

Title 10, Chapter 119: Private Preserves, Propagation Farms, Private Ponds, Refuges, and Shooting Grounds, § 5201 Notices; posting, and § 5202 Private preserve, stocking, affidavit.

Eric Palmer, Fish Division Director, VT Fish & Wildlife, 2/11/16

The proposed changes to §§ 5201 and 5202 eliminate the ability of a landowner to setup a private fishing preserve on rivers and streams (i.e. flowing waters of the state). As the statute now stands, it enables a landowner to privatize that portion of a river or stream flowing through their property and restrict the public's use of the water for fishing even if access to that section of the stream can be obtained without crossing the landowner's property, such as by a public highway or public access area.

As currently written, § 5201 enables a landowner to privatize certain "waters of the state" by setting up a private preserve on his/her land as long as certain requirements are met. These requirements are stated under § 5202. By establishing a private preserve (defined in § 4001) the landowner may prohibit the public from taking wild animals (defined in § 4001), including wild and/or privately stocked fish, from waters located on his/her property and/or waters flowing through his/her property. This is not much of a problem when applied strictly to private ponds defined in § 5210 and propagation farms, including private hatcheries, defined in § 4001. The problem is when §§ 5201 and 5202 are applied to rivers and streams that by their very nature are not confined to a single parcel of private property. Creating a "private preserve" may prohibit the general fishing public the right to fish and take fish from a public stream if it is stocked at the landowner's expense, posted, and filed with the town clerk.

The proposed changes have no effect on a landowner's right to post his/her land against public access or trespass. Nor do these changes affect a landowner's right to post a private pond or hatchery "no fishing".

"Wild animal" is replaced by "game" (defined in § 4001) in order to remove references to fish, a wild animal by definition.

Definitions referenced above:

§ 4001 (9) Game: game birds or game quadrupeds, or both.

§ 4001 (15) Wild animals or wildlife: all animals, including birds, fish, amphibians, and reptiles, other than domestic animals.

§ 4001 (16) Private preserves: lands or waters where the taking of fish or wild animals is prohibited as provided in sections 5204-5206 of this title.

§ 4001 (17) Propagation farms: lands or waters used for the propagation of fish or wild animals as provided in sections 5207-5209 of this title.

§ 5210 Private Pond: A person owning a natural pond of not more than 20 acres or an artificial pond entirely upon his or her premises, stocked at his or her own expense with fish artificially hatched or reared, may take fish from such pond at any time for the purpose of propagation or consumption as food on his or her premises, provided that the sources of water supply for such pond are entirely upon his or her premises or that fish do not have access to such pond from waters not under his or her control or from waters stocked at the expense of the State. (Added 1961, No. 119, § 1, eff. May 9, 1961.)