



Regulation of Public Bodies of Water-

2024 Lakes Congress- June 5, 2024

Review of the Legal Process

Presented by:
Christopher Casko, Esq.
Administrator of Hearings
Christopher.B.Casko@dos.nh.gov
603-223-8047



Christopher Casko
Administrator of Hearings

New Hampshire

Department of Safety

[illegible]

"The reason we don't look at win or loss is, we're the fact-finder. At every hearing, someone wins and [someone] loses. Who are we to say which is a win? We are the independent fact-finder,"



The Union Leader Sunday News

10/26/08

Function of Bureau of Hearings

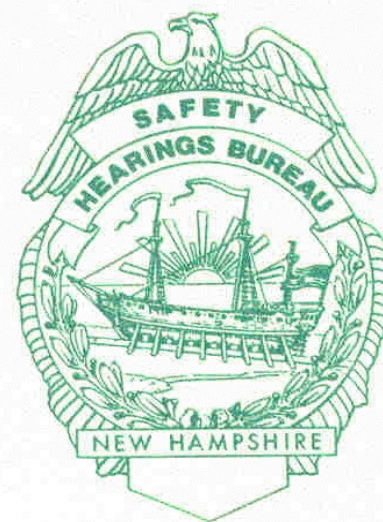
- Hold adjudicative hearings for commissioner of safety or
- Any division of department
- Take disciplinary action against holder of license, permit, or registration issued by DOS
- RSA 21-P:13-II

JAMES H HAYES BUILDING

**DEPARTMENT OF SAFETY
OFFICE OF COMMISSIONER
DIVISION OF STATE POLICE
BUREAU OF HEARINGS
NEXT RIGHT**



Department of Safety



Bureau of Hearings



Regulating Bodies of Water

- RSA 270:12 provides legal authority
- Various types of activity
- Petition signed by 25 or more residents or property owners
- From town where lake, pond, river located
- Commissioner to schedule public hearing
- Authority to adopt rules based on hearing
- Administrative rules also apply

Public Hearing Rule Types

- Govern maximum horsepower of boat engines- less than 35 acres
- Speed limits- less than 35 acres
- Certain exceptions- RSA 270:75- RSA 270:132- statutory regulations
- Close to seaplanes

Exempt



Hearing Process

- Abutter notification by certified mail
- Petitioner responsible
- Deeded waterfront property or deeded right of access
- Give notice of proposed change
- Use reasonable method- for example, send petition/hearing notice/detailed letter describing change

Location

- In vicinity of body of water
- June, July, August, September only
- Rationale- full public participation







Location

Public building- accessible

DOS Responsibility

- Post petition on website
- At least 2 weeks before hearing
- Typically done a month before
- Broad public notice to allow full participation
- Publish in newspaper of general circulation
- Public comment period

Notice

- Details including date, time location
- Legal authority
- Describe public comment period
- Let as many people know as possible



CALENDAR

< **June 2024** >

SUN MON TUE WED THU FRI SAT

26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	1	2	3	4	5	6

Wed, Jun. 5

Department of Safety
Public Hearing - Braun Bay
petition

Thu, Jun. 6

Board of Selectmen
Meeting

Wed, Jun. 12

Planning Board
Organizational Meeting

Wed, Jun. 12

Planning Board

[View All Events](#)

STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
NOTICE OF HEARING

Hearing Notice

Provide sufficient notice to public of what action is being proposed.

PURSUANT TO RSA 270:43, A PUBLIC HEARING ON A PETITION TO PROHIBIT AND/OR RESTRICT RAFTING OF BOATS BY RESCINDING A PRIOR 1993 ORDER WHICH ALLOWED RAFTING AND ANCHORING WITHIN 75 FEET OF SHORE IN BRAUN BAY ON LAKE WINNIPESAUKEE IN MOULTONBOROUGH, NEW HAMPSHIRE WILL BE HELD ON WEDNESDAY, JUNE 5, 2024 AT 9:00 AM. THE HEARING WILL BE CONDUCTED AT THE MOULTONBOROUGH TOWN HALL, ERNEST DAVIS ROOM, 6 HOLLAND STREET, MOULTONBOROUGH, NEW HAMPSHIRE 03254.

THE SPECIFIC RESTRICTION REQUESTED IS TO ADOPT A RULE PROHIBITING RAFTING IN BRAUN BAY BY REVOKING A 1993 ORDER MODIFYING A PRIOR RAFTING PROHIBITION IN THE ENTIRETY OF BRAUN BAY, WHICH 1993 ORDER ALLOWED THE ANCHORING OF BOATS WITHIN 75 FEET FROM SHORE, AND TO RESTORE THE PRIOR RULE.

TESTIMONY WILL BE ALLOWED THAT IS RELEVANT TO THE FOLLOWING ISSUES:

- (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;
 - (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).

PERSONS WISHING TO TESTIFY ARE URGED TO COORDINATE THEIR TESTIMONY TO AVOID UNNECESSARY DUPLICATION OR REPETITION OF TESTIMONY. WRITTEN COMMENT MAY BE SUBMITTED. INDIVIDUALS WISHING TO SUBMIT WRITTEN COMMENT MAY DO SO WITHIN A PERIOD OF SEVEN (7) DAYS AFTER THE SCHEDULED HEARING BUT ANY COMMENT MUST BE RECEIVED BY MAIL OR EMAIL BEFORE 4:15 PM ON JUNE 12, 2024.

AUTHORITY FOR HEARING: RSA 270:12, RSA 270:43, SAF-C 407 AND SAF-C 409.

ROBERT L. QUINN, COMMISSIONER,
DEPARTMENT OF SAFETY, STATE OF NEW HAMPSHIRE

BY:

CHRISTOPHER CASKO, BUREAU ADMINISTRATOR
DEPARTMENT OF SAFETY, BUREAU OF HEARINGS,
33 HAZEN DRIVE, CONCORD, NH 03305
TEL # 603-271-3486
EMAIL: SAFETY-HEARINGS@DOS.NH.GOV
SPEECH/HEARING IMPAIRED HELP LINE TTY/TDD RELAY:
1-800-735-2964



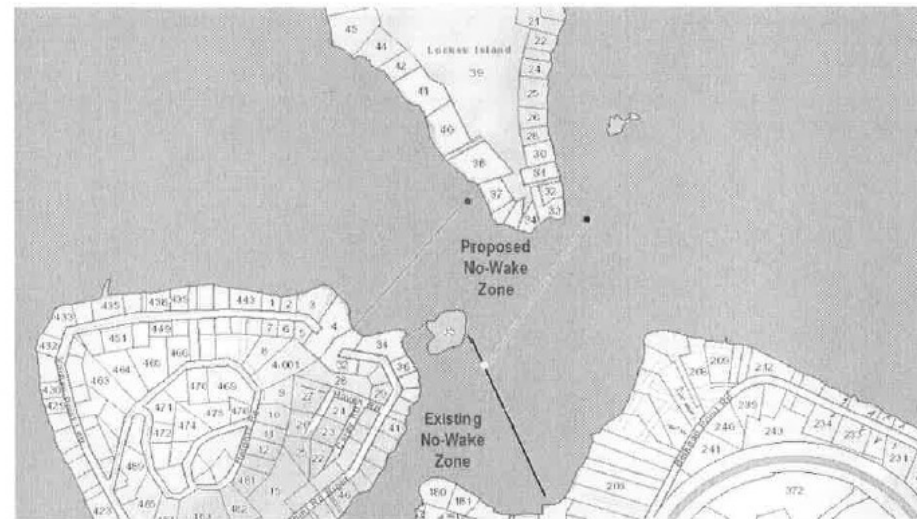
Abutter Defined

- Property owner immediately adjacent and contiguous to area of proposed change
- If change would affect noncontiguous property owners, they must be notified
- No more than $\frac{1}{4}$ mile from the limits of change
- Map with petition helpful
- City or town may be able to assist in determining abutters

Lake Winnepesaukee

Glendale Bay petition for no wake zone- 2021

Figure 1



The boundaries of the proposed no wake zone are as follows:

To the West, a line from a point at or near lighted buoy number 53 (red dot) and the boundary line between lots four and 32 on Varney Point.

To the East, a line from the point at or near the black-and-white buoy off the southeast corner of Lockes Island (black dot) and the headway speed marker just to the east of Pig Island (yellow dot).

Legal Standard

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).



Written Decision

- Within 30 business days of close of public comment
- If granted, rule effective by next boating season
- If denied, petitioner may appeal







The Rulebook- Administrative Procedure Act (APA)



RSA 541-A:30-a through RSA 541-A:38 relate to adjudicative hearings



Requires agencies holding hearings to adopt procedural rules which address specific areas



Must follow these rules in addition to agency administrative rules



Where a statute and rule conflict, statute controls

Administrative Rules

May not add to, detract from, or modify statutes. Portsmouth Country Club v. Town of Greenland, 152 N.H. 617 (N.H. 2005).



Agencies, however, have authority to “...fill in the details to effectuate the purpose of the statute.” Id. at 621.



Rules have force of law. Id. at 621.

Administrative Rules



PROVIDE FURTHER DETAILS
FOR HEARINGS



ADDITIONAL PROCEDURES
CONSISTENT WITH STATUTE

Hearing types

- No Wake Zone
- Prohibit or regulate rafting
- Ban Seaplanes- consult DOT Director of Aeronautics, Rail, and Transit before decision
- Moorings- If granted G & C must approve

Rafts & Seaplane



Saf-C 409.01 Request for Hearing.

(a) A group of petitioners made up of 25 or more residents or property owners of each affected town or towns in which the subject body of water is located, an association having not less than 25 members who are residents or property owners of each affected town or towns in which the subject body of water is located, or any governmental subdivision or agency may, pursuant to RSA 270:12, petition the commissioner for a hearing to determine whether a problem exists such that the public interest requires the adoption 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 on any body of water covered by RSA 270.

(b) Pursuant to RSA 270:12, this section shall not apply to those bodies of water covered by RSA 270:75-109.

(c) The department shall not accept a petition to repeal a rule adopted as a result of the granting of a petition for at least one year following the effective date of the petition.

(d) When the petition seeks the establishment of a no-wake zone, the petition shall be accompanied by a listing of names and addresses of the abutters within 300 feet of the proposed zone, together with a statement certifying that all such abutters have been notified of the petition by certified mail, return receipt requested, and have been provided copies of the petition.

Source. #4214, eff 1-22-87, ss by #4562, eff 1-3-89; amd by #5862, eff 7-1-94; amd by #5936, INTERIM, eff 1-3-95, EXPIRES, 5-3-95; ss by #6005, eff 3-24-95; amd by #7534, eff 7-25-01; paragraphs (a) & (b) EXPIRED: 3-24-03; amd by #7904, INTERIM, eff 6-24-03, EXPIRED: 12-21-03

New. #8107, EMERGENCY, eff 6-22-04, EXPIRES: 12-19-04; ss by #8172, eff 9-21-04; ss by #10293, eff 3-20-13

Saf-C 409.02 Scheduling of Hearing. The commissioner shall schedule a hearing within a reasonable period of time, but in no event more than 60 calendar days after the date the request for a hearing is received. The commissioner shall provide at least 7 calendar days advance notice of the hearing. The hearing shall be held in a town in which the body of water under consideration is located, or in a contiguous town.

Source. #4214, eff 1-22-87, ss by #4562, eff 1-3-89; ss by #5936, INTERIM, eff 1-3-95, EXPIRES, 5-3-95; ss by #6005, eff 3-24-95, EXPIRED: 3-24-03

Saf-C 409.03 Conduct of Hearing.

(a) The commissioner shall conduct the hearing as follows:

- (1) The commissioner shall explain the purpose of the hearing, including:
 - a. The request made by the petitioners; and
 - b. The commissioner's authority pursuant to RSA 270:12 to adopt rules regarding operating restrictions;
- (2) The commissioner shall state that written comments shall be accepted and considered. The commissioner shall provide the address to which written comments may be sent and the date by which comments shall be received in order to be considered, which shall be at least 7 calendar days after the date of the hearing;
- (3) The commissioner shall request that all persons who wish to speak at the hearing print their name and address on a sign-up sheet provided by the commissioner. This shall not prevent any person who arrives late from speaking if he or she desires;
- (4) The order in which persons speak shall be the same order in which their names appear on the sign-up sheet provided that persons who wish to speak out of order shall be allowed to do so unless there is an objection by another speaker; and
- (5) After all persons have spoken, the commissioner shall:
 - a. Establish a date by which the commissioner shall make a determination on whether to adopt rules pursuant to RSA 270:12; and
 - b. State the means by which interested persons shall be informed of the commissioner's determination.



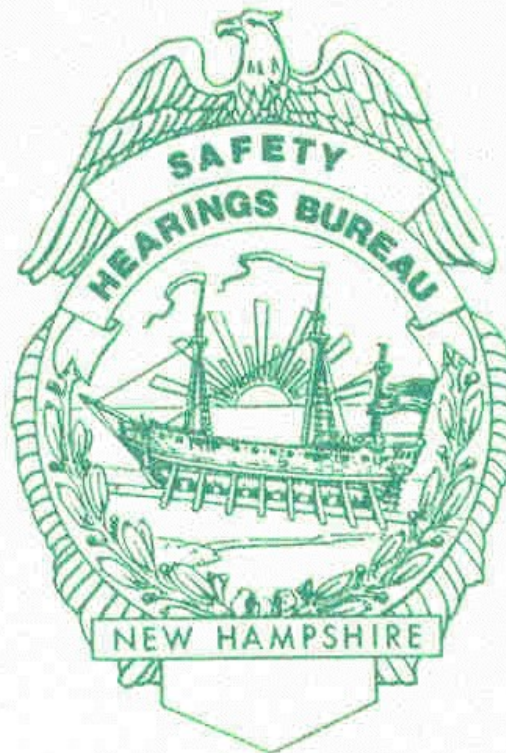
Enjoyment of Public Water





SAFETY

"Our Business"



Bureau of Hearings

