

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF ADOPTION OF
THE RULES FOR THE RECREATIONAL USE OF
WATER SUPPLY LANDS AND WATERS

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY GRANTED TO the New York City Department of Environmental Protection as set forth in Section 24-315 of Title 24, Chapter 3 of the New York City Administrative Code and in accordance with Section 1043(a) of the New York City Charter that the New York City Department of Environmental Protection has amended §16-02, §16-03, §16-07, §16-08, §16-13, §16-18 and §16-20 of Chapter 16 of Title 15 of the Rules of the City of New York, the NYCDEP Rules for the Recreational Use of Water Supply Lands and Waters.

The rules are promulgated pursuant to the authority of the Department of Environmental Protection as set forth in Section 1043(a) of the New York Charter and Sections 24-315, 24-326, 24-327 and 24-359 of the New York City Administrative Code.

These rules were initially published for comment in the City Record on February 13, 2009. After duly advertised public hearings held on March 16, March 17 and March 18, 2009 and a period for submissions of written comments that ended on March 25, 2009 and after having reviewed the testimony received at the hearings and the single written comment received, Chapter 16 of Title 15 of the Rules of the City of New York is amended. The language to be deleted is [bracketed] and the new parts to be added are underlined.

NYCDEP

**Rules for the Recreational Use of
Water Supply Lands and Waters**

Section one. Subdivision (q) of section 16-02 of Title 15 of the Rules of the City of New York is amended, subdivision (r) of such section is repealed, subdivisions (s) through (v) are relettered subdivisions (r) through (u), new subdivisions (v) and (w) are added, and subdivisions (w) through (aa) are relettered subdivisions (x) through (bb), to read as follows:

§16-02 **Definitions.**

All terms shall have the same meaning as in the New York State Environmental Conservation Law ("ECL") unless defined differently as follows:

(q) **Hunting Area.** “Hunting Area” means a location designated by NYCDEP as available for hunting to holders of valid Access Permits [and Hunt Tags].

(r) [**Hunt Tag.** “Hunt Tag” means an instrument of permission issued for the purpose of allowing Access Permit holders to hunt at Hunting Areas, as further described in §16-07 herein.

(s)] **NYCDEP.** “NYCDEP” means the New York City Department of Environmental Protection, an executive agency of the City.

[(t)](s) **NYSDEC.** “NYSDEC” means the New York State Department of Environmental Conservation, an executive agency of the State of New York.

[(u)](t) **Public Access Area.** “Public Access Area” means a location designated by NYCDEP as available for recreational uses as allowed by New York State law and these Rules, and on which NYCDEP Access Permits[, Hunt Tags] and Vehicle Tags are not required.

[(v)](u) **Public Map.** “Public Map” means a map produced by NYCDEP to convey information to Access Permit holders and the public.

(v) **Recreational Boat Tag.** “Recreational Boat Tag” means an instrument of permission issued for the purpose of allowing Access Permit holders to use and store boats for use when boating on Recreational Boating Areas, as further described in §16-07 herein.

(w) **Recreational Boating Area.** “Recreational Boating Area” means a location designated by NYCDEP that is available for boating that does not require boat occupants to be plausibly engaged in the activity of Fishing.

(x) **Vehicle Tag.** “Vehicle Tag” means an instrument of permission issued in support of an Access Permit for the purpose of allowing visitors to park a vehicle on City Property while accessing City Property for recreational use, as further described in §16-11 herein.

[(x)](y) **Water Supply.** “Water Supply” means the New York City public water supply system, and includes all watercourses, wetlands, reservoirs, reservoir stems and controlled lakes tributary thereto.

[(y)](z) **Watercourse.** “Watercourse” means a visible path through which surface water travels on a regular basis, including an intermittent stream, which is tributary to the Water Supply.

[(z)](aa) **Watershed.** “Watershed” or “New York City Watershed” means the land area contributing surface water to the New York City water supply.

[(aa)](bb) **Watershed Rules.** “Watershed Rules” means the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources, 15 Rules of the City of New York Chapter 18; 10 NYCRR Part 128.

§2. The first unnumbered paragraph of Section 16-03 of Title 15 of the Rules of the City of New York is amended to read as follows:

All persons 16 years of age and older must complete an application for and receive, maintain and carry a valid Access Permit in order to access Hiking Areas, Fishing Areas [and], Hunting Areas and Recreational Boating Areas for recreational purposes as defined in these rules. Entry onto City Property, other than Public Access Areas and Designated Use Areas, without a valid Access Permit, Guest Pass, or without appropriate accompaniment as described herein, is prohibited and shall be considered a trespass.

§3. Section 16-07 of Title 15 of the Rules of the City of New York, relating to hunt tags, is REPEALED, and a new section 16-07 is added, to read as follows:

§16-07 **Recreational Boating Areas.**

NYCDEP may, in its discretion, designate portions of, or entire, City reservoirs and controlled lakes as Recreational Boating Areas which may be entered and used by persons with valid Access Permits for boating. For purposes of this section, individuals shall comply with all provisions of this Chapter with the exception of §16-05 and §16-06. Recreational Boating Areas and launch sites shall be designated by NYCDEP on sign postings, on the NYCDEP website, on Public Maps, and/or in other publications and notices available from NYCDEP and at local sporting outfitters. In compliance with both the State Environmental Quality Review Act and the City Environmental Quality Review requirements, NYCDEP will undertake environmental reviews for each reservoir it proposes to designate a Recreational Boating Area prior to making such designation, including review of any cumulative impact of such designation to the watershed.

(a) **Season.** Access to Recreational Boating Areas begins at sunrise on the Friday immediately preceding Memorial Day weekend, is available seven (7) days a week from sunrise to sunset and ends on Columbus Day at sunset except as otherwise restricted on NYCDEP sign postings, the NYCDEP website, Public Maps, and/or in other publications or notices.

(b) **Recreational Boat Tags.** Due to the threat of Water Supply contamination by organisms such as zebra mussel larvae that may be introduced to City waters by boats previously used in contaminated waters, all boats used in Recreational Boating Areas shall be registered and steam cleaned by NYCDEP or its designee and must have a valid Recreational Boat Tag affixed to the upper port side exterior bow.

(1) **Eligibility.** Boats eligible for Recreational Boat Tags include canoes, sculls, small sailboats with removable center/dagger boards and jonboats that measure no less than eleven feet five inches (11' 5") in length and kayaks that measure no less than nine feet (9'") in length. Inflatable boats, collapsible boats and motorized boats are prohibited. NYCDEP may, at its discretion, add to or delete from the list of boats eligible for Recreational Boat Tags. Changes to the list shall be designated by NYCDEP on sign

postings, the NYCDEP website, Public Maps, and/or in other publications and notices available from NYCDEP and at local sporting outfitters.

(2) Term. At the option of the applicant, Recreational Boat Tags shall be valid for the following terms: (i) one through seven days (“temporary”); or (ii) from sunrise on the Friday immediately preceding Memorial Day weekend through sunset on Columbus Day (“season”) unless revoked or suspended pursuant to §16-19(e). Recreational Boat Tags shall only remain valid as long as the boat owner’s Access Permit is valid. If an Access Permit holder’s Access Permit and/or Recreational Boat Tag is suspended or revoked, he or she must remove the boat within 24 hours of the suspension date[.] in the company of a NYCDEP representative.

(3) Application. Recreational Boat Tag applications shall be available at the same locations as Access Permit applications, and may also be available at local hotels, motels, B&Bs, sporting outfitters and other merchants designated by NYCDEP for processing certain boats for use in Recreational Boating Areas.[.] No application fee is required.

(4) Required Information. A Recreational Boat Tag application shall require the following information:

- (i) Applicant’s valid Access Permit number;
- (ii) Applicant’s name, mailing address, phone number, electronic mail address, if available, and date of birth;
- (iii) Boat make, model, color, width, length, material, hull shape and, if known, serial number;
- (iv) Term of Recreational Boat Tag;
- (v) Acknowledgment of risk and waiver of liability;
- (vi) Applicant signature and date of signature; and
- (vii) If applicant is under 18, parent or legal guardian signature and date of signature.

(5) Boat Processing, Registration, Steam Cleaning and Recreational Boat Tag Issuance. Recreational Boat Tag applications may be completed in advance of submission, except for the portions which need to be completed by NYCDEP or its designee when the boat is registered, steam cleaned and placed on the reservoir. Prior to entering Recreational Boating Areas, all boats shall be steam cleaned by NYCDEP or its designee. Boat owners applying for temporary Recreational Boat Tags may have their boats processed, registered, steam cleaned and receive their Recreational Boat Tags without an appointment at local merchants designated by NYCDEP. Boat Owners applying for season Recreational Boat

Tags must have their boats processed by appointment with NYCDEP at the Downsville Office, which can be made by contacting the Downsville office at the number listed on NYCDEP's website.

(c) **Boat Launch Sites.** Boats shall only be placed in or taken out of Recreational Boating Areas at boat launch sites as designated by NYCDEP. Boat launch sites shall be designated by NYCDEP on sign postings, the NYCDEP website, Public Maps, and/or in other publications and notices available from NYCDEP and at local sporting outfitters.

(d) **Boat Storage Areas and Boat Storage.** NYCDEP will assign a Boat Storage Area to boats with season Recreational Boat Tags. Boats with temporary or season Recreational Boat Tags may not be stored in shoreline buffer zones, which are generally within ten (10) feet of the shoreline, but may be more or less than ten (10) feet as designated. Boats shall not be stored on or against other stored boats. Boats stored in Boat Storage Areas within Recreational Boating Areas shall not be secured to dead trees or trees marked with blue paint by NYCDEP for removal. Boats with temporary Boat Tags may be stored, at the owner's risk, in the vicinity of the Recreational Boating Area's launch sites above the high water mark back from the shoreline so as not to obstruct access to the water and in a hull up position so as not to collect water.

(e) **Owner Removal of Boat With Recreational Boat Tag.** Boats with Recreational Boat Tags may be removed from Recreational Boat Areas by their owners at any time before the Recreational Boat Tag's expiration date. Boat owners with season Recreational Boat Tag shall notify the NYCDEP Downsville Office prior to such removal. Upon removal of a boat from a Recreational Boating Area, its Recreational Boat Tag shall be immediately rendered invalid. Boat owners wishing to return a once-registered, removed boat to a Recreational Boating Area must secure a new Recreational Boat Tag.

(f) **NYCDEP Removal of Boats.** Any boat left in the water unattended; found on land outside of the boat's assigned Boat Storage Area; found in a closed Boat Storage Area to which it was not assigned; found without a valid Recreational Boat Tag or found on City Property after expiration, suspension or revocation of the owner's Recreational Boat Tag or Access Permit; or found in a restricted area is subject to removal and storage by NYCDEP at the owner's expense of \$120.00 for removal and \$1.00 per day for storage. While boats without valid Recreational Boat Tags may be removed from City Property, confiscated, and stored by NYCDEP at any time, such boat removal shall generally commence on the day after Columbus Day of each year and be completed before the Friday preceding Memorial Day the following year. NYCDEP shall attempt to contact the owner of an invalid or removed boat at least once during the removal process or the three-month storage period in order to notify him or her of the boat's status. This contact may be by USPS mail, telephone, or electronic mail for the contact information on file for the boat, such contacts shall be documented.

(g) **Storage of NYCDEP-Removed Boats.** NYCDEP shall store removed boats in designated storage yards on NYCDEP properties until the removed boats are claimed by their owners or until three months have passed since NYCDEP's initial attempt to contact the owner. If a boat remains unclaimed three months from the date of NYCDEP's initial attempt to locate the owner,

it will be deemed the property of NYCDEP and will be disposed at NYCDEP's discretion. By accepting a NYCDEP Recreational Boat Tag, the owner of the subject boat acknowledges and accepts NYCDEP's right to remove, store and/or dispose of the boat in accordance with this section in lieu of any other procedure for the storage and disposition of abandoned property required or permitted by law, and waives any right to assert a claim against NYCDEP pursuant to the provisions of the New York State Personal Property Law, Abandoned Property Law or by any such other procedure. NYCDEP is not liable to the owner under any circumstances for damage to or loss of a boat during its removal, storage or disposition.

(h) **Owner Claim of Stored Boats.** Boats removed and stored by NYCDEP shall be available for claim and pick up by the owner of record by appointment with NYCDEP. NYCDEP staff shall confirm that the person claiming the boat is the owner of record. Any accumulated removal and storage fees shall be paid to NYCDEP by certified check, bank check, or money order made out to "NYCDEP" in order for the boat to be released. Owners shall pay any accumulated fees and remove their claimed boat at the same appointment. NYCDEP shall not hold claimed boats nor allow deferred payment.

(i) **Disposal of NYCDEP-owned Boats.** When necessary, NYCDEP shall dispose of boats owned by the City through the following means:

- (1) Disposal or sale of unseaworthy boats as refuse or scrap metal;
- (2) Donation of seaworthy boats to public or community non-profit organizations through a City-approved donation process;
- (3) Sale of in as-is condition at public, sealed bid auction.

(j) **Lost and Stolen Boats.** Boat owners shall report boats believed to be lost or stolen to NYCDEP immediately upon discovery. NYCDEP staff shall document the report, attempt to locate the boat, and, if unsuccessful, submit the report to the NYCDEP Police for further investigation.

(k) **Safety.** Every boat used on City Property shall have at least one U.S. Coast Guard approved wearable personal flotation device in good condition for each person on board. Each person on board who is under the age of 12 must wear a securely fastened U.S. Coast Guard approved wearable flotation device of an appropriate size.

(l) **Capacity.** Each boat may carry no more than three occupants, unless the boat has a U.S. Coast Guard approved "Maximum Capacities" plate or label affixed by the manufacturer that identifies a greater occupancy capacity.

(m) **Condition and Maintenance.** Boat owners are responsible for the sanitary condition and seaworthiness of their vessels and for all activities that occur thereon.

(n) **Mooring.** Mooring of boats, including to buoys, is prohibited.

§4. Subdivisions (b), (c), (e) and (f) of section 16-08 of Title 15 of the Rules of the City of New York are amended, subdivision (l) of such section is deleted, and subdivisions (m) and (n) are relettered (l) and (m), to read as follows:

§16-08 **Hunting and Hunting Areas.**

(b) **Access.** Access to Hunting Areas on City Property for purposes of hunting shall be by Access Permit[and Hunt Tag. Hunters must have a valid Hunt Tag in order to hunt on Hunting Areas]. Hunting is not allowed on any other City Property except on Public Access Areas. Hunters must also be properly licensed by the State of New York.

(c) **Allowable Species.** Hunters [with valid Hunt Tags] may hunt on Hunting Areas for any species allowed under New York State law, during and in accordance with all available NYSDEC hunting seasons and NYCDEP property designations.

(e) **Game Pursuit.** Hunters shall respect the rights of owners of neighboring properties and shall not trespass on private lands. If an animal wounded by a hunter travels onto neighboring property, the [Hunt Tag holder]hunter shall obtain the property owner's permission to enter the property for retrieval. If an animal wounded by a hunter travels onto City Property that is not a Hunting Area, the hunter shall obtain permission to enter the area from NYCDEP Police before entering by calling (888) 426-7433.

(f) **Hunter Behavior.** [Hunt Tag holders]Hunters shall abide by the principles of the NYSDEC hunter education training program and conduct themselves in a safe and courteous manner in relation to other hunters and recreational users, NYCDEP employees and representatives, neighboring land owners and community members. Failure to do so may advance a detrimental image of hunting and hunters, and result in the loss of individual hunting opportunities, Hunting Area closures, and individual permissions.

(l) [**Hunt Tag Automatic Issuance.** Valid Hunt Tag holders who submit completed hunt surveys postmarked by the due date will automatically receive their next season's Hunt Tags in the weeks prior to the pre-season scouting period provided their Access Permits remain valid. These automatic recipients will be listed on the NYCDEP website by Access Permit number as early in the year as possible.

(m)] **Hunting Area Closures.** NYCDEP may close Hunting Areas or parts thereof to public access, to hunting, or to certain hunting activities, and may limit the number of hunters permitted on a Hunting Area as it deems necessary. Possible considerations for Hunting Area closure include but are not limited to Water Supply protection, management and security concerns. Closures will be indicated on the NYCDEP website.

[(n)](m) **Firearms.** Firearms may not be discharged over or into the waters of any reservoir or controlled lake.

§5. The first unnumbered paragraph of section 16-13 of Title 15 of the Rules of the City of New York is amended to read as follows:

NYCDEP may, in its discretion, designate portions of City Property as Public Access Areas that may be entered and used by the public for recreational uses as allowed by New York State law without the requirement of having a valid NYCDEP Access Permit[, Hunt Tag] or Vehicle Tag. Public Access Areas are not subject to these rules except for those set forth in this section and in sections 16-01 (Scope and Purpose), 16-02 (Definitions), 16-15 (Restricted Areas), 16-16 (General Rules), 16-17 (Prohibitions), 16-18 (Regulated Activities), 16-19 (Permit Suspension and Revocation), 16-20 (Conformance with State and Local Laws), and 16-21 (Unenforceability). Public Access Areas shall be designated by NYCDEP on sign postings and, when applicable, on the NYCDEP website, on Public Maps, and/or in other publications and notices.

§6. Subdivision (b) of section 16-18 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) **Firearms, Weapons, Explosives.** Rifles, shotguns, handguns, bows and arrows, muzzleloaders and pocket or hunting knives may only be carried and used as permitted in Hunting Areas by persons with valid [Hunt Tags]Access Permits, or in Public Access Areas, in accordance with NYSDEC regulations (i.e., rifles may be prohibited by the State in certain locations). Bows and arrows may be used when Fishing for carp. The use or carrying of handguns is prohibited on all City Property except for purposes of hunting, either at Hunting Areas by persons with valid [Hunt Tags]Access Permits or in Public Access Areas. Access Permit holders engaged in Hiking, Fishing, or hunting may carry pocket or hunting knives for purposes of Hiking, Fishing, or hunting. All other weapons, fireworks and explosives are prohibited.

§7. Section 16-20 of Title 15 of the Rules of the City of New York is amended to read as follows:

§16-20 **Conformance with State and Local Laws.**

All persons using City Property for recreational purposes are subject to the ECL and all other statutes, ordinances, rules applicable, including (without limitation) the Watershed Rules and the rules set forth herein. [The] Access Permits [and Hunt Tag] are not substitutes for any NYSDEC Fishing or Hunting License required by law.

STATEMENT OF BASIS AND PURPOSE

The purpose of the rule is to amend Chapter 16 of Title 15 of the Rules of the City of New York to provide expanded recreational boating opportunities to the public by allowing additional types of boats to be used without requiring that occupants of these boats be engaged in fishing in areas specifically designated on the Cannonsville Reservoir. DEP will ensure that appropriate procedures are in place to protect water quality and maintain security. The rule has been written to allow the Department of Environmental Protection to similarly

expand recreational boating opportunities in the future at other City-owned reservoirs or portions thereof, after compliance with environmental review requirements. Two definitions were added to §16-02 to accommodate the expanded recreational boating opportunities and the definition section was re-lettered accordingly. The rule also eliminates the need for hunters to apply for and maintain a Hunt Tag in order to hunt at Hunting Areas and the rules were adjusted accordingly to eliminate all references to the Hunt Tag. Finally, a provision prohibiting the mooring of boats was added at §16-07(n). The language to be deleted is bracketed and the new parts to be added are underlined.

The proposed rules are derived from historical recreational uses of the land that are recognized in the New York City Watershed Memorandum of Agreement (MOA), dated January 21, 1997, and are not intended to establish supervised recreational activities on these lands. The City does not assume any liability for the recreational use by the public of its lands and waters beyond that provided in General Obligation Law § 9-103.