

Administrative Procedures – Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” ([CVR 04-000-001](#)) adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Vermont Use of Public Waters Rules

_____, on _____,
(signature) (date)

Printed Name and Title:

Julie Moore, Secretary
Agency of Natural Resources

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Filing Confirmed

1. TITLE OF RULE FILING:

Vermont Use of Public Waters Rules

2. ADOPTING AGENCY:

Agency of Natural Resources

3. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Oliver Pierson

Agency: Agency of Natural Resources

Mailing Address: Davis Building, 3rd Floor, 1 National Life Drive, Montpelier, Vermont 05620-3522

Telephone: 802 490 - 6198 Fax: 802 828 - 1544

E-Mail: oliver.pierson@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dec.vermont.gov/watershed/laws>

4. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Hannah Smith

Agency: Agency of Natural Resources

Mailing Address: Davis Building, 3rd Floor, 1 National Life Drive, Montpelier, Vermont 05620-3522

Telephone: 802 461 - 8187 Fax: 802 828 - 1544

E-Mail: hannah.smith@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

N/A

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

N/A

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. § 1424 (a) (1)

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

10 V.S.A. § 1424(a)(1) explicitly authorizes the Agency of Natural Resources to adopt rules to regulate the use of public waters of the State. The Agency is authorized to exercise this authority by defining areas on public waters wherein certain uses may be conducted; defining the uses which may be conducted in the designated areas; 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 regulating the time various uses may be conducted. Additionally, 10 V.S.A. § 1424(f) authorizes the Agency to delegate authority under Section 1424 to a municipality when the municipality is adjacent to or contains the water; and the municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the water.

8. CONCISE SUMMARY (150 WORDS OR LESS):

The proposed rule is an amendment to Appendix D of the Vermont Use of Public Waters Rules (UPW). Until recently, the City of Newport had delegated authority over the regulation of the mooring of vessels within Lake Memphremagog and other public waters within the City of Newport. Other public waters include the Clyde River and the Black River within the city limits of Newport. Per Rule 16 of Appendix D, that delegation expired on January 1, 2021. This proposed rule amendment would extend Newport's delegation an additional 10 years, until December 31, 2031.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

Pursuant to 10 V.S.A. § 1424(f), any delegation of ANR's authority to regulate the use of public waters must be established by rule. The City of Newport's delegated authority over the mooring of vessels in public waters within the City expired on January 1, 2021. According to statute and the Vermont Use of Public Waters Rules Appendix D, Rule 17, an extension or expansion of Newport's delegation must be achieved through a proposed rulemaking.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is not arbitrary because it was developed in accordance with state statute. 10 V.S.A. § 1424(a) authorizes ANR to adopt rules regulating the use of public waters by defining where and when various uses may be conducted, and regulating conduct within certain areas of public waters. State statute also authorizes the Agency to delegate that authority to a municipality adjacent to or which contains the public water. Appendix D of the Use of Public Waters Rules constitutes the delegation of authority to the City of Newport, over mooring and anchoring of vessels within public waters within the City limits, consistent with 10 V.S.A. § 1424(f). Newport has petitioned the Secretary of ANR to extend its now-expired delegated authority, consistent with the requirements of Appendix D of the rule and 10 V.S.A. § 1424(f).

11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Municipal officials of the City of Newport
Residents of the City of Newport
Visitors to the City of Newport
Recreational users of Lake Memphremagog
Individuals and entities with registered moorings in the Newport Mooring Management Area
Newport Harbor Commission
Vermont Department of Environmental Conservation
Vermont Department of Fish and Wildlife
Northeastern Vermont Development Association
U.S. Coast Guard
Local lake associations
Local recreational outfitters

12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The proposed rule would allow the City of Newport to continue to exercise delegated authority over the mooring of vessels within the designated Mooring Management Area. Pursuant to UPW Appendix D, Rule 9, the City collects registration fees for use of the City's mooring facilities. Over the last five years, mooring fees have generated approximately \$4,000 in income for the City, after deducting mooring-field maintenance expenses. Maintenance

Proposed Rule Coversheet

of the Mooring Management Area also results in indirect economic benefit to the City by providing facilities for seasonal and transient mooring-users, allowing visiting boaters access to downtown businesses.

13. A HEARING IS NOT SCHEDULED .

14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

16. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Vermont Use of Public Waters Rules

2. ADOPTING AGENCY:

Agency of Natural Resources

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Vermont Use of Public Waters Rules, November 1, 2016

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

The proposed rule will have an economic impact on the City of Newport, resident and non-resident boaters seeking mooring capacity in public waters within the City, and potentially downtown businesses and other recreational users of the public waters within Newport.

The proposed rule amendment will have an economic impact on the City of Newport. The proposed rule will

Economic Impact Analysis

allow the City of Newport to continue to exercise their delegated authority over the mooring of vessels within the Mooring Management Area. Pursuant to this delegated authority, the City issues Certificates of Registration for the use of moorings and collects annual fees for those Certificates. The annual fee for a certificate of registration is \$185, and is set annually by resolution of the City Council. Revenue from registration fees provides for the administration of the mooring management ordinance, as well as expenses associated with mooring management in public waters. The City recognized over \$4,000 in revenue from the collection of mooring fees over the last five years. The City expects to see additional revenue from mooring fees as boater traffic increases following the Covid-19 pandemic.

The proposed rule will have an economic impact on recreational boaters establishing and using moorings in certain mooring management zones, who will continue to pay annual registration fees for the use of those moorings. The annual fees are currently set at \$185.

The proposed rule will have an economic impact on downtown businesses, which receive business from seasonal and transient mooring-users.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The proposed rule is not anticipated to have any impact on public education, public schools or school districts, or taxpayers. Mooring fees collected by the City are not used to pay the City's general budget expenses. Management of mooring areas in public waters within Newport has not had a calculable impact on the permanent population of the City in a manner that would impact the school district or taxpayers.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Economic Impact Analysis

The proposed rule is not anticipated to have an economic impact on local school districts.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The proposed rule is anticipated to continue to be economically beneficial to small businesses operating in downtown Newport. The availability of moorings in designated Mooring Management Zones brings tourists and seasonal and transient boat traffic to Newport, and those visitors frequent downtown businesses and restaurants. Small businesses that utilize moorings will continue to be impacted by the proposed rule as they will be required to pay annual registration fees for the establishment of moorings in certain Mooring Management Zones.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The proposed rule does not impose a regulatory burden on small businesses, with the exception of marinas and yacht clubs which must pay annual registration fees to establish moorings within certain Mooring Management Zones. The annual fees for moorings are nominal, and the Agency believes that the City's process of requiring all mooring-users, including marinas and yacht clubs, to use the same application and registration process allows the City to regulate the Mooring Management Area in a way that ensures the protection of public health and safety, including the safe anchoring of boats and access for fisherman and passive recreational users.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Should the City's delegated authority over the Mooring Management Area not be extended, the City would lose the income generated through the collection of Registration fees. It is unclear whether rescinding the

Economic Impact Analysis

City's authority would have an indirect economic impact on downtown businesses. An alternative proposed rule that restricted the City's ability to assess Registration fees against small businesses applying for mooring capacity may have some nominal economic benefit for small businesses.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

This economic analysis examines all potential economic impacts of the proposed rule.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

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3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

This rule is not anticipated to impact the emission of greenhouse gasses. The City's management of the Mooring Management Area over the last 20 years has relieved some congestion at the City's waterfront by restricting the density of moorings and areas in which moorings can be located, and requiring that moorings be located within reasonable distance of a point of access. Reduced traffic congestion could result in a reduction in greenhouse gas emissions.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

The proposed rule is not expected to negatively impact water quality. Restrictions imposed by the City on the

Environmental Impact Analysis

capacity of each Mooring Management Zone may reduce the intensity of boat traffic in public waters within the City of Newport, and associated environmental impacts such as emission of petroleum products into the water. The proposed rule is expected to have a net positive impact on the use of public waters. The delegation of authority to Newport authorizes the City to regulate mooring of vessels in the Mooring Management Area in order to protect the public health, safety, and welfare by prohibiting impediments to navigation and conflicts with other normal uses of the public water, such as swimming and fishing. The City's delegation prohibits mooring of vessels in areas that are not designated as Mooring Management Zones. Through implementation of its delegated authority, the City has defined mooring areas, fairways, types of mooring tackle that can be used, and the safe anchoring of boats, and created access for fisherman and passive recreational users. Historically, implementation of the City's delegated mooring authority has improved the circulation of boating traffic and protected fishing access areas.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

The proposed rule pertains only to Newport's delegated authority over mooring of vessels in public waters within the City limits, and is not expected to have any impact on land use.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

The proposed rule will promote and encourage water-based recreation on Lake Memphremagog and in the public waters within the City of Newport. Pursuant to its delegated mooring management authority, the City has designated Mooring Management Zones within which mooring of boats is permitted, encouraging safe boat traffic in the City's waterfront area and providing mooring facilities for transient and seasonal users. The City has been able to use Registration fees collected to maintain its mooring fields. Designation of specific areas for mooring has also allowed the City to protect access for passive recreational use such as fishing and swimming.

Environmental Impact Analysis

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

The proposed rule is not expected to impact climate in the State.

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

The proposed rule is not expected to impact other aspects of Vermont's environment.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

This environmental impact analysis examines all potential environmental impacts of the proposed rule.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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Agency of Natural Resources

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

ICAR requires agencies to maximize public input and involvement in the rulemaking process through outreach with stakeholders and interested parties, and public hearings.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The proposed rule amendment will extend the City's delegated authority over mooring management, which the City has exercised since 2000. Since being delegated this authority, neither the City, the Agency, or the Natural Resources Board have received a complaint or comment from the public regarding the City's management of the Mooring Management Area. The City held a publicly-warned City Council meeting on May 2nd, 2021, at which extension of the Mooring Management delegation was discussed, and the Council voted in favor of the petition to extend the delegation. The City also held a Public Summit on June 15th, 2021, at which the health and use of Lake Memphremagog was discussed.

Public Input

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The proposed rule was developed by the City of Newport, with approval by the Newport City Council.