

Section 8
Miscellaneous Information



MEMORANDUM

6 September 2012

TO: Attorney Bradford M. Towson and Attorney Angela Rehm
Legislative Commissioner's Office

FR: Timothy F. Delgado, Environmental Analyst 2
Boating Division / BOR/ Department of Energy and Environmental Protection
(860) 447-4354 Phone, (860) 434-8638 Fax
timothy.delgado@ct.gov

RE: Regulation No. 2012-30, Candlewood Lake Vessel Length Restriction

Pursuant to the LRRC's rejection without prejudice of the referenced regulation, we respectfully submit our responses to your 28 August 2012 Memorandum addressed to the LRRC. We have also attached our revised regulation to this memorandum for your review.

We believe that this rewrite is clearer and more explicit as a result of your review, and we thank you for your comments. We acknowledge that more explanation may be needed with respect to marine dealer business practices, and we would gladly meet with you if questions remain after consideration of the enclosed.

Below we address your concerns as you numbered them in the 28 August 2012 Memorandum. Our proposed revised regulations then follow.

Substantive Concerns:

Item 1. On page 1, in subsection (b)(2)(A), the phrase "person or entity" is used, but is not defined. The controlling definition section for the proposed regulation is section 15-121-A1, which defines "person" as "any individual, partnership, firm, association, corporation or **other entity**." (emphasis added) As "person" includes "other entity", it is unclear what the agency intends "or entity" to mean in the context of the proposed regulation. If the agency intends "person or entity" to mean something more than "person", as defined in said section 15-121-A1, then the agency should state specifically what this phrase means. Otherwise, if the agency intends for "person or entity" to mean "person", as previously defined, then the agency should substitute "person" for "person or entity."

Response: The subsection now references the word "person" and eliminates the reference to "other entity", relying on the definition of "person" provided in section 15-121-A1.

Item 2. On page 1, in subsection (b)(2)(A), the term "lakefront" is used but is not defined. Accordingly, it is unclear if this term is intended to only refer to Candlewood Lake or if it refers to any lake.

Response: This subdivision has been restructured to help clarify our intent. There will likely be three classes of vessel owners to whom this subsection will apply: (1) those who own property abutting the lake, (2) those who rent vessel

storage or dockspace under agreement on lake-abutting property that is owned by others (where we assume there is vessel launching and retrieving capability), and (3) those who rent vessel storage on property that does not abut the lake where vessel launching and retrieval is offered as a service. We have specifically referenced Candlewood Lake in each subclause to clarify that we are referring only to Candlewood Lake.

Item 3. On page 2, in subsection (b)(2)(C), the term "oversized vessel" is used but is not defined. Accordingly, it is unclear if the intent of such term is to only capture boats having a length of twenty-six feet or greater.

Response: We have eliminated the use of the term "oversized vessel" and replaced it with the phrase "vessels 26 feet in length or greater..."

Item 4. **(A)** On page 2, in subsection (b)(2)(C), the proposed regulation allows the commissioner to authorize "the number of vessels equal to the average number of oversized vessels sold over the last five years per year, rounded up to the nearest whole number, from that business (marine dealer) located within one of the five municipalities surrounding Candlewood Lake" if such marine dealer shares vessel inventory with other businesses that are located outside of the five municipalities surrounding Candlewood Lake. The intent of this exception to the prohibition is unclear since the prohibition contained in the proposed regulation is a prohibition on the operation of vessels with a length of twenty-six feet or greater, not a prohibition on the sale of such vessels.

(B) Moreover, in subsection (b)(1)(C), vessels displaying a valid marine dealer registration number that are being demonstrated for sale are exempt from the prohibition. Unlike the exception contained in subsections (b)(2)(A) and (b)(2)(B), the exception in subsection (b)(2)(C) of the proposed regulation does not require the person purchasing such vessel to intend to use the vessel on Candlewood Lake. Therefore, the need for such exception is not clear in light of the actual prohibition.

(C) Finally, the exception in question does not require the oversized vessels sold over the past five years to have originated from the businesses located outside of the five municipalities surrounding Candlewood Lake with the intent to be sold by the marine dealer located within one of the five municipalities. Accordingly, the significance of such a shared vessel inventory to the exception is unclear.

Response: We have sectioned and labeled the above comment for clarity. We believe that concerns expressed in (A) and (C) are addressed in the response to comment 6. We also direct you to the discussion on Page 8 of the Hearing Officer's Report.

With respect to (B), we included this provision as a direct result of comment provided by a marine dealer. The marine dealer reminded us that although his business is on Candlewood Lake, he sells vessels from that location for use elsewhere. If we prevent him from being able to demonstrate such vessels from his business location he is likely to lose sales and we adversely impact his business – and that is not our intention. Therefore we allow marine dealers (which includes surveyors and repairers) to test or demonstrate such vessels under a marine dealer certificate of number (see CGS Section 15-145) – that is, a "dealer plate". We acknowledge that this will put additional oversized vessels on the lake, but only briefly and with purpose.

Item 5. On page 2, in subsection (b)(2)(D), it is unclear whether the requirements set forth apply to each of the exceptions contained in subparagraphs (A) to (C). If the requirements of subsection (b)(2)(D) are intended to apply

to subparagraph (C), such requirements conflict with the provisions of subparagraph (C). By this, there is no requirement in subparagraph (C) that the authorized vessels already be owned by the marine dealer.

Response: This subsection has been rewritten and reorganized to clarify the requirements for marine dealers.

Item 6. On page 2, in subsection (b)(3), it is unclear why authorizing decals will not be issued after December 31, 2013. While the proposed regulation obligates marine dealers to identify vessels to be authorized for an exception not later than sixty days after the effective date of the regulation, individuals who might seek an exception pursuant to subsection (b)(2)(A) are under no such time restriction.

Response: We propose to limit the period in which non-marine dealers can apply for an authorizing decal now to December 31, 2014. We prefer to close the grandfathering on a date certain, to make final the grandfathering process, and to provide a final count of the number of oversized vessel operating on Candlewood Lake. We hold the grandfathering period open this long to give non-marine dealers two boating seasons to apply for authorization for their vessels. However, we acknowledge that we could hold this period open indefinitely, and will defer if necessary.

The marine dealer authorization period is another matter, due to the existence of the "-Max" model of dealerships. In this business model, which is similar to the "Car Max" model, multiple dealers are bound together under agreement to share inventory, allowing a Max dealer to claim ownership of, and access to, an inventory of boats far more extensive than any independent dealer could ever own and maintain. Whereas a single independent dealer might have an inventory of 3 oversized vessels, a Max outlet could rightfully claim access to a far greater multi-state inventory, even if it would be physically impossible to store those vessels at their Candlewood Lake location and even if they never sold a single oversized vessel from that location. Such a dealer, unchecked, could continue to sell oversized vessels from their shared inventory until their multi-state supply of oversized vessels is exhausted. This defeats the intention of limiting the fleet of oversized vessels and unlevels a playing field that is otherwise leveled by each business's individual ability to buy, store, and sell large boats.

We introduce a mechanism to impose a limit on the number of vessels a Max dealer can grandfather, based on their own past performance, and we include the sixty day finite declaration period as additional protection to the non-Max dealerships, so as to avoid giving the Max dealerships an unfair advantage. Absent some kind of temporal limit a potential buyer will always be better off going to a Max dealership to – essentially – custom order a vessel from undeclared multi-state inventory. This is an advantage that non-Max dealerships will not enjoy.

Therefore we propose that dealerships declare which vessels will be grandfathered within sixty days, and we propose to limit the number of vessels a Max dealer can grandfather to the number of oversized vessels that they typically sell in a year. This way, Max dealerships will have to share the same risks and limitations associated with finite inventory as their non-Max competitors.

Item 7. On page 2, in subsection (b)(3), the request for an authorizing decal appears to be a separate request from the request for an exception made by a marine dealer. However, it is not clear if there is also a request, other than a request for an authorizing decal, required of individuals seeking an exception pursuant to subsection (b)(2)(A).

Response: This subsection has been rewritten and reorganized to clarify the "request for authorization" process for marine dealers and for non-marine dealers.

Item 8. On page 2, in subsection (b)(5), the proposed regulation authorizes the commissioner to issue an authorizing decal, after such decal has been denied, if a person applies to the commissioner for such reconsideration and only after the commissioner reviews "additional information presented by the individual". It is unclear what this additional information consists of and how such information must differ from the information such person will be required to submit when he or she first applies for such authorizing decal.

Response: We have added to the section to provide more detail and guidance. We now provide a list of things that might be included with an appeal to the Commissioner, specify that it must include information not provided in the rejected application, specify an oath, and require notarization. We do not wish to make this list of possible evidence finite because someone may come up with convincing evidence that falls outside of the listed items.

Technical Corrections:

1. The pages of the proposed regulation should be numbered, for proper form.

Response: This correction will be made.

2. On page 1, "(effective from passage)" should be deleted, as it is unnecessary.

Response: This correction has been made.

3. On page 1, in the third line, "determined from" should be inserted after "length of the vessel shall be", for clarity.

Response: This correction has been made.

4. On page 2, in subsection (b)(2)(E), "a marine dealer is a" should be " "marine dealer" means any", for proper form and "the effective date of passage" should be "the effective date of this regulation", for accuracy.

Response: This correction has been made. The language is now contained in subsection (b)(2)(D).

5. On page 2, in subsection (b)(3), in the fourth line, "section" should be "subsection", for accuracy.

Response: This correction has been made.

6. On page 2, in subsection (b)(3), subdivisions (1) and (2) should be subparagraphs (A) and (B), respectively, for proper form.

Response: This correction has been made.

7. On page 3, in subsection (b)(6), in the fifth line, "such withdrawal" should be inserted after "and", for clarity.

Response: This correction has been made.

8. On page 3, in subsection (b)(7), "Effective from the date of passage, any" should be "Any", for clarity and "Effective 6 months from the date of passage," should be "On and after the sixth month following the effective date of this regulation," for clarity and "26 ft or greater" should be "26 feet in length or greater", for consistency..

Response: This correction has been made.

DRAFT Vessel Length Restriction on Candlewood Lake
5 September 2012

Contact: Tim Delgado, EA2, Boating Division, 860-447-4354
timothy.delgado@ct.gov

Section 15-121-B 15a of the Regulations of the Connecticut State Agencies is amended by adding subsection (b) as follows:

(NEW) (b) No person shall operate a registered vessel that is 26 feet in length or greater on the waters of Candlewood Lake unless such operation has been exempted or authorized by the commissioner under this subsection. For the purpose of this subsection the registered length of the vessel shall be determined from the length identified on the vessel's certificate of number awarded by this state, by another state or by the United States pursuant to the provisions of the federal Boat Safety Act of 1971, or marine document issued by the United States Coast Guard.

(1) The following vessels are exempt from the requirements of this subsection:

- (A) Vessels that while on the waters of Candlewood Lake are operated exclusively by authorized law enforcement personnel in the performance of official duties;
- (B) Vessels that while on the waters of Candlewood Lake are used exclusively for invasive species control, sewage transfer, or marine structure or infrastructure construction or maintenance; and
- (C) Vessels displaying a valid marine dealer registration number that are being demonstrated for sale, test run in connection with maintenance or repair, or surveyed by a certified marine surveyor.

(2) The Commissioner shall authorize the operation of vessels that are 26 feet in length or greater on the waters of Candlewood Lake that meet one of the following conditions:

- (A) The vessel is owned by a person other than a marine dealer and such person purchased and registered the vessel prior to the effective date of this regulation and presents evidence to the Commissioner of one or more of the following:
 - (i) dockspace on Candlewood Lake for such vessel which dockspace was owned or rented on or before the effective date of this regulation;
 - (ii) a written contract or agreement executed on or before the effective date of this regulation for the storage of such vessel on property abutting Candlewood Lake;
 - (iii) a written contract or agreement which explicitly references Candlewood Lake that was executed on or before the effective date of this regulation that includes a provision for the

launching of such vessel onto Candlewood Lake or the retrieving of such vessel from Candlewood Lake; or,

(iv) other documentation evidencing the use of the subject vessel on the waters of Candlewood Lake for more than ten consecutive days or twenty days in aggregate, over the twenty four months preceding the effective date of this regulation.

(B) The vessel is owned by a marine dealer located in one of the five surrounding municipalities (Danbury, Brookfield, New Milford, Sherman, or New Fairfield) where the vessel is present in inventory or ordered for inventory prior to the effective date of this regulation.

(C) Notwithstanding subparagraph (B) of this subdivision, for any marine dealer located within one of the five municipalities surrounding Candlewood Lake who shares ownership of vessel inventory with other businesses that are located outside of the five municipalities surrounding Candlewood Lake or with a branch or branches of the same business that are located outside of the five municipalities surrounding Candlewood Lake, the Commissioner may authorize the number of vessels equal to the average number of vessels 26 feet in length or greater that were sold per year over the last five years, rounded up to the nearest whole number, from that business located within one of the five municipalities surrounding Candlewood Lake.

(D) For the purpose of this section, a “marine dealer” means any business that possesses a Marine Dealer Registration Number pursuant to Section 15-145 of the Connecticut General Statutes, or that uses a North American Industry Classification System (NAICS) or Standard Industry Classification (SIC) code for vessels sales in tax filings, and can demonstrate the use of such code in tax filings prior to the effective date of this regulation.

(3) The Commissioner shall provide permanent numbered decals that shall be attached to those vessels that are 26 feet in length or greater that are authorized by the Commissioner to operate on the waters of Candlewood Lake and that are not exempt in accordance with this subsection. The Commissioner shall issue one such authorizing decal for each vessel 26 feet or greater in length meeting one of the conditions of subdivision (2) of this subsection. The authorizing decal shall be affixed to the starboard side of the vessel such that the decal is not obstructed from view on the hull and above the waterline and closer to the stern than the bow, or on a superstructure or windshield near the operator’s station. The authorizing decal shall be permanently affixed to the vessel for the life of the vessel. The authorizing decal shall not be transferable to other vessels or other hulls.

(A) Requests for an authorizing decal made by a person other than a marine dealer shall be made on or before December 31, 2014, and on a form provided by the Commissioner for this purpose.

(B) Requests for an authorizing decal made by a marine dealer shall be made within sixty days of the effective date of this regulation and on a form provided by the Commissioner for this purpose. A marine dealer shall provide proof to the satisfaction of the Commissioner regarding the ownership,

identity and number of vessels claimed for authorization, and that such vessels were present in inventory or ordered for inventory prior to the effective date of this regulation.

(4) The Commissioner may issue a replacement authorizing decal at any time upon written application.

(5) An individual vessel owner or marine dealer whose vessel is denied an authorizing decal or a replacement authorizing decal by the Commissioner or the Commissioner's designee may apply to the Commissioner for reconsideration of the denial. Such application shall be made in writing by the vessel owner or owners and shall contain the original signature of the applicant or applicants and the statement, " I (we) declare under penalty of false statement that the information furnished herein is true and complete to the best of my (our) knowledge and belief." Such application shall be notarized and shall include additional evidence not considered in the denied application, which evidence may include but shall not be limited to financial records, contracts or agreements, photographs, vessel safety check records, third party affidavits, government records, newspaper articles, or other information evidencing the right to seek authorization for use of such vessel on Candlewood Lake pursuant to subdivision (2) of this subsection. The Commissioner shall review such application and may issue an authorizing decal or a replacement decal after considering such evidence. The Commissioner shall be the sole judge as to the weight and suitability of such evidence.

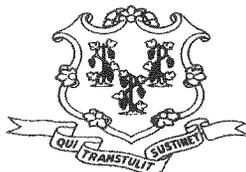
(6) The Commissioner may designate the Candlewood Lake Authority (CLA) to act as agent in issuing authorizing decals upon receipt of written agreement from the executive officer of the lake authority. The Commissioner may designate any or each of the governments of the several lakefront municipalities (Danbury, Brookfield, New Milford, Sherman, and New Fairfield) to act as agent in issuing authorizing decals upon receipt of written agreement from the municipality's executive officer. The CLA or any municipality so designated may withdraw from being a designated agent upon written request by the Chairman of the CLA or that municipality's executive officer to the Commissioner, and such withdrawal shall be effective forty-five (45) days from the date which the written withdrawal is received by the Commissioner.

(7) Any law enforcement officer or lake patrolman duly authorized to enforce these regulations may terminate the operation of a vessel that is in violation of this section. On and after the sixth month following the effective date of this regulation, operation of a registered vessel on the waters of Candlewood Lake that is 26 ft in length or greater and that does not have an authorizing decal issued by the Commissioner shall be an infraction.

The Connecticut General Assembly

Legislative Regulation Review Committee

Senator Andrew Roraback
Co-Chair



Representative Paul Davis
Co-Chair

August 29, 2012

Subject: Proposed Regulation 2012-030

Daniel Esty, Commissioner
Department of Energy & Environmental Protection
79 Elm Street
Hartford, CT 06106

Dear Commissioner Esty:

Proposed Regulation

2012-030 **Department of Environmental Protection** "CANDLEWOOD LAKE VESSEL LENGTH RESTRICTION" The Regulations of Connecticut State Agencies is amended be adding subsection (b).

The above captioned regulation was **Rejected without Prejudice** by the Legislative Regulation Review Committee on 8/28/2012. The action was based on the recommendations of the Legislative Commissioners' Office. The necessary corrections are listed on the attached pages.

The regulation should be corrected and then resubmitted to the Legislative Regulation Review Committee with a summary of the changes listed by paragraph. If this is a mandated regulation then the regulation must be resubmitted to this office no later than the 1st Tuesday of the second month following the regulation's rejection.

Sincerely,

Handwritten signature of Pamela B. Booth in cursive.

Pamela B. Booth, Administrator
Legislative Regulation Review Committee

Enclosures (2)

8/16/12

The Connecticut General Assembly

Legislative Commissioners' Office

Edwin J. Maley, Jr.
Commissioner
William A. Hamzy
Commissioner

Larry G. J. Shapiro
Director



Legislative Office Building
Suite 5500
Hartford, Connecticut
06106-1591
(860) 240-8410
fax (860) 240-8414
e-mail: lco@cga.ct.gov

Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: August 28, 2012

Regulation No:	2012-30
Agency:	Department of Energy and Environmental Protection
Subject Matter:	Candlewood Lake Vessel Length Restriction
Statutory Authority: (copy attached)	Special Acts 10-3 and 9-12

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

For the Committee's Information:

Substantive Concerns:

1. On page 1, in subsection (b)(2)(A), the phrase "person or entity" is used, but is not defined. The controlling definition section for the proposed regulation is section 15-121-A1, which defines "person" as "any individual, partnership, firm, association, corporation or *other entity*." (emphasis added) As "person" includes "other entity", it is unclear what the agency intends "or entity" to mean in the context of the proposed regulation. If the agency intends "person or entity" to mean something more than "person", as defined in

said section 15-121-A1, then the agency should state specifically what this phrase means. Otherwise, if the agency intends for "person or entity" to mean "person", as previously defined, then the agency should substitute "person" for "person or entity."

2. On page 1, in subsection (b)(2)(A), the term "lakefront" is used but is not defined. Accordingly, it is unclear if this term is intended to only refer to Candlewood Lake or if it refers to any lake.
3. On page 2, in subsection (b)(2)(C), the term "oversized vessel" is used but is not defined. Accordingly, it is unclear if the intent of such term is to only capture boats having a length of twenty-six feet or greater.
4. On page 2, in subsection (b)(2)(C), the proposed regulation allows the commissioner to authorize "the number of vessels equal to the average number of oversized vessels sold over the last five years per year, rounded up to the nearest whole number, from that business (marine dealer) located within one of the five municipalities surrounding Candlewood Lake" if such marine dealer shares vessel inventory with other businesses that are located outside of the five municipalities surrounding Candlewood Lake. The intent of this exception to the prohibition is unclear since the prohibition contained in the proposed regulation is a prohibition on the operation of vessels with a length of twenty-six feet or greater, not a prohibition on the sale of such vessels. Moreover, in subsection (b)(1)(C), vessels displaying a valid marine dealer registration number that are being demonstrated for sale are exempt from the prohibition. Unlike the exception contained in subsections (b)(2)(A) and (b)(2)(B), the exception in subsection (b)(2)(C) of the proposed regulation does not require the person purchasing such vessel to intend to use the vessel on Candlewood Lake. Therefore, the need for such exception is not clear in light of the actual prohibition. Finally, the exception in question does not require the oversized vessels sold over the past five years to have originated from the businesses located outside of the five municipalities surrounding Candlewood Lake with the intent to be sold by the marine dealer located within one of the five municipalities. Accordingly, the significance of such a shared vessel inventory to the exception is unclear.
5. On page 2, in subsection (b)(2)(D), it is unclear whether the requirements set forth apply to each of the exceptions contained in subparagraphs (A) to (C). If the requirements of subsection (b)(2)(D) are intended to apply to subparagraph (C), such requirements conflict with the provisions of subparagraph (C). By this, there is no requirement in subparagraph (C) that the authorized vessels already be owned by the marine dealer.
6. On page 2, in subsection (b)(3), it is unclear why authorizing decals will not be issued after December 31, 2013. While the proposed regulation obligates marine dealers to identify vessels to be authorized for an exception not later than sixty days after the effective date of the regulation, individuals who might seek an exception pursuant to subsection (b)(2)(A) are under no such time restriction.
7. On page 2, in subsection (b)(3), the request for an authorizing decal appears to be a separate request from the request for an exception made by a marine dealer. However, it is not clear if there is also a request, other than a request for an authorizing decal, required of individuals seeking an exception pursuant to subsection (b)(2)(A).

8. On page 2, in subsection (b)(5), the proposed regulation authorizes the commissioner to issue an authorizing decal, after such decal has been denied, if a person applies to the commissioner for such reconsideration and only after the commissioner reviews "additional information presented by the individual". It is unclear what this additional information consists of and how such information must differ from the information such person will be required to submit when he or she first applies for such authorizing decal.

Technical Corrections:

1. The pages of the proposed regulation should be numbered, for proper form.
2. On page 1, "(effective from passage)" should be deleted, as it is unnecessary.
3. On page 1, in the third line, "determined from" should be inserted after "length of the vessel shall be", for clarity.
4. On page 2, in subsection (b)(2)(E), "a marine dealer is a" should be "marine dealer" means any", for proper form and "the effective date of passage" should be "the effective date of this regulation", for accuracy.
5. On page 2, in subsection (b)(3), in the fourth line, "section" should be "subsection", for accuracy.
6. On page 2, in subsection (b)(3), subdivisions (1) and (2) should be subparagraphs (A) and (B), respectively, for proper form.
7. On page 3, in subsection (b)(6), in the fifth line, "such withdrawal" should be inserted after "and", for clarity.
8. On page 3, in subsection (b)(7), "Effective from the date of passage, any" should be "Any", for clarity and "Effective 6 months from the date of passage," should be "On and after the sixth month following the effective date of this regulation," for clarity and "26 ft or greater" should be "26 feet in length or greater", for consistency..

Recommendation:

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part <input checked="" type="checkbox"/> Rejection without prejudice</p>
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Reviewed by: Bradford M. Towson / Angela Rehm

Date: August 16, 2012

House Bill No. 5241

Special Act No. 10-3

AN ACT CONCERNING CANDLEWOOD LAKE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective from passage*) Not later than January 1, 2012, the Commissioner of Environmental Protection shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to establish a maximum boat length on Candlewood Lake. Such regulations shall be consistent with the recommendations submitted to the joint standing committee of the General Assembly having cognizance of matters relating to the environment pursuant to special act 09-12.

Approved May 18, 2010

House Bill No. 5823

Special Act No. 09-12

AN ACT CONCERNING THE RECREATIONAL USE OF CANDLEWOOD LAKE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective from passage*) (a) The Commissioner of Environmental Protection shall, in consultation with the chief elected officials, or their designees, of the towns of Brookfield, New Milford, Sherman and New Fairfield and the city of Danbury, make recommendations concerning the maximum boat length and maximum motor size permitted on Candlewood Lake. In making such recommendations, the commissioner and chief elected officials shall consider the following factors, which shall include, but not be limited to: Public safety, public access, public pumpout facilities, noise pollution, user conflict and the carrying capacity of the lake.

(b) Not later than February 1, 2010, the Commissioner of Environmental Protection shall submit such recommendations, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to the environment.

Approved July 2, 2009



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May 10, 2012

Senator Andrew W. Roraback
Representative Paul Davis
Regulation Review Committee, Room 011
State Capitol
Hartford, CT 06106

RE: Proposal to Amend the Boating Safety Regulations

Dear Senator Roraback and Representative Davis:

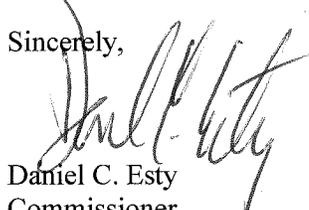
Pursuant to section 4-170 of the Connecticut General Statutes, I submit for your consideration and approval the enclosed proposal which amends the boating safety regulations found at Section 15-121-B15a of the Regulations of the Connecticut State Agencies. The proposal restricts vessels 26 feet in length or greater from Candlewood Lake pursuant to the requirements of Special Act 10-3. Implementation of this regulation will have the short term effect of capping the number of oversized vessels on Candlewood Lake, and ending the general escalation of vessel size that is taking place on the lake. The long term effect will be to *decrease* user conflict and *increase* boating safety on the lake, as the number of oversized vessels is *reduced* over time as vessels age and are removed from service.

As part of this proposed regulation, authorization to operate will be given to oversized vessels that have historically been used on Candlewood Lake prior to the effective date of the proposed regulation, and for the lifetime of a given vessel. Accommodation is also made for oversized commercial and government vessels, and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included.

The Department first published public notice of this proposal in the Connecticut Law Journal on November 29, 2011. The Department held a public hearing on January 4, 2012 and accepted public comment until January 27, 2012. As detailed in the Hearing Officer's Report (included here as Section 7), the Department revised the proposal based on these comments.

If there are any questions regarding this proposal, please contact Robert LaFrance, the Department's Legislative Liaison, at 860-424-3401 (office) or 860-622-1797 (cell). Thank you for your assistance with this matter.

Sincerely,


Daniel C. Esty
Commissioner

DCE/TFD/tfd
Enclosures

cc: Robert LaFrance

IMPORTANT: Read instructions on back of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

State of Connecticut
REGULATION
of

NAME OF AGENCY

Department of Energy and Environmental Protection

Concerning

SUBJECT MATTER OF REGULATION

Vessel Length Restriction on Candlewood Lake

(effective from passage)

Section 15-121-B15a of the Regulations of the Connecticut State Agencies is amended by adding subsection (b) as follows:

(NEW) (b) No person shall operate a registered vessel that is 26 feet in length or greater on the waters of Candlewood Lake unless such operation has been exempted or authorized by the Commissioner under this subsection. For the purpose of this subsection the registered length of the vessel shall be the length identified on the vessel's certificate of number awarded by this state, by another state or by the United States pursuant to the provisions of the federal Boat Safety Act of 1971, or marine document issued by the United States Coast Guard.

(1) The following vessels are exempt from the requirements of this subsection:

(A) vessels that while on the waters of Candlewood Lake are operated exclusively by authorized law enforcement personnel in the performance of official duties;

(B) vessels that while on the waters of Candlewood Lake are used exclusively for invasive species control, sewage transfer, or marine structure or infrastructure construction or maintenance; and

(C) vessels displaying a valid marine dealer registration number that are being demonstrated for sale, test run in connection with maintenance or repair, or surveyed by a certified marine surveyor.

(2) The Commissioner shall authorize the operation of vessels that are 26 feet in length or greater on the waters of Candlewood Lake that meet one of the following conditions:

(A) The vessel is owned by a person or entity, and such person or entity purchased and registered the vessel prior to the effective date of this regulation and presents evidence to the Commissioner of current or past owned or rented lakefront storage space or dockspace for such vessel, or can otherwise document use of the subject vessel on the waters of Candlewood Lake for more than ten consecutive days or twenty days in aggregate, over the twenty four months preceding the effective date of this regulation.

(B) The vessel is consigned to a marine dealer by a person meeting the conditions of subparagraph (A) of this subdivision or is owned by a marine dealer located in one of

the five surrounding municipalities (Danbury, Brookfield, New Milford, Sherman, or New Fairfield) where the vessel was present in inventory, ordered for inventory, or consigned to the marine dealer prior to the effective date of this regulation.

(C) Notwithstanding subparagraph (B) of this subdivision, for any marine dealer located within one of the five municipalities surrounding Candlewood Lake who shares vessel inventory with other businesses that are located outside of the five municipalities surrounding Candlewood Lake, the Commissioner may authorize the number of vessels equal to the average number of oversized vessels sold over the last five years per year, rounded up to the nearest whole number, from that business located within one of the five municipalities surrounding Candlewood Lake.

(D) A marine dealers shall provide proof to the satisfaction of the Commissioner regarding the number of vessels claimed for authorization, and that such vessels are owned by said marine dealer at the time the request to authorize such vessels is made. Said marine dealer shall identify those vessels to be authorized within sixty days of the effective date of this regulation, and on a form provided by the Commissioner.

(E) For the purpose of this section, a marine dealer is a business that possesses a Marine Dealer Registration Number pursuant to Section 15-145 of the Connecticut General Statutes, or that uses a North American Industry Classification System (NAICS) or Standard Industry Classification (SIC) code for vessels sales in tax filings, and can demonstrate the use of such code in tax filings prior to the effective date of passage.

(3) The Commissioner shall provide permanent numbered decals that shall be attached to those vessels that are 26 feet in length or greater that are authorized by the Commissioner to operate on the waters of Candlewood Lake and that are not exempt in accordance with this section. Until December 31, 2013, the Commissioner shall issue one such authorizing decal for each vessel 26 feet or greater in length meeting one of the conditions of subdivision (2) of this subsection. The authorizing decal shall be affixed to the starboard side of the vessel such that the decal is not obstructed from view: (1) on the hull and above the waterline and closer to the stern than the bow or (2) on a superstructure or windshield near the operator's station. The authorizing decal shall be permanently affixed to the vessel for the life of the vessel. The authorizing decal shall not be transferable to other vessels or other hulls. Requests for an authorizing decal shall be made by written application approved by the Commissioner.

(4) The Commissioner may issue a replacement authorizing decal at any time upon written application.

(5) An individual vessel owner or marine dealer who is denied an authorizing decal or a replacement authorizing decal by the Commissioner or the Commissioner's designee may apply to the Commissioner for reconsideration of the denial. The Commissioner may review such application and may elect to issue an authorizing decal or a replacement decal after reviewing additional information presented by the individual vessel owner or marine dealer.

(6) The Commissioner may designate the Candlewood Lake Authority (CLA) to act as agent in issuing authorizing decals upon receipt of written agreement from the executive officer of the lake authority. The Commissioner may designate any or each of the governments of the

several lakefront municipalities (Danbury, Brookfield, New Milford, Sherman, and New Fairfield) to act as agent in issuing authorizing decals upon receipt of written agreement from the municipality's executive officer. The CLA or any municipality so designated may withdraw from being a designated agent upon written request by the Chairman of the CLA or that municipality's executive officer to the Commissioner, and shall be effective forty-five (45) days from the date which the written withdrawal is received by the Commissioner.

(7) Effective from the date of passage, any law enforcement officer or lake patrolman duly authorized to enforce these regulations may terminate the operation of a vessel that is in violation of this section. Effective 6 months from the date of passage, operation of a registered vessel on the waters of Candlewood Lake that is 26 ft or greater and that does not have an authorizing decal issued by the Commissioner shall be an infraction.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

In 2010 the Connecticut General Assembly (CGA) passed Special Act 10-3, which directed the DEP to propose a regulation implementing a vessel length limit of under 26-feet on Candlewood Lake for the purpose of halting the general escalation of vessel size on the lake, both a cause and a consequence of user conflict.

Under the proposed regulation, persons operating an unauthorized oversized vessel will be subject to ejection from the lake and/or a fine, and the size of the vessel will be determined by the registered length as it appears on its state-issued certificate of registration.

As part of this proposed regulation, authorization to operate will be given to oversized vessels that have historically been used or that have been ordered for use on Candlewood Lake prior to the effective date of the proposed regulation, and for the lifetime of a given vessel. The Commissioner will accomplish this "Grandfathering" function by issuing a numbered decal to the owner of a qualified oversized vessel, the display of which will indicate an oversized vessel's authorized presence on the lake.

Accommodation is also made for oversized commercial and government vessels and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included.

Implementation of this regulation will have the short term effect of capping the number of oversized vessels on Candlewood Lake, and ending the general escalation of vessel size that is taking place on the lake. The long term effect will be to *reduce* the size of the fleet of oversized vessels, as vessels age and are removed from service.



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**Notice of Intent to Amend the Boating Safety Regulations to Establish a Vessel Length Limit
on Candlewood Lake**

The Commissioner of the Department of Energy and Environmental Protection (DEEP) hereby gives notice of his intent to amend Section 15-121-B15a of the Regulations of the Connecticut State Agencies to establish a vessel length limit on Candlewood Lake. This amendment is being proposed pursuant to Special Act 10-3 and under the authority granted to the Commissioner in Connecticut General Statute Section 15-121(b)(11).

Statement of Purpose: Special Act 10-3 requires the DEEP to propose a regulation implementing a vessel length limit of under 26-feet on Candlewood Lake for the purpose of halting the general escalation of vessel size on the lake, understood to be both a cause and a consequence of user conflict. Under this proposed amendment to existing Candlewood Lake regulations, persons operating an unauthorized oversized vessel will be subject to ejection from the lake and/or a fine. Authorization to operate will be given to oversized vessels that have historically been used or that have been ordered for use on Candlewood Lake prior to the effective date of the proposed regulation, and for the lifetime of a given vessel. Accommodation is made for oversized commercial and government vessels and vessels that have the function of maintaining the quality of the lake environment. While there is an anticipated impact to small business, measures protective of business have been included.

All interested persons are invited to submit comments on the proposed amendment to the Department of Energy and Environmental Protection (DEEP), Bureau of Outdoor Recreation, Boating Division, P.O. Box 280, Old Lyme, CT 06371. All comments should be directed to the attention of Timothy Delgado and must be received by 4:00 PM on January 27, 2012. Comments may be submitted by post, facsimile to (860) 434-3501 or by electronic mail to timothy.delgado@ct.gov.

In addition to accepting written comments, DEEP will also hold the public hearing described below. The Commissioner requests that any person giving oral comment at the hearing also submit a written copy of such comments.

PUBLIC HEARING
January 4, 2012 at 6:30 PM
Seminar Room
Whisconier Middle School
17 W Whisconier Road
Brookfield, CT

Printed on Recycled Paper

79 Elm Street, Hartford, CT 06106-5127
www.ct.gov/deep

Affirmative Action/Equal Opportunity Employer

Copies of the proposed amendment are available for public inspection during normal business hours and may be obtained from Timothy Delgado at the Bureau of Outdoor Recreation, Boating Division, 333 Ferry Road, Old Lyme, Connecticut. The same documents are posted on DEEP's website at the following location:

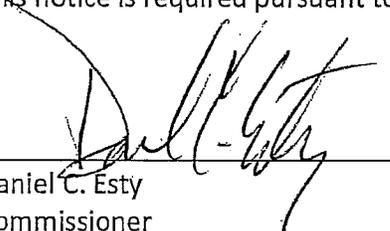
http://www.ct.gov/dep/cwp/browse.asp?a=2586&depNav_GID=1511

For additional information, contact Timothy Delgado of the Boating Division at (860) 447-4354 or timothy.delgado@ct.gov.

DEEP is an affirmative action/equal opportunity employer and service provider. In conformance with the Americans with Disabilities Act, DEEP makes every effort to provide equally effective services for persons with disabilities. Individuals with disabilities who need this information in an alternative format, to allow them to benefit and/or participate in DEEP's programs and services, should call 860-424-3035 or e-mail the ADA Coordinator, at DEP.aaoffice@ct.gov.

Persons who are hearing impaired should call the State of Connecticut relay number 711. Requests for accommodations must be made at least two weeks prior to the program date.

This notice is required pursuant to CGS section 4-168.



Daniel C. Esty
Commissioner

To be published in the CT Law Journal on November 29, 2011

Draft Regulation 15-121-B15a(amended) (PDF)

Matthew Ranelli, Esq.
Shipman & Goodwin, LLP ✓
One Constitution Plaza
Hartford, CT 06103-1919

Janice Deshais
CT DEP, Office of Adjudications ✓
79 Elm Street
Hartford, CT 06106

The Honorable Edward Meyer
Senator
Environment Committee ✓
CT State Legislature
Room 3200, Legislative Office Building
Hartford, CT 06106

The Honorable Richard Roy
Environment Committee ✓
CT State Legislature
Room 3200, Legislative Office Building
Hartford, CT 06106

The Honorable William Dickinson
Mayor of Wallingford ✓
45 South Main Street
Wallingford, CT 06492

The Honorable Gary D. LeBeau
Senator
Commerce Committee ✓
CT State Legislature
Room 110, Capitol Building
Hartford, CT 06106

50 Dollar list
+

Commerce Committee

Printed and mailed
11-29-11 by TFD

The Honorable Jeffrey J. Berger
Commerce Committee
CT State Legislature
Room 110, Capitol Building
Hartford, CT 06106





NOTICE OF AVAILABILITY OF REGULATIONS

Amendment of Section 15-121-B15a of the Regulations of the Connecticut State Agencies to Establish a Vessel Length Limit on Candlewood Lake

The Department of Energy and Environmental Protection (DEEP) hereby gives notice that it has decided to take action on the proposed amendment of Section 15-121-B15a of the Regulations of the Connecticut State Agencies, which amendment establishes a vessel length limit of less than 26 feet on Candlewood Lake while making certain accommodations for the use of oversized vessels in commerce and government, and while authorizing the continued use of the existing fleet of oversized recreational vessels used on the lake until those vessels are retired.

The DEEP held a public hearing on 4 January 2012 to receive comment on the proposed amendment, and received comment until 27 January 2012. The DEEP proposes to revise the sections in accordance with the recommendations of the Hearing Officer.

A copy of the final wording of the proposed amendment and the Hearing Officer's report is available on-line via the DEEP at:

<http://www.ct.gov/dep/cwp/view.asp?A=2586&Q=491346>

or by contacting:

Timothy F. Delgado
Department of Energy and Environmental Protection
Bureau of Outdoor Recreation
Boating Division
P.O. Box 280
Old Lyme, CT 06371
timothy.delgado@ct.gov

Telephone: (860) 447-4354

June 7, 2012

Date


Timothy F. Delgado
Environmental Analyst

CANDLEWOOD LAKE VESSEL LENGTH LIMIT

**Notice of Availability – 20 Day Notice
List of Persons to be Notified upon Verification of Legal Sufficiency
Compiled 15 May 2012**

Sent 6/8/2012

Fifty Dollar List and Committees with Cognizance (notice by mail)

Matthew Ranelli, Esq.
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

Sent TFD 6/8/12

Janice Deshais
CT DEP, Office of Adjudications
79 Elm Street
Hartford, CT 06106

Sent TFD 6/8/12

The Honorable Edward Meyer
Senator
Environment Committee
CT State Legislature
Room 3200, Legislative Office Building
Hartford, CT 06106

Sent TFD 6/8/12

The Honorable Richard Roy
Environment Committee
CT State Legislature
Room 3200, Legislative Office Building
Hartford, CT 06106

Sent TFD 6/8/12

The Honorable William Dickinson
Mayor of Wallingford
45 South Main Street
Wallingford, CT 06492

Sent TFD 6/8/12

The Honorable Gary D. LeBeau
Senator
Commerce Committee
CT State Legislature
Room 110, Capitol Building
Hartford, CT 06106

Sent TFD 6/8/12

The Honorable Jeffrey J. Berger
Commerce Committee
CT State Legislature
Room 110, Capitol Building
Hartford, CT 06106

Sent TFD 6/8/12

Those Providing Comment Other Than By Email (notice by mail)

Raymond Kelly
11 Orchard Rest Road
Sherman, CT 06784

Sent TFD 6/8/12

Frank Fernandez
57 Bogus Hill Road
New Fairfield, CT

Sent TFD 6/8/12

Jim McAlister
Candlewood Watershed Initiative
127 Field Point Drive
Fairfield CT 06824

Sent TFD 6/8/12

Lynda & Eugene Willingham
15 Knollcrest Road
New Fairfield, CT 06812

Sent TFD 6/8/12

Cliff Ricci
192 Candlewood Lake RD North
New Milford, CT 06776

Sent TFD 6/8/12

Larry Marsicano
25 Nutmeg Drive
New Milford, CT 06776

Sent TFD 6/8/12

Mitchel O'Hara
Candlewood East Marina
204 Candlewood Lake Road
Brookfield, CT 06804

Sent TFD 6/8/12

Stephen Paduano
767 Candlewood Lake RD South
New Milford, CT 06776

Sent TFD 6/8/12

Jim Marquis
13 Pocono Point Road
Danbury, CT 06811

Sent TFD 6/8/12

Linda Marquis
13 Pocono Point Road
Danbury, CT 06811

Sent TFD 6/8/12

Mike Chengeri
Candlewood East Marina
204 Candlewood Lake Road
Brookfield, Ct 06804

Sent TFD 6/8/12

Michele Marquis
767 Candlewood Lake RD South
New Milford, CT 06776

Sent TFD 6/8/12

Ralph Gallagher
2 Farview Terrace
Danbury, CT 06811

Sent TFD 6/8/12

Those Providing Comment Other Than By Email (notice by email)

Sent TFD 6/8/12

PPorrazzo@comcast.net

Peter Porrazzo –provided mailing address illegible

Fly55@AOL.com

Karl Kattrein –provided mailing address illegible

Robertw@remax.net

Robert Weinsta – provided mailing address illegible

Howie@visualacesstech.com

Howie Berger – provided mailing address illegible

Those Providing Comment or Making Inquiry to be Notified by Email

Sent TFD 6/8/12

Alex Scalera

alscalera@charter.net

Ann Gustavson

anngustavson@hotmail.com

Anne Alvarez

annea@homalocks.com

Barbara Hoag

blhoag@charter.net

Basil Jones

basil@basilyoga.com

Ben Wild

benjwild@yahoo.com

Bill Donahue Sr.

bill@arnoldsupplyinc.com

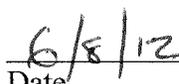
Bob Neidhardt	bobneid@aol.com
Brian Mellstrom	bmellstrom@yahoo.com
Bruce Hoag	bchoag@charter.net
Byron Carlson	bycarl@earthlink.net
Caren Silva	silvazoo@sbcglobal.net
Carol Crothers	carol.crothers@gmail.com
Chet Valiante	cvaliante@thehour.com
Craig Wright	CWright@coach.com
Dave Marsillios	MARSILLIOS@aol.com
Dennis Paradiso	d.paradiso@sbcglobal.net
Donald Blough	donald_blough@brown.edu
Donna Schumacher	Donna.Schumacher@sephora.com
Dr Brian K. Applebee	drapplebee@hotmail.com
Dr. Allen Hindin	hindingrp@aol.com
E. Schofield	sscnw@aol.com
Erol Gund	erolgund@aol.com
Gerry Kraszewski	mamaski4@gmail.com
James Stead	jstead2425@charter.net
Jamison D. Lynch	jamie.lynch@mac.com
Jean Hartnett	gniiks@gmail.com
Jeffrey Berman	JBerman@jbarch.com
Jill Finch	jlfinch355@aol.com
Jim McAlister	ToDMacPac@aol.com
John Cotumaccio	John.Cotumaccio@1-3com.com
John Donohue	jd8875@aim.com
John Glynn	isleharbormaster@charter.net
JOHN LAVAGNINO	johnjlavagnino3@gmail.com
Karen Cleary	kmcleary2@yahoo.com
KARL HOFFMANN	budhoffmann@gmail.com
Katherine Consiglio	krconsig@us.ibm.com
Ken Erdmann	kenneth.erdmann@sbcglobal.net
Ken Stilson	engine25lt@yahoo.com
Kenneth Perry	kap411@me.com
Kris Fazzone	FUZZEMT@aol.com
Kurt Gerstmann	kurt.gerstmann@gmail.com
Laura Nally	lauranally@aol.com
Linda Donahue	LMDON@aol.com
Linda Kieves	kieveslinda@gmail.com
Louise Kaminer	Lkaminer@livehappy.com
Lynn DeLuke	l_deluke@yahoo.com
LynnJenkins	pace.6@netzero.net
Mark Kunkel	doctormark30@gmail.com
Maureen Shoule	maureens@jwhampton.com
Melinda Miller	Millerk9@aol.com

Mitch O'hara Jr.	mitchjr@candlewoodeast.com
Nick Robertson	nsr721@yahoo.com
Paul Kraszewski	coachk1952@gmail.com
Ralph Gallagher	rjgjrassoc@aol.com
Richard Creaturo	rscreaturo@comcast.net
rob jenk	robjenk2@yahoo.com
Robert Nestel	rsnestel@gmail.com
Robert V.H. Weinberg	rwfishermn@yahoo.com
Ronald Noren	RNoren@brodywilk.com
Ryan Brigham	RBrigham@cbs.com
Sandra Vonniessen-Applebee	sandra_vonniessen@hotmail.com
Sarelle Rosner	sarellerz@apl.com
Scott Bolesta	sbolesta@charter.net
Scott Randall	scottrandall@optonline.net
Scott Simpson	maximosca@charter.net
Sharon Freitas	sfre105049@charter.net
Skip Clapp	cclapp@snet.net
Stephen K. Reichenbach	stever222@gmail.com
Steven Levenherz	nevets77@me.com
Suzanne Berrie	berrie350@aol.com
Terry Metz	terry.metz@sbcglobal.net
THOMAS PERKINS	tperkinsct@me.com
Walter A. Eppler	walepp@att.net

The Notice of Availability for the referenced proposed regulation was sent by the undersigned on the date indicated below:

 (TFD)

Timothy F. Delgado
Environmental Analyst


Date

Connecticut Department of Energy and Environmental Protection / Boating Division