

(DRAFT)
VERMONT ANTI-DEGRADATION IMPLEMENTATION

**EXISTING USE DETERMINATION FOR USE
DURING RIVER BASIN PLANNING**

It is the policy of the State of Vermont to protect and enhance the quality, character and usefulness of its surface waters, prevent the degradation of high quality waters, and prevent, abate or control all activities harmful to water quality. Further, Vermont's Anti-Degradation Policy requires that the existing uses and the level of water quality necessary to protect those existing uses shall be protected and maintained (Section 1-03, Vermont Water Quality Standards). Determinations on the presence of an existing use can be made during basin planning or on a case-by-case basis such as during consideration of a permit application.¹ The Agency of Natural Resources will use the following process to identify existing uses of contact recreation, fishing, boating and public drinking surface water supplies during river basin planning and the development of river basin water quality management plans.

1. The Agency will presume that all lakes and ponds that exist within a river basin have existing uses of fishing, contact recreation and boating. This simplifying assumption is being used for two principal reasons: first, the well known and extensive use of these types of waters for these activities based upon their intrinsic qualities; and, secondly, to avoid the tedium associated with the production and presentation of exhaustive lists of all of these types of waterbodies across any given river basin. This presumption may be rebutted on a case-by-case basis during the Agency's consideration of a permit application which might be deemed to affect these types of uses.
2. Each river basin plan will include a list of existing uses of contact recreation, fishing, boating in/on flowing waters and a list of public drinking surface water supplies, which will be identified using the criteria set forth below.
3. To determine the presence of an existing use of contact recreation, fishing or boating on/in flowing waters or a public drinking water supply during the river basin planning process, positive findings with respect to several conditions need to be made. The unique set of criteria for each particular existing use is set forth below.
4. The list of existing uses in each river basin plan is not intended to represent an exhaustive list of all existing uses, but merely an identification of very well known existing uses. Additional existing uses of contact recreation, boating and fishing on/in flowing waters and additional public drinking water supplies may be identified during the Agency's consideration of a permit application.

¹ As per the Vermont Water Quality Standards, "existing use means a use which has actually occurred on or after 11/28/1975, in or on waters, whether or not the use is included in the standard for classification of the waters, and whether or not the use is presently occurring."

Contact Recreation in Flowing Waters

The Agency may base its determination of the presence of an existing use for contact recreation in flowing waters if it can be shown there is more than an incidental level of use of the specified water body. The application of existing use determination criteria for contact recreation shall not apply to contact recreation situations that may be occurring but at a level deemed to be incidental, irregular and/or infrequent or in situations where there is no clearly defined or previously established access to the water. In determining the presence and level of use in a specified water body, positive findings are needed for both condition 1 and 2:

Condition 1. There is documentation and/or physical evidence that people have access to the waters for contact recreation.

Documentation or physical evidence may consist of:

a. Existence of road pull-off areas, public parking areas, and public access trails.

☞ Video and/or pictures taken from adjacent roads and from the water.

and

b. Status of land ownership: public lands and/or public easements defining access locations

☞ Previously designated public contact recreation or public beach area.

☞ Maps of municipal, state, or federal lands (including road rights-of-ways and bridge crossings).

☞ Documents referring to easements on private lands granting public access to the water for contact recreation purposes;

Condition 2. There is documentation and/or physical evidence of attractive contact recreation sites in and along the affected water.

Documentation or physical evidence may consist of:

a. Presence of any sandy or grassy beach or rock outcropping areas where people can comfortably rest out of the water.

☞ Maps, video or pictures taken along the shore land of the affected waters.

b. Presence of area with sufficient depth, deep water holes, cascades, gorges, rock outcroppings or large boulders in or along the affected waters that create a slow and safe water area for swimming, wading, floating, tubing and/or bathing.

☞ Maps, video or pictures taken of the affected waters.

c. Presence of aesthetically pleasing waters.

☞ Observations concerning water clarity and substrate composition.

☞ Water quality data concerning level of human health risk (such as E.coli abundance) has been regularly collected.

Recreational Boating on Flowing Waters

The Agency may base its determination of the presence of an existing use for recreational boating if it can be shown there is more than an incidental level of use of the specified water body. The application of existing use determination criteria for boating shall not apply to those recreational boating situations that may be occurring but at a level deemed to be incidental, irregular and/or infrequent or in situations where there is no clearly defined or previously established public access to the water. In determining the presence and level of boating use in, on or along a specified water body, positive findings are needed for both condition 1 and 2:

Condition 1. There is documentation and/or physical evidence that people have access to the specified reach of water for recreational boating.

Documentation or physical evidence may consist of:

- a. Evidence of road pull-off areas, public parking areas, and public access to the waters edge for boat put-ins, take-outs and portage routes.
 - ☞ Maps (digital or hardcopy) of designated public boating access points and public pathways to the water.
 - ☞ Video and/or pictures taken from adjacent roads and from the water.
 - ☞ Video and/or pictures taken of specified access area in use.
 - ☞ Video and/or pictures taken of designated public boating access points and public pathways to the water.

and

- b. Status of land ownership: public lands and/or public easements defining access locations.
 - ☞ Maps of municipal, state, or federal lands (including road rights-of-ways and bridge crossings) detailing public boating access points and public pathways to the water.
 - ☞ Documents referring to easements on private lands that grant public access to the water for recreational boating purposes;

Condition 2. There is documentation and/or physical evidence of attractive recreational boating in, on or along the specified reach of water.

Documentation or physical evidence may consist of:

- a. Features (unique or otherwise noted) valued for recreational boating (whitewater or flat-water).
 - ☞ Video or pictures taken along the shore land of the specified waters and features.
- b. Pooled water, rapids, ledges, cascades, gorges, rock outcroppings or large boulders in or along the specified reach that create rapids or pools for boating.
 - ☞ Video or pictures taken of the specified waters.
- c. Aesthetically pleasing waters.
 - ☞ Observation of water clarity and substrate composition.

Recreational Fishing in Flowing Waters

The Agency of Natural Resources fully supports and actively promotes fishing in Vermont's waters. While fishing may occur in most waters of the State, in many places this use may be occurring on merely an incidental level. As part of the river basin water quality management planning process, the Agency recognizes that fishing occurs in all lakes and ponds and in certain reaches of flowing waters (i.e. streams and rivers).

The existing uses for fishing were identified by staff using an Agency procedure developed specifically for use only during the preparation of basin plans. This procedure focuses solely on the identification of well recognized and documented existing uses with public access and therefore is not meant to be an exhaustive list of existing uses for fishing within any particular river basin. It is expected that additional existing uses for fishing will be identified in the future, both as a result of additional information gathered by staff during basin plan updates and as part of Agency reviews of permitting applications for projects that affect the basin. The Agency plans to develop an additional procedure to guide staff in further identifying existing uses in the context of permit application reviews.

The Agency may base its determination of the presence of an existing use for recreational fishing if it can be shown there is more than an incidental level of use of the specified water body. The application of existing use determination criteria for fishing shall not apply to situations where fishing may be occurring but it is being done at a level deemed to be incidental, irregular and/or infrequent or in situations where there is no clearly defined or previously established public access to the water. In determining the presence and level of use in a specified water body, positive findings are needed for both condition 1 and 2 or for either condition 3 or 4:

Condition 1. There is documentation and/or physical evidence that people have public access to the waters for recreational fishing.

Documentation or physical evidence may consist of:

- a. Existence of road pull-off areas with public parking areas, public access trails, publically accessible streambanks or similar features.

- ☞ Video and/or pictures taken from adjacent roads and from the water.

and

- b. Status of land ownership: public lands and/or public easements defining access locations.

- ☞ Previously designated public boat launching area with vehicle parking.

- ☞ Maps of municipal, state, or federal lands (including road rights-of-ways and bridge crossings).

- ☞ Documents referring to easements on or across private lands granting public access to the water for recreational fishing purposes.

- ☞ Documentation of private ownership by 501c3 non-profit conservation organizations and/or land trusts that promote or grant public access for fishing.

AND

Condition 2. There is documentation and/or physical evidence of sites to fish in, on or along the specified reach of water.

Documentation or physical evidence may consist of:

- a. Presence of any land areas along rivers where people can comfortably engage in angling.

- ☞ Video or pictures taken along the shore land of the affected waters.

- b. Presence of pools, fish refuge areas and other habitats in, on or along the affected waters (especially rivers) that create sufficient habitat structure and diversity suitable for fish targeted by Vermont anglers.
 - ☞ Video or pictures taken of the affected waters.

- c. Presence of fish populations targeted by Vermont anglers.
 - ☞ Fish population surveys documenting the presence of target species.
 - ☞ Survey data concerning angler use and catch rates.
 - ☞ Water quality data concerning target fish suitability and sustainability has been regularly collected.

OR

Condition 3. There is documentation of reaches where special regulations for fishing have been imposed by the State of Vermont (whether stocked fish or not).

Documentation or evidence may consist of:

- a. Type, nature and subject species of special fishing regulation(s).

OR

Condition 4. There is documentation of reaches or affected waters that are stocked as a result of being identified on the State's Managed Request for Cultured Fish.

Documentation or evidence may consist of:

- a. Species being stocked and stocking history of affected waters.

Public Drinking Surface Water Supply

The Agency may base its determination of the presence of an existing use for a public drinking surface water supply if there is more than an incidental use of the specified water body as a public drinking surface water supply. The application of existing use determination criteria for public drinking surface water supplies shall not apply to non-public or domestic water supply withdrawals (e.g. single family residence) from a specified surface water. In determining the presence of an existing use of a public drinking surface water supply source in a specified water body, positive findings are needed for the following condition:

Condition 1. Documentation and/or physical evidence exists that the specified waters are used as a source for public drinking water supply.

Documentation and physical evidence may consist of:

- a. Recorded regular use of specified water body as an active public drinking water supply source.
 - ☞ Maps and documents detailing supply intake locations, permits, source protection areas and approximate number of connections or people served.
- b. Recorded use of specified water body as a designated emergency (not in active use) public drinking water supply source.
 - ☞ Maps and documents detailing supply intake locations and inclusion in source protection areas, plans or permits, etc.
- c. A physical intake for treatment and distribution of water for public drinking water supply from specified water body.