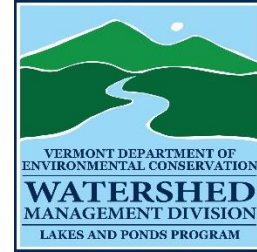


Frequently Asked Questions – Rule Making Process for Great Hosmer Pond



Why consider rulemaking?

General advantages of a rule:

1. Protect and preserve existing uses;
2. Reduce conflict;
3. Maximize everyone's enjoyment by providing more predictability of when and where uses will occur; and
4. Enforceable by law enforcement officers.

Note: voluntary agreements are not enforceable by law enforcement officers.

What authority does the Agency of Natural Resources (ANR) and the DEC have to create a rule?

Per 10 V.S.A. § 1424 (a)(1), the Secretary of ANR may establish rules related to the use of public waters, including:

1. Defining areas on public waters wherein certain uses may be conducted;
2. Defining the uses which may be conducted in the defined areas;
3. Regulating the conduct in these areas, including the size of motors allowed, size of boats allowed, allowable speeds for boats, and prohibiting the use of motors or houseboats; and
4. Regulating the time various uses may be conducted.

What is the role of a petition in the rulemaking process?

Per 10 V.S.A. § 1424(e), members of the public may petition ANR to adopt, amend or appeal rules governing the use of public waters. This is separate from ANR's authority under 10 V.S.A. § 1424 (a)(1), which gives ANR the authority to undertake rulemaking governing the use of public waters independently of and without a petition from the public.

What factors are considered in the rulemaking process?

Per 10 V.S.A. § 1424(b), in establishing a rule, the DEC shall consider:

1. Size and flow of navigable waters;
2. Predominant use of adjacent lands;
3. Depth of the water;
4. Predominant use of the waters prior to regulation;
5. Uses for which the water is adaptable;
6. Availability of fishing, boating, and bathing facilities; and
7. Scenic beauty and recreational uses of the area.

What are the DEC's responsibilities in the rulemaking process?

Both statute and rule encourage the DEC to protect and preserve all existing uses and address conflicts using the least restrictive approach practicable.

Per 10 V.S.A. § 1424(c) the DEC's role is as follows:

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.

The Secretary shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner and in the best interests of all the citizens of the State. To the extent possible, the Secretary shall provide for all normal uses.

Why does the Department intend to move forward with rulemaking at this time?

For more than two years, the DEC has engaged with the local community through public meetings and with a Taskforce of representatives from the user communities active on the lake. The DEC has made considerable effort to find a community-based solution that balances conflicting uses on the pond and increases safety for everyone. In July 2017, the Commissioner made the determination to provide draft language for a possible rule to further focus the conversation on identifying a solution. Given the time needed to move through the rulemaking process, it is important to undertake rulemaking this fall so that all parties are aware of new guidance when planning for summer 2018.

What is the expected timeline for the Great Hosmer rulemaking process?

Rulemaking typically requires four to five months. The Department may initiate the process upon a determination that a rule change is necessary to fulfill the Department's statutory obligations. We have proposed the following tentative rulemaking time line:

- September 2017
 - Continue to receive stakeholder input;
 - consideration of any new alternative proposal gaining broad community support;
 - finalize language of the draft rule and gain DEC internal approvals; and
 - Final proposed draft rule submitted to the Intergovernmental Committee on Administrative Rules (ICAR) by September 18th.
- October
 - Once approved by ICAR and filed with the Secretary of State, the 30-day public comment period will begin, including
 - public meeting(s),
 - formal written comments
- November
 - Department responds in writing to public comments received in response to rulemaking. Note that changes can be made to the proposed rule in response to comments.
- December
 - Final proposed rule reviewed by the Legislative Committee on Administrative Rules (LCAR)
- January - February 2018
 - Rule goes into effect.

Is the draft rule language as proposed final?

No, the Commissioner remains open to any alternative proposal for Great Hosmer Pond that gains broad community support and meets our obligations to manage normal uses on the pond and thereby maintain safety for all users. Alternatives can be put forward at any time before and during the rulemaking process. Please send your correspondence to ANR.GreatHosmerPond@vermont.gov or the DEC Watershed Management Division - Great Hosmer Pond, 1 National Life Drive, Main 2, Montpelier VT 05620.