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Agency Of Natural Resources

June 21, 2023

Charlene Dindo, Committee Assistant
Legislative Committee on Administrative Rules
Vermont State House
115 State Street
Montpelier, VT 05633-5301

Re: Baitfish Regulations

Dear Ms.Dindo:

Enclosed for filing please find the Fish and Wildlife Board proposed amended rule, entitled 10 V.S.A. App. § 141. Baitfish Rules.

This is a supplemental filing for the Committee's consideration during the meeting scheduled on June 29, 2023. Legislative Counsel has advised the Department that the appropriate term for a rule in accordance with the Vermont Administrative Procedures Act, is "rule" rather than "regulation." In addition, there was a typographic error in Section 7.2.3.2, where there is a missing "b" in word "bait."

As such, we have amended the Baitfish Rules to include those corrections. The correction will have no substantive impact on the rules. I have highlighted the changes in the attached revised rules.

Thank you for your assistance and do not hesitate to contact me at 802-595-3331 or catherine.gjessing@vermont.gov with any questions you may have.

Sincerely,

/s/ Catherine Gjessing

Catherine Gjessing
General Counsel

Cc: Christopher Herrick, Commissioner, Department of Fish and Wildlife
Eric Palmer, Director Fisheries
Margaret Murphy, Fisheries Program Manager

TITLE 10 Conservation and Development APPENDIX
CHAPTER 2. FISH
Subchapter 2. Seasons, Waters, and Limits

§ 141. Baitfish ~~Regulation Rule~~

1.0 Authority

This ~~regulation rule~~ is adopted pursuant to 10 V.S.A. §4081(b). In adopting this ~~regulation rule~~, the Fish and Wildlife Board is implementing the policy that the protection, propagation, control, management, and conservation of fish, wildlife and fur-bearing animals in this state is in the interest of the public welfare and that the safeguarding of this valuable resource for the people of the state requires a constant and continual vigilance.

In accordance with 10 V.S.A. §4082, this ~~regulation rule~~ is designed to maintain the best health, population and utilization levels of Vermont's fisheries.

In accordance with 10 V.S.A. §4083, this ~~regulation rule~~ establishes open seasons; establishes daily, season, possession limits and size limits; prescribes the manner and means of taking fish; and prescribes the purchase, sale, and use of baitfish.

2.0 Purpose

2.1 This ~~regulation rule~~ applies to fish used as bait. This ~~regulation rule~~ shall apply to all persons who take, possess, transport, use, purchase, or sell baitfish.

2.2 The purpose of this ~~regulation rule~~ is to: a) conserve and protect the fish, and fisheries in the state, b) maintain the best health of species and natural ecological systems in the state, c) prevent the introduction or spread of diseases or parasites harmful to humans and wild species, and d) prevent the escape or release of non-native species or species that injure or compete with natural ecological systems and processes.

3.0 Definitions

3.1 "Application" means a specific form provided by the Department of Fish and Wildlife.

3.2 "Baitbox" means a receptacle used for holding or keeping baitfish alive for personal use. A legal baitbox shall not exceed 25 cubic feet in volume.

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- 3.3 "Baitfish" means fish species and parts thereof, living or dead, used for the purpose of attracting and catching fish.
- 3.4 "Baitfish zone" means a specific geographic area, where it is permissible to use baitfish in accordance with this regulation rule, and the area is described and depicted on a map by the Commissioner and posted on the Department website.
- 3.5 ~~"Black list water"~~ "Restricted Water" means a specific waterbody and any listed tributaries where the use of baitfish is restricted in accordance with this regulation rule, and the waterbody is described and depicted on a map by the Commissioner and posted on the Department website.
- 3.6 "Commissioner" means the Commissioner of the Vermont Department of Fish and Wildlife.
- 3.7 "Department" means the Vermont Department of Fish and Wildlife.
- 3.8 "Fish hatchery" refers to any fish culture station, hatchery, or artificial rearing pond which grows or maintains baitfish for sale in Vermont.
- 3.9 "Ice fishing" means a manner of fishing as described in 10 V.S.A App. §122 Subsection 4.0.
- 3.10 "Open-water fishing" means a manner of fishing as described in 10 V.S.A. App. § 122 Subsection 3.0.
- 3.11 "Permit" is a document from the Commissioner granting a Commercial Bait Dealers Permit.
- 3.12 "Waterbody" means any lake, pond, river, or stream including all tributaries upstream to the first barrier impassable to upstream fish movement.
- 3.13 "Commercially preserved baitfish" means baitfish which are chemically treated in a manner approved by the Department, and then packaged for retail sale.
- 3.14 "Personal baitfish harvest" and "Personally harvested baitfish" means baitfish taken for non-commercial use.
- 3.15 "Non-Restricted Water" means any waterbody not included in the list of Restricted Waters

4.0 Personal Baitfish Harvest

- 4.1 Personally harvested baitfish from ~~black-list waters~~ Restricted Waters shall not be used on any other waters or transported away from the ~~black-list water~~ Restricted Water from which they were harvested.
- 4.2 Personally harvested baitfish may be used on multiple waterbodies and may be transported away from the waterbody from which they were collected and retained for later use, provided that all of the following criteria are met:
 - 4.2.1 The personally harvested baitfish shall not be harvested from or have been previously used on a ~~black-list water~~ Restricted Water;
 - 4.2.2 Personally harvested baitfish shall only be used in the same baitfish zone they were harvested in; and
 - 4.2.3 A person using personally harvested baitfish on any waterbody that is different from the waterbody where the baitfish was harvested shall possess a wild baitfish endorsement in accordance with Subsection 6.0 of this regulation rule.
- 4.3 A person shall only harvest for use as bait those fish species listed under Subsection 8.1, 8.2, 8.3, and 8.4 of this regulation rule.
- 4.4 Personally harvested baitfish shall only be taken by the following methods: a) minnow traps no longer than eighteen inches with an entrance for fish not exceeding one inch in diameter, b) dip nets, cast nets, and umbrella nets not exceeding a total of 51 square feet of mesh, or a seine net not exceeding 25 feet in length, c) Open-water/ice fishing by hook and line.
- 4.5 No person shall personally harvest baitfish in seasonally closed waters for trout as listed in 10 V.S.A. App. § 122, Subsection ~~6~~7.0, except during the open season for trout. Personal baitfish harvest in seasonally closed waters during open seasons for trout shall only be conducted by open-water/ice fishing or the use of minnow traps no longer than eighteen inches with an entrance for fish not exceeding one inch in diameter.
- 4.6 All traps, nets, baitboxes or other holding receptacles capable of taking, holding or keeping live baitfish in public waters shall be marked with the name, address, and telephone number of the owner and user.
- 4.7 Baitfish may be held on the water in a baitbox as defined in Subsection 3.2 of this regulation rule.

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- 4.8 Only a person with a valid wild baitfish endorsement (Subsection 6.0) may transport unused personally harvested baitfish, collected in non-~~black-list waters~~ Restricted Water, away from waters of the state for later use. Baitfish may be held in waters of the baitfish zone where they were harvested provided the water is not a ~~black-list water~~ Restricted Water or waters described in Subsection 12.0. Outside of the baitfish zone where harvested, the baitfish shall be kept in a closed container isolated from any inflow of lake, pond, or stream water, or outflows to such waters of the state.
- 4.9 No person shall personally harvest baitfish from any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.
- 4.10 Fish eggs may be collected from legally harvested fish from Vermont waters, and used immediately as bait on the same water where taken unless that waterbody has been closed to baitfish collection. Personally harvested fish eggs shall not be transported and used in any waterbody other than the waterbody where the fish eggs were harvested. No person shall transport fish eggs away from a waterbody and return them to the same waterbody for use as bait unless they have been processed in a manner approved by the Department as described on the Department website.

5.0 Commercially Purchased Baitfish

- 5.1 No person shall import baitfish into the State of Vermont without a fish importation permit, except as provided for in subsections 5.8 and 5.9 of this **regulation rule**.
- 5.2 A person purchasing commercial baitfish shall retain a transportation receipt issued by a state-approved commercial bait dealer, authorizing transportation of baitfish overland. The receipt shall contain the following information: 1) A unique receipt identification number, 2) The name and telephone number of the bait dealer, 3) time and date of sale, 4) species purchased, 5) quantity purchased, 6) baitfish zone or ~~black-list water~~ Restricted Water (limited to one) in which the baitfish will be used, and 7) the signature of purchaser.
- 5.3 A person in possession of commercially purchased baitfish shall only use those baitfish in the baitfish zone or ~~black-list water~~ Restricted Water recorded on the transportation receipt and shall retain and exhibit the receipt upon request of the Commissioner or the Commissioner's designee(s).

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- 5.4 A transportation receipt shall be valid for 10 days from time and date of sale.
- 5.5 A person may transport unused commercially purchased baitfish away from waters of the state, and retain for later use in the same baitfish zone or ~~black-list water~~ Restricted Water as indicated on the baitfish transportation receipt, with the following prohibitions.
- 5.5.1 A person shall not transport unused commercially purchased baitfish away from a ~~black-list water~~ Restricted Water if the baitfish transportation receipt does not specify that ~~black-list water~~ Restricted Water.
- 5.5.2 A person shall not transport unused commercially purchased smelt for the use as bait away from a ~~black-list water~~ Restricted Water.
- 5.6 A person transporting unused commercially purchased baitfish away from waters of the state for later use may hold them in waters of the baitfish zone listed on the transportation receipt provided that the water is not a ~~black-list water~~ Restricted Water and the holding waters are not listed in subsection 12.0 of this regulation rule. Outside of the baitfish zone or ~~black-list water~~ Restricted Water listed on the transportation receipt, the commercially purchased baitfish shall be kept in a closed container isolated from any inflow of lake, pond, or stream water, or outflow to such waters of the state.
- 5.7 Baitfish may be held beyond the 10 days period in a baitfish zone or ~~black-list water~~ Restricted Water provided they remain in the same waterbody in a baitbox in accordance with Subsection 3.2 of this regulation rule.
- 5.8 A person may purchase baitfish from a New York baitshop for use in the Lake Champlain ~~black-list water~~ Restricted Water, provided the baitshop is Vermont-licensed, and the baitfish are accompanied by a Vermont-issued baitfish transportation receipt. For the purposes of this regulation rule, the Lake Champlain ~~black-list water~~ Restricted Water are defined in 10 V.S.A. Appendix § 122 Subsection 5.
- 5.9 A person may purchase baitfish from a New Hampshire baitshop for use in the Connecticut River ~~black-list water~~ Restricted Water, provided the baitshop is Vermont-licensed, and the baitfish are accompanied by a Vermont-issued baitfish transportation receipt. For the purposes of this regulation rule, the Connecticut River is defined as all waters of the river including the bays, setbacks, and tributaries, but only to the first highway bridge crossing said tributaries on the Vermont side.

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5.10 Commercially prepared and preserved baitfish and fish eggs available from retail stores may be purchased and used as bait, taken home, and kept for later use provided they are retained in the original packaging at all times.

6.0 Wild Baitfish Endorsement

6.1 Any person who wishes to use, sell, or transport personally harvested baitfish outside of the waterbody in which they were harvested must possess and exhibit upon request of the Commissioner or the Commissioner's designee(s) a wild baitfish endorsement as developed and administered by the Department.

6.2 A person who wishes to obtain a wild baitfish endorsement shall satisfactorily complete a wild baitfish certification course.

6.3 The wild baitfish certification course shall instruct participants regarding the requirements of the baitfish **regulation rules** and the vectors and risks associated with aquatic nuisance species and pathogens.

7.0 Commercial Bait Dealers

7.1 Any person who buys baitfish for resale or sells baitfish shall obtain a commercial bait dealers permit from the Commissioner except as provided for in subsection 7.2. Only persons operating a place of business and offering baitfish for sale to the public may apply for and hold a commercial bait dealers permit.

7.2 A commercial bait dealers permit is not required when:

7.2.1 A person only sells commercially preserved baitfish as defined in Subsection 3.13 of this **regulation rule**.

7.2.2 A person sells baitfish as specified by subsections 8.1 and 8.2 to another angler while on the same waterbody where the baitfish were personally harvested.

7.2.3 A person sells personally harvested rainbow smelt and meets the following criteria:

7.2.3.1 The personally harvested rainbow smelt shall be harvested, transported, and possessed in accordance with subsection 4.0 of this **regulation rule**.

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- 7.2.3.2 The buyer shall possess a valid zone-specific commercial bait dealers permit.
- 7.2.3.3 The commercial bait dealer's zone designation shall be the same zone from which the personally harvested rainbow smelt were harvested.
- 7.2.3.4 The seller shall possess a valid wild baitfish endorsement in accordance with subsection 6.0 of this regulation.
- 7.2.3.5 The seller shall complete and sign an affidavit, as specified by subsection 7.11.1 of this regulation, attesting the waterbody of origin for any personally harvested rainbow smelt that are sold.
- 7.3 Commercial bait dealers shall only purchase and sell the baitfish species listed under subsection 8.1 of this regulation. Commercial bait dealers may also sell rainbow smelt as bait, provided one of the following criteria are met:
- 7.3.1 Rainbow smelt are obtained from a fish hatchery approved by the Commissioner as set forth in subsection 7.5 of this regulation and its subsections: or
- 7.3.2 Rainbow smelt are harvested by open-water/ice fishing and sold for use on the same waterbody on which the bait dealer is located in accordance with subsection 7.6 of this regulation and its subsections; or
- 7.3.3 Rainbow smelt are commercially purchased or harvested in accordance with subsection 7.7 and its subsections.
- 7.4 Commercial bait dealers must declare in their permit application if they will be a statewide baitfish dealer, waterbody-specific baitfish dealer, or a zone-specific baitfish dealer (limited to one).
- 7.5 Statewide baitfish dealers are prohibited from possessing, buying or selling wild-caught baitfish.
- 7.5.1 Baitfish sold by statewide baitfish dealers shall originate from a fish hatchery approved by the Commissioner.
- 7.5.2 Statewide baitfish dealers shall hold or keep baitfish in waters drawn from a secure well, a municipal water source, or other water source approved by the Department.

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- 7.5.3 Baitfish sold by statewide baitfish dealers may be used in waters throughout the state, except those waters listed in subsection 12.0 of this regulationrule.
- 7.6 Waterbody specific baitfish dealers shall declare on their permit application the waterbody on which they are located.
- 7.6.1 Waterbody-specific baitfish dealers may harvest wild baitfish only from the declared waterbody and offer them for sale and use only on the declared waterbody.
- 7.6.2 The baitfish facilities of waterbody specific bait fish dealers shall discharge to their declared waterbody. The discharge treatment infrastructure shall adequately filter and disinfect water to the satisfaction of the Department. Note that this does not relieve the baitfish dealer from compliance with all other applicable requirements.
- 7.6.3 No waterbody-specific baitfish dealer shall harvest baitfish by netting in or on seasonally closed waters ~~for trout~~ as listed in 10 V.S.A. Appendix § 122 Subsection ~~67.0~~ unless otherwise permitted by their commercial bait dealers permit. Waterbody specific baitfish dealers shall not operate dip nets, cast nets, or umbrella nets exceeding 51 square feet of mesh, or a seine net exceeding 125 feet in length, for the purposes of taking fish for bait, unless otherwise permitted by their commercial bait dealers permit.
- 7.6.4 All traps, nets, baitboxes or other holding receptacles capable of taking, holding or keeping live baitfish in public waters shall be marked with the name, address, and telephone number of the owner and user.
- 7.6.5 No person shall commercially harvest baitfish on any waterbody of the state that is listed as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.
- 7.7 Zone-specific baitfish dealers shall declare on their permit application the waterbody on which they are located, the baitfish zone in which they are located, the baitfish zone from which they intend to harvest, and purchase wild baitfish (limited to one) and the baitfish zone where the baitfish they sell may be used (limited to one).

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- 7.7.1 Zone-specific baitfish dealers shall be located in the baitfish zone which they intend to harvest, purchase, hold, and sell baitfish in, with the following exceptions:
- 7.7.1.1 Baitfish may be purchased from a fish hatchery approved by the Commissioner outside of the zone-specific dealer's baitfish zone and sold as zone-specific baitfish.
 - 7.7.1.2 A Zone-specific baitfish dealer can be physically located outside of the baitfish zone in which they intend to sell baitfish for provided they hold or keep baitfish in water drawn from a secure water source as approved by the Department.
- 7.7.2 Zone-specific baitfish dealers shall harvest and purchase wild baitfish only from the declared baitfish zone where the baitfish they sell may be used, and such baitfish shall be offered for sale and use only in the declared baitfish zone or ~~black-list water~~ Restricted Water within the declared baitfish zone.
- 7.7.3 Zone-specific baitfish dealers may purchase wild rainbow smelt provided they meet the provisions of subsections 7.2.3 and 7.11.1 of this regulationrule.
- 7.7.4 Zone-specific baitfish dealers shall not harvest or purchase wild baitfish which are from or have been used previously on a ~~black-list water~~ Restricted Water nor shall they hold or keep baitfish in waters drawn from a ~~black-list water~~ Restricted Water.
- 7.7.5 The baitfish holding facilities of zone-specific baitfish dealers shall discharge to the declared baitfish zone or to a water treatment infrastructure which adequately filters and disinfects water to the satisfaction of the Department. Note that this does not relieve the baitfish dealer from compliance with all other applicable requirements.
- 7.7.6 No zone-specific baitfish dealer shall harvest baitfish by netting in seasonally closed waters ~~for trout~~ as listed in 10 V.S.A App § 122 subsection ~~6~~7.0, unless otherwise permitted by their commercial bait fish dealers permit. No zone-specific baitfish dealer shall operate dip nets, cast nets, or umbrella nets that exceed 51 square feet of mesh, or a seine net that exceeds 125 feet in length, for the purposes of taking fish for bait, unless otherwise permitted by their commercial bait dealers permit.

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- 7.7.7 All traps, nets, baitboxes, or other holding receptacles capable of taking, holding, or keeping live baitfish in public waters shall be marked with the name, address, and telephone number of the owner and user.
- 7.7.8 No person shall commercially harvest baitfish on any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.
- 7.8 A commercial bait dealer shall provide to each customer at the point of sale a copy of a transportation receipt containing the following information: 1) A unique receipt identification number, 2) The name and telephone number of the bait dealer, 3) time and date of sale, 4) species purchased, 5) quantity purchased, 6) baitfish zone or ~~black list water~~ Restricted Water (limited to one) in which the baitfish will be used, and 7) the signature of purchaser.
- 7.9 A transportation receipt shall be valid for 10 days from time and date of sale.
- 7.10 Receipt books shall be provided to commercial bait dealers by the Department.
- 7.11 Any holder of a commercial bait dealers permit shall maintain receipts or records for each lot of wholesaled hatchery-raised or wild-caught baitfish introduced into their shop. The receipts or records shall include: name, address and telephone number of seller (for wholesaled baitfish), and date received, species identification, and quantity purchased or harvested, for wholesaled and wild-caught baitfish. The permit holder shall retain the receipts and records for at least one year after the date of sale or harvest. Receipts or records shall be provided to the Department immediately upon request.
- 7.11.1 Any holder of a commercial bait dealers permit that purchases personally harvested wild rainbow smelt from a person shall maintain a list of purchases which includes: name, address, telephone number, and signature of the seller, date of sale, quantity of fish purchased, and waterbody of origin. Such form will be provided by the Department to the commercial bait dealer.

8.0 Approved Species of Fish for use as Bait

- 8.1 Banded killifish *Fundulus diaphanus*
Blacknose dace *Rhinichthys atratulus*

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Bluntnose minnow *Pimephales notatus*
Common shiner *Luxilus cornutus*
Creek chub *Semotilus atromaculatus*
Eastern silvery minnow *Hybognathus regius*
Emerald shiner *Notropis atherinoides*
Fallfish *Semotilus corporalis*
Fathead minnow *Pimephales promelas*
Golden shiner *Notemigonus crysoleucas*
Longnose dace *Rhinichthys cataractae*
Longnose sucker *Catostomus catostomus*
Mimic shiner *Notropis volucellus*
Northern redbelly dace ~~*Phoxinus*~~ *Chrosomus eos*
Spottail shiner *Notropis hudsonius*
White sucker *Catostomus commersoni*

- 8.2 Rainbow smelt *Osmerus mordax* may be taken only by open-water/ice fishing by hook and line and may be commercially sold as bait.
- 8.3 The following additional fish species, or parts thereof, may be taken only by open-water/ice fishing by hook and line and used for bait only in those waters where taken and shall not be transported alive from those waters.

Bluegill *Lepomis macrochirus*
Pumpkinseed *Lepomis gibbosus*
Rock bass *Ambloplites rupestris*
Yellow perch *Perca flavescens*

- 8.4 Lake Champlain – In addition to subsection 8.2, the following fish species, or parts thereof, may be taken only by open-water/ice fishing by hook and line in Lake Champlain and used as bait in Lake Champlain, as described in 10 V.S.A. App §122 subsection 5.0, and may not be commercially harvested or sold as bait; Alewife may only be used/possessed if dead:

Alewife *Alosa pseudoharengus*
White perch *Morone americana*

- 8.5 All other species of fish are prohibited for use as bait.

9.0 Commercial Bait Dealer Application Process

- 9.1 A person who wishes to obtain a commercial bait dealers permit shall apply to the Commissioner in writing on a form provided by the Department. The Department may require the applicant to submit such additional information as is necessary to determine that the permitted activities comply with the purposes of this regulation, including but

not limited to fish health testing, and an analysis of the impact of the sale of baitfish on Vermont's fish species, fisheries, and natural ecosystems and processes.

- 9.2 If the application is deficient, the Department shall inform the applicant of the deficiencies and return the application within 30 days of receipt, along with any associated fee, to the applicant for revision and re-submission.
- 9.3 If the application is denied, the Commissioner shall, within 30 days of receipt of application, send the applicant a written denial setting forth the reasons for the denial.

10.0 Permit Compliance

- 10.1 The Permittee shall make the permit available upon request by Commissioner or Commissioner's designee. Premises and equipment used by persons to take, harvest, purchase, store, or sell in baitfish shall be accessible for inspection by the Commissioner and his or her designee. Samples for species determination or disease examination shall be provided immediately upon request.
- 10.2 Permittees shall provide the Department with additional information as requested on an annual basis or prior to the re-issuance of a new permit.

11.0 Permit Revocation

- 11.1 The Commissioner may revoke any permit for: any violation of a permit; failure to comply with this **regulationrule**; a violation of any **regulationrules** of the Board; a violation of the provisions of Part 4, Title 10, Vermont Statutes Annotated; or if the Commissioner determines that the revocation is necessary to protect fish or fisheries of Vermont.
- 11.2 The Commissioner shall comply with all applicable requirements of 3 V.S.A. Chapter 25, related to any permit revocation.
- 11.3 Appeals of the decisions of the Commissioner are subject to the Vermont **RegulationRules** of Civil Procedure.

12.0 Waterbodies where the Use of fish as bait is prohibited

The use of fish in any form whether alive or dead for bait in fishing is prohibited in:

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Adams Reservoir, Woodford;
Beaver Pond, Holland;
Beck Pond, Newark;
Beebe Pond, Sunderland;
Big Mud Pond, Mt. Tabor;
Blake Pond, Sutton;
Bourn Pond, Sunderland;
Branch Pond, Sunderland;
Cary Pond, Walden;
Cow Mountain Pond, Granby;
Griffith Lake, Mt. Tabor;
Jobs Pond, Westmore;
Lake Pleiad, Hancock;
Lewis Pond, Lewis;
Little Rock Pond, Wallingford;
Martins Pond, Peacham;
~~McIntosh Pond, Royalton;~~
Mud Pond, Hyde Park;
North Pond, Chittenden;
Notch Pond, Ferdinand;
Red Mill Pond, Woodford;
Sterling Pond, Cambridge;
South America Pond, Ferdinand;
Stratton Pond, Stratton;
Unknown Pond, Averys Gore;
Unknown Pond, Ferdinand;
West Mountain Pond, Maidstone

and any additional waters created or reclaimed by the Department. This regulation rule shall be posted at all waters affected.

TITLE 10 Conservation and Development APPENDIX
CHAPTER 2. FISH
Subchapter 2. Seasons, Waters, and Limits

§ 141. Baitfish Rule

1.0 Authority

This rule is adopted pursuant to 10 V.S.A. §4081(b). In adopting this rule, the Fish and Wildlife Board is implementing the policy that the protection, propagation, control, management, and conservation of fish, wildlife and fur-bearing animals in this state is in the interest of the public welfare and that the safeguarding of this valuable resource for the people of the state requires a constant and continual vigilance.

In accordance with 10 V.S.A. §4082, this rule is designed to maintain the best health, population and utilization levels of Vermont's fisheries.

In accordance with 10 V.S.A. §4083, this rule establishes open seasons; establishes daily, season, possession limits and size limits; prescribes the manner and means of taking fish; and prescribes the purchase, sale, and use of baitfish.

2.0 Purpose

- 2.1 This rule applies to fish used as bait. This rule shall apply to all persons who take, possess, transport, use, purchase, or sell baitfish.
- 2.2 The purpose of this rule is to: a) conserve and protect the fish, and fisheries in the state, b) maintain the best health of species and natural ecological systems in the state, c) prevent the introduction or spread of diseases or parasites harmful to humans and wild species, and d) prevent the escape or release of non-native species or species that injure or compete with natural ecological systems and processes.

3.0 Definitions

- 3.1 "Application" means a specific form provided by the Department of Fish and Wildlife.
- 3.2 "Baitbox" means a receptacle used for holding or keeping baitfish alive for personal use. A legal baitbox shall not exceed 25 cubic feet in volume.

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- 3.3 "Baitfish" means fish species and parts thereof, living or dead, used for the purpose of attracting and catching fish.
- 3.4 "Baitfish zone" means a specific geographic area, where it is permissible to use baitfish in accordance with this rule, and the area is described and depicted on a map by the Commissioner and posted on the Department website.
- 3.5 "Commercially preserved baitfish" means baitfish which are chemically treated in a manner approved by the Department, and then packaged for retail sale.
- 3.6 "Commissioner" means the Commissioner of the Vermont Department of Fish and Wildlife.
- 3.7 "Department" means the Vermont Department of Fish and Wildlife.
- 3.8 "Fish hatchery" refers to any fish culture station, hatchery, or artificial rearing pond which grows or maintains baitfish for sale in Vermont.
- 3.9 "Ice fishing" means a manner of fishing as described in 10 V.S.A App. §122 Subsection 4.0.
- 3.10 "Non-Restricted Water" means any waterbody not included in the list of Restricted Waters
- 3.11 "Open-water fishing" means a manner of fishing as described in 10 V.S.A. App. § 122 Subsection 3.0.
- 3.12 "Permit" is a document from the Commissioner granting a Commercial Bait Dealers Permit.
- 3.13 "Personal baitfish harvest" and "Personally harvested baitfish" means baitfish taken for non-commercial use.
- 3.14 "Restricted Water" means a specific waterbody and any listed tributaries where the use of baitfish is restricted in accordance with this rule, and the waterbody is described and depicted on a map by the Commissioner and posted on the Department website.
- 3.15 "Waterbody" means any lake, pond, river, or stream including all tributaries upstream to the first barrier impassable to upstream fish movement.

4.0 Personal Baitfish Harvest

- 4.1 Personally harvested baitfish from Restricted Waters shall not be used on any other waters or transported away from the Restricted Water from which they were harvested.
- 4.2 Personally harvested baitfish may be used on multiple waterbodies and may be transported away from the waterbody from which they were collected and retained for later use, provided that all of the following criteria are met:
 - 4.2.1 The personally harvested baitfish shall not be harvested from or have been previously used on a Restricted Water;
 - 4.2.2 Personally harvested baitfish shall only be used in the same baitfish zone they were harvested in; and
 - 4.2.3 A person using personally harvested baitfish on any waterbody that is different from the waterbody where the baitfish was harvested shall possess a wild baitfish endorsement in accordance with Subsection 6.0 of this rule.
- 4.3 A person shall only harvest for use as bait those fish species listed under Subsection 8.1, 8.2, 8.3, and 8.4 of this rule.
- 4.4 Personally harvested baitfish shall only be taken by the following methods: a) minnow traps no longer than eighteen inches with an entrance for fish not exceeding one inch in diameter, b) dip nets, cast nets, and umbrella nets not exceeding a total of 51 square feet of mesh, or a seine net not exceeding 25 feet in length, c) Open-water/ice fishing by hook and line.
- 4.5 No person shall personally harvest baitfish in seasonally closed waters for trout as listed in 10 V.S.A. App. § 122, Subsection ~~6~~7.0, except during the open season for trout. Personal baitfish harvest in seasonally closed waters during open seasons for trout shall only be conducted by open-water/ice fishing or the use of minnow traps no longer than eighteen inches with an entrance for fish not exceeding one inch in diameter.
- 4.6 All traps, nets, baitboxes or other holding receptacles capable of taking, holding or keeping live baitfish in public waters shall be marked with the name, address, and telephone number of the owner and user.

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- 4.7 Baitfish may be held on the water in a baitbox as defined in Subsection 3.2 of this rule.
- 4.8 Only a person with a valid wild baitfish endorsement (Subsection 6.0) may transport unused personally harvested baitfish, collected in non-Restricted Water, away from waters of the state for later use. Baitfish may be held in waters of the baitfish zone where they were harvested provided the water is not a Restricted Water or waters described in Subsection 12.0. Outside of the baitfish zone where harvested, the baitfish shall be kept in a closed container isolated from any inflow of lake, pond, or stream water, or outflows to such waters of the state.
- 4.9 No person shall personally harvest baitfish from any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.
- 4.10 Fish eggs may be collected from legally harvested fish from Vermont waters, and used immediately as bait on the same water where taken unless that waterbody has been closed to baitfish collection. Personally harvested fish eggs shall not be transported and used in any waterbody other than the waterbody where the fish eggs were harvested. No person shall transport fish eggs away from a waterbody and return them to the same waterbody for use as bait unless they have been processed in a manner approved by the Department as described on the Department website.

5.0 Commercially Purchased Baitfish

- 5.1 No person shall import baitfish into the State of Vermont without a fish importation permit, except as provided for in subsections 5.8 and 5.9 of this rule.
- 5.2 A person purchasing commercial baitfish shall retain a transportation receipt issued by a state-approved commercial bait dealer, authorizing transportation of baitfish overland. The receipt shall contain the following information: 1) A unique receipt identification number, 2) The name and telephone number of the bait dealer, 3) time and date of sale, 4) species purchased, 5) quantity purchased, 6) baitfish zone or Restricted Water (limited to one) in which the baitfish will be used, and 7) the signature of purchaser.
- 5.3 A person in possession of commercially purchased baitfish shall only use those baitfish in the baitfish zone or Restricted Water recorded on the transportation receipt and shall retain and exhibit the receipt upon request of the Commissioner or the Commissioner's designee(s).

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- 5.4 A transportation receipt shall be valid for 10 days from time and date of sale.
- 5.5 A person may transport unused commercially purchased baitfish away from waters of the state, and retain for later use in the same baitfish zone or Restricted Water as indicated on the baitfish transportation receipt, with the following prohibitions.
 - 5.5.1 A person shall not transport unused commercially purchased baitfish away from a Restricted Water if the baitfish transportation receipt does not specify that Restricted Water.
 - 5.5.2 A person shall not transport unused commercially purchased smelt for the use as bait away from a Restricted Water.
- 5.6 A person transporting unused commercially purchased baitfish away from waters of the state for later use may hold them in waters of the baitfish zone listed on the transportation receipt provided that the water is not a Restricted Water and the holding waters are not listed in subsection 12.0 of this rule. Outside of the baitfish zone or Restricted Water listed on the transportation receipt, the commercially purchased baitfish shall be kept in a closed container isolated from any inflow of lake, pond, or stream water, or outflow to such waters of the state.
- 5.7 Baitfish may be held beyond the 10 days period in a baitfish zone or Restricted Water provided they remain in the same waterbody in a baitbox in accordance with Subsection 3.2 of this rule.
- 5.8 A person may purchase baitfish from a New York baitshop for use in the Lake Champlain Restricted Water, provided the baitshop is Vermont-licensed, and the baitfish are accompanied by a Vermont-issued baitfish transportation receipt. For the purposes of this rule, the Lake Champlain Restricted Water are defined in 10 V.S.A. Appendix § 122 Subsection 5.
- 5.9 A person may purchase baitfish from a New Hampshire baitshop for use in the Connecticut River Restricted Water, provided the baitshop is Vermont-licensed, and the baitfish are accompanied by a Vermont-issued baitfish transportation receipt. For the purposes of this rule, the Connecticut River is defined as all waters of the river including the bays, setbacks, and tributaries, but only to the first highway bridge crossing said tributaries on the Vermont side.
- 5.10 Commercially prepared and preserved baitfish and fish eggs available from retail stores may be purchased and used as bait, taken home, and kept for later use provided they are retained in the original packaging at all times.

6.0 Wild Baitfish Endorsement

- 6.1 Any person who wishes to use, sell, or transport personally harvested baitfish outside of the waterbody in which they were harvested must possess and exhibit upon request of the Commissioner or the Commissioner's designee(s) a wild baitfish endorsement as developed and administered by the Department.
- 6.2 A person who wishes to obtain a wild baitfish endorsement shall satisfactorily complete a wild baitfish certification course.
- 6.3 The wild baitfish certification course shall instruct participants regarding the requirements of the baitfish rules and the vectors and risks associated with aquatic nuisance species and pathogens.

7.0 Commercial Bait Dealers

- 7.1 Any person who buys baitfish for resale or sells baitfish shall obtain a commercial bait dealers permit from the Commissioner except as provided for in subsection 7.2. Only persons operating a place of business and offering baitfish for sale to the public may apply for and hold a commercial bait dealers permit.
- 7.2 A commercial bait dealers permit is not required when:
 - 7.2.1 A person only sells commercially preserved baitfish as defined in Subsection 3.13 of this rule.
 - 7.2.2 A person sells baitfish as specified by subsections 8.1 and 8.2 to another angler while on the same waterbody where the baitfish were personally harvested.
 - 7.2.3 A person sells personally harvested rainbow smelt and meets the following criteria:
 - 7.2.3.1 The personally harvested rainbow smelt shall be harvested, transported, and possessed in accordance with subsection 4.0 of this rule.
 - 7.2.3.2 The buyer shall possess a valid zone-specific commercial bait dealers permit.

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7.2.3.3 The commercial bait dealer's zone designation shall be the same zone from which the personally harvested rainbow smelt were harvested.

7.2.3.4 The seller shall possess a valid wild baitfish endorsement in accordance with subsection 6.0 of this rule.

7.2.3.5 The seller shall complete and sign an affidavit, as specified by subsection 7.11.1 of this rule, attesting the waterbody of origin for any personally harvested rainbow smelt that are sold.

7.3 Commercial bait dealers shall only purchase and sell the baitfish species listed under subsection 8.1 of this rule. Commercial bait dealers may also sell rainbow smelt as bait, provided one of the following criteria are met:

7.3.1 Rainbow smelt are obtained from a fish hatchery approved by the Commissioner as set forth in subsection 7.5 of this rule and its subsections: or

7.3.2 Rainbow smelt are harvested by open-water/ice fishing and sold for use on the same waterbody on which the bait dealer is located in accordance with subsection 7.6 of this rule and its subsections; or

7.3.3 Rainbow smelt are commercially purchased or harvested in accordance with subsection 7.7 and its subsections.

7.4 Commercial bait dealers must declare in their permit application if they will be a statewide baitfish dealer, waterbody-specific baitfish dealer, or a zone-specific baitfish dealer (limited to one).

7.5 Statewide baitfish dealers are prohibited from possessing, buying or selling wild-caught baitfish.

7.5.1 Baitfish sold by statewide baitfish dealers shall originate from a fish hatchery approved by the Commissioner.

7.5.2 Statewide baitfish dealers shall hold or keep baitfish in waters drawn from a secure well, a municipal water source, or other water source approved by the Department.

7.5.3 Baitfish sold by statewide baitfish dealers may be used in waters throughout the state, except those waters listed in subsection 12.0 of this rule.

7.6 Waterbody specific baitfish dealers shall declare on their permit application the waterbody on which they are located.

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- 7.6.1 Waterbody-specific baitfish dealers may harvest wild baitfish only from the declared waterbody and offer them for sale and use only on the declared waterbody.
- 7.6.2 The baitfish facilities of waterbody specific bait fish dealers shall discharge to their declared waterbody. The discharge treatment infrastructure shall adequately filter and disinfect water to the satisfaction of the Department. Note that this does not relieve the baitfish dealer from compliance with all other applicable requirements.
- 7.6.3 No waterbody-specific baitfish dealer shall harvest baitfish by netting in or on seasonally closed waters ~~for trout~~ as listed in 10 V.S.A. Appendix § 122 Subsection ~~67.0~~ unless otherwise permitted by their commercial bait dealers permit. Waterbody specific baitfish dealers shall not operate dip nets, cast nets, or umbrella nets exceeding 51 square feet of mesh, or a seine net exceeding 125 feet in length, for the purposes of taking fish for bait, unless otherwise permitted by their commercial bait dealers permit.
- 7.6.4 All traps, nets, baitboxes or other holding receptacles capable of taking, holding or keeping live baitfish in public waters shall be marked with the name, address, and telephone number of the owner and user.
- 7.6.5 No person shall commercially harvest baitfish on any waterbody of the state that is listed as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.
- 7.7 Zone-specific baitfish dealers shall declare on their permit application the waterbody on which they are located, the baitfish zone in which they are located, the baitfish zone from which they intend to harvest, and purchase wild baitfish (limited to one) and the baitfish zone where the baitfish they sell may be used (limited to one).
- 7.7.1 Zone-specific baitfish dealers shall be located in the baitfish zone which they intend to harvest, purchase, hold, and sell baitfish in, with the following exceptions:
- 7.7.1.1 Baitfish may be purchased from a fish hatchery approved by the Commissioner outside of the zone-specific dealer's baitfish zone and sold as zone-specific baitfish.

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- 7.7.1.2 A Zone-specific baitfish dealer can be physically located outside of the baitfish zone in which they intend to sell baitfish for provided they hold or keep baitfish in water drawn from a secure water source as approved by the Department.
- 7.7.2 Zone-specific baitfish dealers shall harvest and purchase wild baitfish only from the declared baitfish zone where the baitfish they sell may be used, and such baitfish shall be offered for sale and use only in the declared baitfish zone or Restricted Water within the declared baitfish zone.
- 7.7.3 Zone-specific baitfish dealers may purchase wild rainbow smelt provided they meet the provisions of subsections 7.2.3 and 7.11.1 of this rule.
- 7.7.4 Zone-specific baitfish dealers shall not harvest or purchase wild baitfish which are from or have been used previously on a Restricted Water nor shall they hold or keep baitfish in waters drawn from a Restricted Water.
- 7.7.5 The baitfish holding facilities of zone-specific baitfish dealers shall discharge to the declared baitfish zone or to a water treatment infrastructure which adequately filters and disinfects water to the satisfaction of the Department. Note that this does not relieve the baitfish dealer from compliance with all other applicable requirements.
- 7.7.6 No zone-specific baitfish dealer shall harvest baitfish by netting in seasonally closed waters as listed in 10 V.S.A App § 122 subsection 6.0, unless otherwise permitted by their commercial bait fish dealers permit. No zone-specific baitfish dealer shall operate dip nets, cast nets, or umbrella nets that exceed 51 square feet of mesh, or a seine net that exceeds 125 feet in length, for the purposes of taking fish for bait, unless otherwise permitted by their commercial bait dealers permit.
- 7.7.7 All traps, nets, baitboxes, or other holding receptacles capable of taking, holding, or keeping live baitfish in public waters shall be marked with the name, address, and telephone number of the owner and user.
- 7.7.8 No person shall commercially harvest baitfish on any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.

- 7.8 A commercial bait dealer shall provide to each customer at the point of sale a copy of a transportation receipt containing the following information: 1) A unique receipt identification number, 2) The name and telephone number of the bait dealer, 3) time and date of sale, 4) species purchased, 5) quantity purchased, 6) baitfish zone or Restricted Water (limited to one) in which the baitfish will be used, and 7) the signature of purchaser.
- 7.9 A transportation receipt shall be valid for 10 days from time and date of sale.
- 7.10 Receipt books shall be provided to commercial bait dealers by the Department.
- 7.11 Any holder of a commercial bait dealers permit shall maintain receipts or records for each lot of wholesaled hatchery-raised or wild-caught baitfish introduced into their shop. The receipts or records shall include: name, address and telephone number of seller (for wholesaled baitfish), and date received, species identification, and quantity purchased or harvested, for wholesaled and wild-caught baitfish. The permit holder shall retain the receipts and records for at least one year after the date of sale or harvest. Receipts or records shall be provided to the Department immediately upon request.
- 7.11.1 Any holder of a commercial bait dealers permit that purchases personally harvested wild rainbow smelt from a person shall maintain a list of purchases which includes: name, address, telephone number, and signature of the seller, date of sale, quantity of fish purchased, and waterbody of origin. Such form will be provided by the Department to the commercial bait dealer.

8.0 Approved Species of Fish for use as Bait

- 8.1 Banded killifish *Fundulus diaphanus*
 Blacknose dace *Rhinichthys atratulus*
 Bluntnose minnow *Pimephales notatus*
 Common shiner *Luxilus cornutus*
 Creek chub *Semotilus atromaculatus*
 Eastern silvery minnow *Hybognathus regius*
 Emerald shiner *Notropis atherinoides*
 Fallfish *Semotilus corporalis*
 Fathead minnow *Pimephales promelas*
 Golden shiner *Notemigonus crysoleucas*
 Longnose dace *Rhinichthys cataractae*

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Longnose sucker *Catostomus catostomus*
Mimic shiner *Notropis volucellus*
Northern redbelly dace ~~*Phoxinus*~~ *Chrosomus eos*
Spottail shiner *Notropis hudsonius*
White sucker *Catostomus commersoni*

- 8.2 Rainbow smelt *Osmerus mordax* may be taken only by open-water/ice fishing by hook and line and may be commercially sold as bait.
- 8.3 The following additional fish species, or parts thereof, may be taken only by open-water/ice fishing by hook and line and used for bait only in those waters where taken and shall not be transported alive from those waters.

Bluegill *Lepomis macrochirus*
Pumpkinseed *Lepomis gibbosus*
Rock bass *Ambloplites rupestris*
Yellow perch *Perca flavescens*

- 8.4 Lake Champlain – In addition to subsection 8.2, the following fish species, or parts thereof, may be taken only by open-water/ice fishing by hook and line in Lake Champlain and used as bait in Lake Champlain, as described in 10 V.S.A. App §122 subsection 5.0, and may not be commercially harvested or sold as bait; Alewife may only be used/possessed if dead:

Alewife *Alosa pseudoharengus*
White perch *Morone americana*

- 8.5 All other species of fish are prohibited for use as bait.

9.0 Commercial Bait Dealer Application Process

- 9.1 A person who wishes to obtain a commercial bait dealers permit shall apply to the Commissioner in writing on a form provided by the Department. The Department may require the applicant to submit such additional information as is necessary to determine that the permitted activities comply with the purposes of this rule, including but not limited to fish health testing, and an analysis of the impact of the sale of baitfish on Vermont's fish species, fisheries, and natural ecosystems and processes.
- 9.2 If the application is deficient, the Department shall inform the applicant of the deficiencies and return the application within 30 days of receipt, along with any associated fee, to the applicant for revision and re-submission.

- 9.3 If the application is denied, the Commissioner shall, within 30 days of receipt of application, send the applicant a written denial setting forth the reasons for the denial.

10.0 Permit Compliance

- 10.1 The Permittee shall make the permit available upon request by Commissioner or Commissioner's designee. Premises and equipment used by persons to take, harvest, purchase, store, or sell in baitfish shall be accessible for inspection by the Commissioner and his or her designee. Samples for species determination or disease examination shall be provided immediately upon request.
- 10.2 Permittees shall provide the Department with additional information as requested on an annual basis or prior to the re-issuance of a new permit.

11.0 Permit Revocation

- 11.1 The Commissioner may revoke any permit for: any violation of a permit; failure to comply with this rule; a violation of any rules of the Board; a violation of the provisions of Part 4, Title 10, Vermont Statutes Annotated; or if the Commissioner determines that the revocation is necessary to protect fish or fisheries of Vermont.
- 11.2 The Commissioner shall comply with all applicable requirements of 3 V.S.A. Chapter 25, related to any permit revocation.
- 11.3 Appeals of the decisions of the Commissioner are subject to the Vermont Rules of Civil Procedure.

12.0 Waterbodies where the use of fish as bait is prohibited

The use of fish in any form whether alive or dead for bait in fishing is prohibited in:

Adams Reservoir, Woodford;
Beaver Pond, Holland;
Beck Pond, Newark;
Beebe Pond, Sunderland;
Big Mud Pond, Mt. Tabor;
Blake Pond, Sutton;
Bourn Pond, Sunderland;
Branch Pond, Sunderland;

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Cary Pond, Walden;
Cow Mountain Pond, Granby;
Griffith Lake, Mt. Tabor;
Jobs Pond, Westmore;
Lake Pleiad, Hancock;
Lewis Pond, Lewis;
Little Rock Pond, Wallingford;
Martins Pond, Peacham;
Mud Pond, Hyde Park;
North Pond, Chittenden;
Notch Pond, Ferdinand;
Red Mill Pond, Woodford;
Sterling Pond, Cambridge;
South America Pond, Ferdinand;
Stratton Pond, Stratton;
Unknown Pond, Averys Gore;
Unknown Pond, Ferdinand;
West Mountain Pond, Maidstone

and any additional waters created or reclaimed by the Department. This rule shall be posted at all waters affected.