

Agency of Natural Resources  
Department of Environmental Conservation

**MEMORANDUM**

**To:** Sen. Bray, Chair, Senate Natural Resources and Energy, and Members of the Committee

**From:** Elizabeth Schilling, Associate General Counsel, DEC

**Date:** March 3, 2017

**Re:** Laws governing temporary closure of certain areas of public waters to prevent the spread of aquatic invasive species

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Yesterday in Committee questions arose regarding the laws and process governing when and how certain parts of a public water may be closed-off to prevent the spread of aquatic invasive species. Section 1424 of Title 10 authorizes the Agency to adopt rules to manage the use of public waters and requires that the Secretary “manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the State,” and “[t]o the extent possible, ... provide for all normal uses.” To comply with statute, the Secretary administers the Vermont Use of Public Waters Rules (Environmental Protection Rule, Chapter 32).

The Vermont Use of Public Waters Rules provide a process by which the Secretary may temporarily close portions of a public water to prevent the spread of aquatic invasive species (VUPWR § 4.1(b)). If closure (via placement of buoys, signs, or other means) will be for less than 90 days, then notice prior to the closure is not required, but rather within 5 days of posting the closure, the Secretary must provide notice to the municipality, lake association, and any interested persons. For areas to be closed longer than 90 days, notice must be provided at least 15 days before the closure takes effect, must include the foregoing entities, and must be provided in a local newspaper, and the public must have an opportunity to request a public meeting. Closures of longer than 90 days must be reviewed periodically to determine whether the purpose of the closure is being achieved.

The foregoing process ensures that the State’s public waters, held in the public trust, are closed only when and to the extent necessary, and that the public has proper notice of such closures.