of the no wake zone. Some comments challenged the existing no wake zone and suggested that it be eliminated or reduced rather than extended.
15. Public comment was received regarding the number of people affected by extending the no wake zone. If the no wake zone is not extended, many people will be negatively impacted which outweighs the concerns presented. The rationale for the original no wake zone was focused on safety and implemented to create traffic control for safety.³ The testimony established that the existing boundary is insufficient to achieve the purpose of the original no wake zone and supports moving it. The situation remains unsafe for many.

³ Discussion (page 8) Decision and order of Commissioner Flynn 9/8/00

16. The New Hampshire Marine Patrol enforces the law governing the public waters within Meredith Bay in Meredith, New Hampshire, and navigational laws are enforced through that agency.
 17. A petition to repeal or otherwise modify the area of this no wake zone was denied after public hearing by order issued on or about August 23, 2002.
-

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

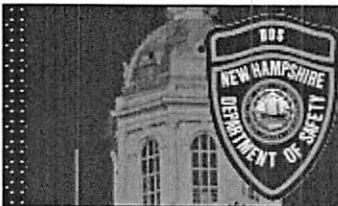
Respectfully,



Christopher Casco, Esq.
Administrator

CONCLUSION OF LAW:

Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules, Saf-C 409, the information submitted was thoroughly considered within the petition, along with the public commentary received. The evidence demonstrates that the petition is in the public interest and will fulfill the purpose of law. There is sufficient proof to allow extension of a No Wake Zone encompassing Meredith Bay on Lake Winnepesaukee in Meredith, New Hampshire.



DISPOSITION:

The Petition to extend a No Wake Zone as described in the petition is granted. Rulemaking will proceed in accordance with 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."

RSA 541:6 Appeal

"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 Decision and Order has been forwarded to the below named via first-class mail or electronic mailing (*as applicable*).



Christopher Casco, Administrator

Date of mailing: 11/21/16

Petitioner Designee: John Puccia
(*To be distributed to petitioners*)

Town Administrator
Meredith, New Hampshire

Captain Timothy Dunleavy,
NH Division of State Police
Marine Patrol Unit
Department of Safety

cc: File