



State of Vermont
Agency of Natural Resources
Department of Environmental Conservation
Office of General Counsel
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CHAPTER 32 – USE OF PUBLIC WATERS RULES – 2025-2026 AMENDMENTS

Description of Edits for May 14, 2026 LCAR Meeting

The Agency of Natural Resources (“the Agency” or “ANR”) proposes to make two adjustments in response to the May 8, 2026, email from Legislative Counsel Michael O’Grady on behalf of the Legislative Committee on Administrative Rulemaking (“LCAR”) (Attachment A), and also provides additional explanatory information regarding Appendix E. The Agency is not proposing any textual changes to Appendix E at this time.

1. Definition and Consistent Usage of “Ballasted Vessel(s)”

During the formal rulemaking process, the Agency held two public hearings: the first was on January 27, 2026, and the second was on February 4, 2026. The Agency also granted an extension request for the public comment period until February 27, 2026. During that period, the Agency received approximately 1,500 public comments, all of which were included in the rulemaking package submitted to LCAR and the Secretary of State’s Office on April 20, 2026.

One of the revisions made in response to public comment, and discussed in the Agency’s cover letter accompanying the April 20 submission, concerned the use of the term “ballasted vessel(s).” Specifically, the Agency revised Sections 3.7(d)–(e) to ensure that the increased decontamination requirements originally applicable to wakeboats also apply to all ballasted vessels. The Agency made this revision because the decontamination risks and management concerns are the same for all ballasted vessels.

Legislative Counsel requested clarification regarding the definition of “ballasted vessel” and the distinction between ballasted vessels, ballasted recreational vessels, and wakeboats. The Agency agrees that additional clarity and consistent terminology are warranted. Accordingly, the Agency proposes to add the following definition to Section 5 of the proposed rules:

5.3 “Ballasted Vessel” means a vessel, including a wakeboat, with internal ballast tanks, bags, or similar compartments to hold water.

The Agency has also renumbered the subsequent definitions in Section 5.3 to accommodate this addition.

In addition, the Agency proposes to revise the definition of “wakesports,” to now be enumerated as Section 5.20, as follows:

5.20 “Wakesports” means:

- A. to operate a wakeboat with ballast tanks, bags, or other devices or design features engaged to increase the size of the boat’s wake; or
- B. to use a surfboard, wakeboard, hydrofoil, or similar device to ride on or in the wake:
 - i. directly behind a wakeboat without a rope; or
 - ii. directly behind a wakeboat with or without a rope, when the wakeboat has ballast tanks, bags, or other devices or design features engaged as described in Section 5.178.A.

To ensure consistency throughout the rule, the Agency has updated all references to “wakesports” and “wakesports zones” in Sections 3.7(a), (e), and (g).

Additionally, to avoid confusion and to reflect the broader category of regulated vessels, the Agency is proposing to replace certain references to “recreational vessels” with “ballasted vessels.” Section 4.4 now provides:

4.4 Wakesports and ballasted ~~recreational~~ vessels in lakes, ponds, and reservoirs not located entirely within Vermont.

- (a) All decontamination provisions described in Section 3.7(d) and 3.7(e) apply to ballasted vessels, including wakeboats, in Vermont waterbodies.

2. Aquatic Nuisance Inspection Station Operator Authority

In the May 8 email, Legislative Counsel also requested clarification regarding the authority of aquatic nuisance inspection station operators.

To ensure consistency with Section 4.1(j)(1), as well as with 10 V.S.A. § 1454, the Agency proposes to revise Section 4.1(c)(2) as follows:

Aquatic nuisance inspection station operators may ~~require~~ inform vessel owners and operators about decontamination requirements for a vessel subsequent to the inspection and prior to entering a waterbody.

This revision clarifies operator authority while aligning the language with existing statutory authority and related provisions within the proposed Rule.

3. Removal of Appendix E

Legislative Counsel also requested additional explanation regarding the Agency's decision to remove Appendix E, entitled in "*List of Lakes, Ponds, and Reservoirs with Defined Wakesports Zones.*"

The Agency is not proposing any additional amendments to Appendix E in response to this request, but provides the following explanation regarding its removal. While the Agency recognizes that Appendix E has been a useful reference tool, the Agency has determined that the appendix should be removed from the Rule itself and maintained instead as guidance on the Agency's wakesports webpage.

First, placement of this information within rule text significantly limits the Agency's ability to respond efficiently to changing environmental or management conditions. Unlike guidance materials, changes to a rule appendix require formal rulemaking under 3 V.S.A. Chapter 25, which can substantially delay necessary updates.

Second, eligibility for wakesports may change over time due to factors including water level fluctuations, lake management activities, aquatic nuisance control treatments, water quality concerns, scientific or monitoring data, or other environmental management considerations. As a result, the waters that presently meet eligibility criteria may later require temporary or permanent modification of a designated wakesports zone.

The Agency's proposed amendments, including Section 3.7(d), expressly contemplate the need to modify defined wakesports zones when management activities, scientific research, water quality concerns, or similar circumstances warrant adjustment.

Maintaining this information on the Agency's wakesports webpage will allow the Agency to provide the public with the most current information regarding waters where wakesports are authorized, maps of designated wakesports zones, decontamination requirements, and temporary or emergency modifications affecting access.

The Agency also notes that this approach is consistent with public expectations regarding access to operational waterbody information. Members of the public are substantially more likely to consult the Agency's webpage for current conditions than to review the

codified rule text. This approach is also consistent with other recreational water uses, for which the Agency does not maintain rule appendices identifying authorized locations.

Finally, this change also responds to stakeholder concerns reflected in the Agency's responsive summary, including comments numbered 143–154. Several stakeholders, including lake associations involved in aquatic nuisance management and permitted treatment activities, expressed concerns regarding wakesports activity in areas subject to alum treatments or other aquatic nuisance control measures.

For these reasons, the Agency believes removal of Appendix E from the Rule text, while maintaining the information as publicly available Agency guidance, better supports effective administration, public transparency, and timely environmental management.

The Agency remains available to provide any additional clarification requested by the Committee prior to the May 14, 2026 meeting.

Respectfully submitted,

A handwritten signature in cursive script that reads "Saige Culbertson".

Saige Culbertson, Esq.
Associate General Counsel
Department of Environmental Conservation

ATTACHMENT A

From: Michael O'Grady <Michael.OGrady@vtleg.gov>
Sent: Friday, May 8, 2026 8:26 AM
To: Dlugolecki, Laura; Culbertson, Saige
Cc: Martin, Charles
Subject: Vermont Use of Public Waters Rules

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Laura and Saige

As you may know, the Legislative Committee on Administrative Rules (LCAR) asks the Office of Legislative Counsel to review all rules to be reviewed by the Committee.

I was asked to review the Use of Public Waters Rules. I think it is very well drafted, but I do have some questions.

First, in the rule the Agency uses three different terms for what I think is the same regulated vessel—wakeboat, ballasted vessel, and ballasted recreational vessel. Wakeboat is defined, but the rules do not provide a definition of ballasted vessel or ballasted recreational vessel. I tried to find a common definition of ballasted vessel. There are available definitions, but they generally refer to larger or more commercial vessels, which I do not believe this rule applies. Could you explain how the three terms are different and provide definitions of all of the terms?

Second, the rule is very clear in some sections that operators of aquatic nuisance inspection stations do not have law enforcement authority. See, e.g. proposed Sec. 4.1(j)(1)(iii)(2). However, in that same section, 4.1(c)(2), aquatic nuisance inspection operators are authorized to “require decontamination for vessels identified subsequent to the inspection and prior to entering a waterbody.” Requiring decontamination reads to me as enforcement authority. Could you clarify what you mean by the operators can require decontamination?

Third, the Agency is proposing to strike the Appendix to the rule that lists all of the waters where wakesports are authorized. Why? It seems like a very effective and efficient way to provide public notice where the activity is authorized. Under the proposed rule, a person wishing to engage in wakesports must look through the list of waters to see where wakesports are not prohibited. As you know, it is a long list, and not incredibly transparent. The Appendix seemed like a very useful tool.

Those are my questions. I would appreciate feedback so that I can communicate that to the LCAR members and the chairs of the jurisdictional committees.

Thank you

Michael O'Grady
Office of Legislative Counsel