

REPORT REGARDING WHETHER THE STATE SHOULD CHARGE A FEE
FOR MOORINGS LOCATED IN WATERS OF THE STATE

2015 Act 57, Section 20

Submitted to the
House Committee on Ways and Means
Senate Committee on Finance
House Committee on Fish, Wildlife and Water Resources
Senate Committee on Natural Resources and Energy

Agency of Natural Resources
Department of Environmental Conservation

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Summary

We recommend the legislature consider assessing a fee for mooring buoys in conjunction with regulation of floating objects in waters of the State. Floating objects are defined as buoys and floats not used as navigational markers. Since questions about such objects are typically fielded by the Lakes & Ponds Protection and Management Program, developing regulations would be in keeping with the Program's responsibilities and would ultimately support more consistency in how we respond to inquiries and complaints related to floating objects. Fee income would support the Lakes and Ponds regulatory team, allowing us to develop standards for management of floating objects in navigable waters of Vermont.

Introduction

While researching questions posed by the legislature for this report, Lakes & Ponds found a range of approaches to mooring buoy management across Vermont. Mooring buoy fields in Lakes Champlain and Memphremagog are permitted by the Army Corps of Engineers and managed by municipalities or marinas, while mooring buoys on inland lakes are not regulated and are typically associated with privately owned shoreland properties.

Based on GIS images, we estimate there are 900 buoys in mooring fields of Lakes Champlain and Memphremagog. The U.S. Army Corps of Engineers does not have a full record of the number of buoys, because their mooring buoy registration system was not implemented until 2012. GIS estimates were checked by consulting with selected marinas (Table 1).

Table 1. Data for selected mooring buoy fields in Lakes Champlain and Memphremagog.

Location	Entity	# of Moorings	Annual Fee
Charlotte	Point Bay Marina	100	\$1300 – \$1450
Newport	City of Newport	60	\$170 plus cost of mooring hardware (average = \$1,000)
Shelburne	Town of Shelburne	68	\$650 resident, \$850 non-resident
Shelburne	Lake Champlain Yacht Club	155	\$80 (+ \$850 membership dues)
South Hero	Apple Island Marina	20	\$895

The Corps considers a number of factors when making permit decisions about the number of buoys in mooring fields, including navigational hazards, water depth, and boat length. The current approach to spacing of buoys is to draw a circle around each buoy with a radius of the boat's length plus five times the maximum water depth at the buoy location.

The Corps does not charge a fee for mooring field permits unless a project involves fill in a lake or wetland. As shown in Table 1, published fees for buoys in mooring fields range from \$170 (without hardware) to \$1450 (with hardware). Mooring fields are managed by organizations ranging from municipalities to commercial entities.

Table 1 does not include information about commercially managed mooring fields in Malletts Bay (Colchester). There has been ongoing controversy around the growing number of buoys in the Bay, and it has not been possible for DEC to obtain accurate information on the number of buoys in the Bay's mooring fields. The Colchester Selectboard is currently searching for

resources to help resolve the controversy. This past September they reached out to Lakes & Ponds for input, because a lake encroachment permit had been issued for a dock adjacent to a growing mooring buoy field.

The State does not currently regulate buoys as long as the buoys do not unreasonably impede navigation (29 V.S.A. Chapter 11 §403). The determination as to whether a mooring buoy impedes navigation is based on factors such as layout of buoys, visibility of markers, distance from shore, common recreational uses of surrounding waters, habitat requirements of wildlife (e.g. loon nesting areas), and proximity of other floating structures.

Recommendations

Recent experiences like that of the Colchester Selectboard indicate that charging a fee for mooring buoys in waters of the State should be undertaken in conjunction with more comprehensive regulation of floating objects. Kingsland Bay State Park managers report a free-for-all “circus” in the Bay, comprised of a combination of private mooring buoys installed for the summer and anchors dropped on a nightly basis. The Park does not manage moorings in the Bay, nor does the Town of Ferrisburgh. On inland lakes, rafts, trampolines, and other recreational structures compete with mooring buoys for space in shallow water areas. In addition, the Lakes and Ponds Program has seen an increase in the number of buoys used to delineate no-wake zones and aquatic nuisance control areas. To support local communities and protect waters of the State, we recommend regulating floating objects in a manner comparable to New York State’s approach. According to 2014 New York Laws, “The commissioner may authorize, through the issuance of a revocable permit, the placing in the navigable waters of the state, of mooring buoys, bathing beach markers, swimming floats, speed zone markers, or any other floating object having no navigational significance, if in his opinion the placing of such floating object will not be a hazard to navigation” (NY Nav L § 35-A (2014)).

If we follow the New York model, our fee structure would be differentiated based on type of use. Shoreland property owners would be allowed one floating object that is exempt from the permitting process. Government/municipal moorings would be registered but not charged fees, adjacent upland property owners would be charged \$25, non-property-owners \$50, slalom race courses or swimming area delineations \$100, and mooring fields (as a whole) \$200. Permit applications for non-exempt moorings or floats would require a “Letter of No-objection” from the local law enforcement agency (local sheriff or state police). New York’s application process for Floating Object Permits entails obtaining such a letter from a local law enforcement official, documenting that the floating object placement does not create a hazard. For more information, see their permit application:

<http://nysparks.com/recreation/boating/documents/FloatingObjectPermitApplication.pdf>

We anticipate partnering with local law enforcement to monitor compliance, as we do with the Use of Public Waters Rules. Violations of the floating object permit requirement would result in a \$50 fine (consistent with New York’s policy).

The New York State Park Marine Services Bureau that issues Floating Object Permits reports receive about 100 new permit applications per year, and they send annual renewal notices and receive 300 – 400 renewal requests each year. Since their jurisdiction excludes lakes in the Adirondacks, Catskills, and Tidewaters (Long Island), we estimate that their program’s rates are

based on an acreage of lakes about twice that of Vermont’s lakes greater than 10 acres. Assuming rates are similar, we would expect about 50 new permit applications per year. For Vermont, we don’t know the actual number of floating objects in total. Given the number of mooring buoys on Lake Champlain and Lake Memphremagog, and extrapolating from the New York data, we estimate that there may be 700 floating objects (with each field of buoys registered as one floating object) in Vermont, excluding one floating object per shoreland property. Based on other states’ experiences, we anticipate we would initially get registrations from a fraction of the population, and over the course of five years, renewals would increase at the rate of about 100 registrations per year, followed by a gradual decrease in new renewals. Given the range of fees for different users, we use an average fee of \$50 to estimate the revenue in Figure 1. If we are more persistent than other states in requiring annual renewals, we would expect a geometric increase in fee revenue over the initial five years. Thereafter, we assume the rate of new applications would decrease and revenue would increase only gradually over time.

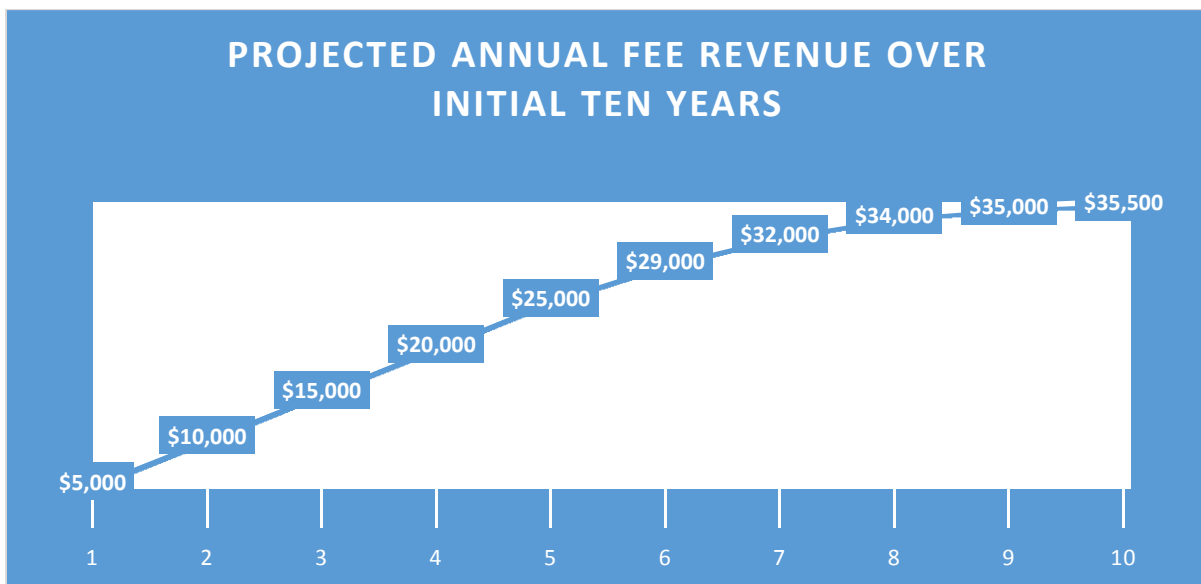


Figure 1. Estimated annual revenue based on an average of \$50 per floating object registration or renewal.

We identified New York State’s approach as a likely model for Vermont after researching floating object regulations across New Hampshire, New York, and Washington (Table 2).

Table 2. Comparison of mooring buoy regulations across several states.

State	Agency Responsible	Mooring Fees	Use of Revenue	Source
New Hampshire	Department of Safety	\$125 application fee, \$25 – 50 annual	Marine Patrol	MP staff
New York	Marine Services Bureau	\$0 - \$95 annual	Boating safety education	MSB staff
Washington	Department of Natural Resources	\$25 application fee, \$175 to \$600 annual	Water quality protection	DNR staff

Implementation of Floating Object Registration Program

Fee income would be used to support management of floating objects as part of the Lakes and Ponds Program's regulatory work. Given projected revenue, we would anticipate ultimately dedicating 0.45 FTE to management and 0.05 FTE to provide technical input regarding petitions for changes in the Use of Public Waters Rules, for a total increase in staffing of 0.50 FTE. Given the need to establish standards for floating object management in navigable waters of Vermont, Lakes & Ponds staff members are prepared to support implementation of a fee for floating objects.