

Vermont Water Resources Board
Final Proposed Use of Public Waters Policy
Annotated to show how the initial proposal (1/13/94) has
been changed in the final proposal

Section 1. POLICY APPLICABILITY AND PURPOSE

1.1 General

This Use of Public Waters Policy (Policy) governs the aquatic resources management of the public waters of Vermont under 10 V.S.A. § 1424. It provides guidance for the review of petitions seeking the adoption of rules regulating the use of particular public waters filed pursuant to 10 V.S.A. § 1424. It also establishes a number of general management rules to protect normal uses on all lakes, ponds and reservoirs for which specific rules have not been adopted.

This Policy [is intended to] will serve as a framework for aquatic resources management under 10 V.S.A. § 1424. It is intended to provide a basis for both avoiding where possible, and resolving when necessary, conflicts in the use of public waters in a comprehensive and integrated manner so that the various uses may be enjoyed in a reasonable manner, considering the best interests of both current and future generations of the citizens of the state[. It is the further intent of this Policy to insure] and insuring that natural resource values of the public waters are fully protected.

Some conflicts and management issues require solutions tailored to the unique circumstances of particular bodies of water which will continue to be considered on a case-by-case basis. Requests to either create exceptions to the management rules in Section 3 or to

supplement those rules on a case-by-case basis will be considered in response to petitions filed pursuant to 10 V.S.A. § 1424.

1.2 Severability

The provisions of these rules are severable, and the invalidity of any section, phrase, clause or part of these rules shall not affect the validity or effectiveness of the remainder of the rules.

Section 2. RULES FOR CONSIDERING PETITIONS FILED UNDER 10 V.S.A. § 1424

In addition to any applicable Rules of Procedure, the following procedures shall be followed when petitions filed under 10 V.S.A. § 1424 are considered:

2.1 Except when public safety or emergency situations require otherwise, or for other good cause:

a. the initial public hearing regarding rules proposed in response to those petitions seeking to regulate summer recreational uses on a specific body of water will be held during the months of June through September;

b. all such petitions will be considered in a single consolidated rulemaking proceeding once a year. Consideration of petitions filed after June 1 may be deferred

until the rulemaking initiated in the following calendar year; and

c. a public hearing will be held in a place convenient to the waters affected when requested by 25 or more persons, the legislative body of any municipality in which the affected waters are located, any governmental subdivision or agency, or an association having 25 or more members.

2.2 In evaluating petitions and associated public comments the following factors, at a minimum, will be considered: the size and flow of navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating, and bathing facilities, and the scenic beauty and recreational uses of the area.

The public waters will be managed so that the various uses may be enjoyed in a reasonable manner, considering safety and the best interests of both current and future generations of citizens of the state and the need to provide an appropriate mix of water-based recreational opportunities on a regional and statewide basis.

2.3 In evaluating normal recreational and other uses, the following uses will be among those considered: fishing, swimming, boating and related activities including waterskiing, fish and wildlife

habitat [protection], wildlife observation, the enjoyment of aesthetic values, quiet solitude of the water body, and other water-based activities.

2.4 When considering the establishment of either general or specific rules for the use of public waters under 10 V.S.A. § 1424 the following persons and entities, at a minimum, will be consulted: the Agency of Natural Resources, the Department of Public Safety, affected municipalities, lake associations, regional planning commissions, affected recreational user groups, environmental and conservation organizations that have expressed an interest and the public.

2.5 Any delegation of authority to manage the use of public waters to eligible municipalities (10 V.S.A. § 1424(f)) shall be made only when it is found that such action is consistent with:

(a) the provisions of 10 V.S.A. § 1424 and any other applicable Vermont law,

(b) the provisions of this Use of Public Waters Policy, and

(c) any surface water use management plan adopted in accordance with 10 V.S.A. § 1423 by the Secretary of the Agency of Natural Resources.

- 2.6 Use conflicts shall be managed in a manner that provides for all normal uses to the greatest extent possible consistent with the provisions of Section 2.2 of these rules.
- 2.7 When regulation is determined to be necessary, use conflicts shall be managed using the least restrictive approach practicable that adequately addresses the conflicts.
- 2.8 When addressing issues common to more than one body of water, uniform and consistent rules shall be adopted when appropriate.
- 2.9 When regulation is determined to be necessary to resolve conflicts involving the operation of vessels, priority will be given to managing the manner in which vessels are used or operated, such as by imposing speed limits or separating conflicting uses by designating specific times or places where various uses are allowed.
- 2.10 When regulation is determined to be necessary to resolve conflicts between two or more normal uses, priority will be given to resolving the conflict by separating the conflicting uses, such as by designating specific times or places where various uses are allowed.
- 2.11 Those water bodies which currently provide wilderness-like recreational experiences shall be managed to protect and enhance the continued availability of such experiences.

Section 3. MANAGEMENT RULES FOR LAKES, PONDS AND RESERVOIRS
LOCATED ENTIRELY WITHIN THE STATE OF VERMONT¹

3.1 Rule Applicability:

The rules in this section shall apply to all lakes, ponds and reservoirs that are public waters and are located entirely within the State of Vermont¹ unless:

- a. they are in conflict with rules previously or currently adopted by the Board under 10 V.S.A. § 1424 that address issues unique to a particular body of water. Such rules for particular bodies of water as of the effective date of this Policy are set out in Appendix B hereto;
- b. they are in conflict with the terms of a license, permit or rule adopted or issued by another agency having jurisdiction over the public waters or a particular use of the waters; or
- c. law enforcement, emergencies or the performance of official duties by a governmental agency require otherwise.

¹ This section does not apply to Lake Champlain, Lake Memphremagog, Wallace Pond and Connecticut River Reservoirs.

Rules for each lake, pond, and reservoir, reflecting either the general rules contained in this section or specific rules adopted for that body of water by petition under 10 V.S.A. § 1424, as of the effective date of this Policy, are set out in Appendix A. Additional rules for particular lakes, ponds, and reservoirs may be found in Appendix B or may be adopted by petition after the effective date of this Policy.

3.2 Maximum Speed Limits [and Other Requirements]:

[a. 'Daytime' - (Option 1) Between 8:00 a.m. and one half hour before sunset, or (Option 2) Between one half hour before sunrise and one half hour after sunset the operation of] Vessels powered by motor shall, in addition to the requirements of 23 V.S.A. § 3311(a) pertaining to careless and negligent operation, comply with the following maximum speed limits and other requirements:

[(1)] a. not exceed five m.p.h. [and not create a disturbing wake] on lakes, ponds and reservoirs upon which the operation of vessels powered by motor at substantially higher speeds is not a normal use, or that have a surface area of 75 acres or less, or that have less than 30 contiguous acres outside the shoreline safety zone, or upon which the use of internal combustion motors is prohibited; and

[(2) not exceed 45 m.p.h. and not create a disturbing wake on all other lakes, ponds and reservoirs; and]

[(3)] b. not be operated in such a manner that either the hull of the vessel or its underwater exhaust outlet completely leaves the water as a result of crossing or jumping the wake of any vessel, including its own wake, or for any other reason.

[b. 'Nighttime' - (Option 1) Between one half hour before sunset and 8:00 a.m., or (Option 2) Between one half hour after sunset and one half hour before sunrise the operation of vessels powered by motor shall, in addition to the requirements of 23 V.S.A. § 3311(a) pertaining to careless and negligent operation, comply with the following maximum speed limits and other requirements:

(1) not exceed five m.p.h. and not create a disturbing wake on lakes, ponds, and reservoirs on which the operation of vessels powered by motor at substantially higher speeds is not a normal use (see footnote 10, Appendix A), that are less than 75 acres in surface area, that have less than 30 contiguous acres outside the shoreline safety zone, or upon which the use of internal combustion motors is prohibited.

(2) not exceed the minimum necessary planing speed or 15 m.p.h., whichever is less, on all other lakes, ponds or reservoirs.

(3) Waterskiing is prohibited.]

3.3 Use of Personal Watercraft

a. The use of personal watercraft is prohibited effective [two years after the effective date of these rules] May 1, 1997 on lakes, ponds and reservoirs:

(1) that have a surface area less than 300 acres, or

[(2) that have less than 30 contiguous acres outside the shoreline safety zone, or]

[(3)] (2) that have a maximum [daytime] speed limit of 5 m.p.h. or less, or

[(4)] (3) on which the use of internal combustion motors to power vessels is prohibited.

b. The above prohibition on personal watercraft may be modified on a case-by-case basis in response to petitions filed pursuant to 10 V.S.A. § 1424.

3.4 Use of Aircraft on Public Waters

The use of aircraft is prohibited from May 1 through November 30 on all lakes, ponds and reservoirs with a surface area of less than 75

acres, where the maximum speed limit for vessels powered by motors is 5 m.p.h. or less, and where the use of internal combustion motors is prohibited [unless such] except where the use by aircraft is specifically authorized in accordance with 5 V.S.A. Chapter 9 (see Appendix A).

3.5 Use of Internal Combustion Motors

Use of internal combustion motors to power vessels on lakes, ponds and reservoirs is prohibited where the use of such motors was not a normal use prior to January 1, 1993 (see Appendix A).

3.6 Protection of Loon Nesting Sites

Between May 1 and July 31 all persons and vessels are prohibited from public waters within 300 feet of any loon nesting site that the Secretary of the Agency of Natural Resources or his/her authorized representative has identified by signs and buoys or other clear on-site markings.

3.7 Petitions

Following the adoption of this Policy, exceptions or modifications to the management rules described in this section 3 for Vermont lakes, ponds and reservoirs will be considered on a case-by-case basis in response to petitions filed in accordance with 10 V.S.A. § 1424. In reviewing all such petitions, the policies in

Section 2 above shall be considered. The petitioner shall have the burden of persuasion that the requested exceptions are consistent with the policies in Section 2 and applicable statutory requirements.

Section 4. DEFINITIONS

For the purposes of these rules, the terms below shall have the following meanings unless a different meaning clearly appears from the context.

4.1 Board: The Vermont Water Resources Board or its delegate under 10 V.S.A. § 1424(f).

[4.2 Designated Use: Those uses, whether established or not, that are specified in the water quality classification (10 V.S.A. Chapter 47) of any body of water.]

[4.3 Disturbing Wake: Any disturbance on the surface of water as a result of combined vessel motion and hull displacement where such disturbance may constitute an actual or potential hazard to a person, other vessels, the shoreland or wildlife.]

[4.4] 4.2 Normal Use: Any lawful use of any specific body of public [waters] water that has occurred on a regular, frequent and consistent basis prior to January 1, 1993.

- [4.5] 4.3 Internal combustion motor: A motor, such as a gasoline or a diesel motor, in which fuel is burned within the motor proper rather than in an external furnace as in a steam engine.
- [4.6] 4.4 Navigable water or navigable waters: Lake Champlain, Lake Memphremagog, the Connecticut River, all natural inland lakes within Vermont and all streams, pond, flowages and other waters within the territorial limits of Vermont, including the Vermont portion of boundary waters, which are boatable under the laws of this state (10 V.S.A. § 1422(4)).
- [4.7] 4.5 Personal Watercraft: A Class A vessel which uses an inboard engine powering a water jet pump as its primary source of motive power and which is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind, the vessel rather than in the conventional manner of sitting or standing inside the vessel (23 V.S.A. § 3302 (8)).
- [4.8] 4.6 Public Waters: Navigable waters excepting those waters in private ponds and private preserves as set forth in 10 V.S.A. §§ 5204, 5205, 5206 and 5210. (10 V.S.A. § 1422(6) and 23 V.S.A. § 3302(9)).

- [4.9] 4.7 Recreational User Group: An organized group representing a discrete group of recreational users of public waters.
- [4.10] 4.8 Shoreline Safety Zone: That portion of the surface area of public waters within 200 feet of the shoreline.
- [4.11] 4.9 Surface Area: The surface area of a lake, pond or reservoir as shown on Appendix A. [determined by the Agency of Natural Resources and listed in a document dated May 28, 1993, entitled "Surface Areas of Vermont Lakes, Ponds and Reservoirs."²]
- [4.12] 4.10 Vessel: Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water (23 V.S.A. § 3302(11)).

[² Copies are available at cost upon request from the Department of Environmental Conservation, c/o Virginia Garrison 244-5638) or the Water Resources Board (828-2871).]