

## Final Proposed Filing - Coversheet

### **Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**10 V.S.A. App. § 141 Baitfish Regulation**

\_\_\_\_\_/s/ Christopher Herrick\_\_\_\_\_, on 5/25/2023  
(signature) (date)

Printed Name and Title:

Christopher Herrick, Commissioner  
Vermont Department of Fish and Wildlife  
Executive Secretary, Vermont Fish and Wildlife Board

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

**10 V.S.A. App. § 141 Baitfish Regulation**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

23P008

3. ADOPTING AGENCY:

Vermont Fish and Wildlife Board

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Catherine Gjessing

Agency: Vermont Fish and Wildlife Department

Mailing Address: 1 National Life Drive, Davis 2,  
Montpelier, VT 05620-3208

Telephone: 802-595-1331 Fax: 802-828-1250

E-Mail: catherine.gjessing@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://vtfishandwildlife.com/about-us/fish-and-wildlife-board/board-rules>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Eric Palmer

Agency: Vermont Fish and Wildlife Department

Mailing Address: 1 National Life Dr., Davis 2, Montpelier,  
VT 05620

Telephone: 802-535-7635 Fax: 802-828-1250

E-Mail: eric.palmer@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

10 V.S.A. §§ 4081-4083

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Title 10 V.S.A. § 4082 provides that the Vermont Fish and Wildlife Board has the authority to "adopt rules, under 3 V.S.A. chapter 5 . . . for the regulation of fish and wild game and the taking thereof." Title 10 § 4083 provides that the regulations of the Board may establish seasons, taking limits, territorial limits, restrictions, the means of taking, and the "type or kinds of bait." This rule regulates the purchase, use and sale of baitfish and the territorial and taking limits for fish.

9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The purpose of the baitfish rule is to protect Vermont waters from invasive species and diseases that would adversely impact fisheries and aquatic ecosystem. The proposed rule amendments revise the terminology describing the waters where baitfish is "restricted" and specifically cannot be used or transported. The rule also amends the list of bait restricted waters to protect the fisheries in the appropriate waterbodies.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The amendments include a technical correction to the terminology that describes those waters where the use and transport of bait is restricted, for greater accuracy. Note that the technical correction does not change the meaning of the rule. The second change is an update to the list of waters where baitfish are not allowed to be used and reflects updates from biologists on waterbodies where a pond trout fishery is being sustained. Beck Pond, Newark; Cary Pond, Walden; Lake Pleiad, Hancock; Mud Pond, Hyde Park; and West Mountain Pond, Maidstone were added to the list of waters where bait is not allowed. The use of baitfish on these waters could undermine the trout fisheries. The rule is also amended to allow bait on McIntosh Pond, Royalton because there is no sustainable trout fishery there.

**16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

The rule is explicitly authorized by statute and is consistent with the policies of protecting state fish and fisheries resources, as well as ensuring that Vermonters have reasonable access to recreational fishing.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Department staff including wardens; individuals who fish, fishing guides, and individuals and businesses who sell baitfish.

**18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

This proposal will have no economic effect but will increase fishing opportunities in Vermont.

**19. A HEARING WAS HELD.**

**20. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 5/10/2023

Time: 06:30 PM

Street Address: 190 Junction Rd, Berlin, VT

Zip Code: 05602



URL for Virtual:

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Date: 5/11/2023

Time: 06:30 PM

Street Address:

Zip Code:

URL for Virtual: [http://teams.microsoft.com/l/meetup-join/19:meeting\\_ytjhytbnwetytk0oc00owrhltk2mjctzdk5mwr\\_iogi2zthh@thread.v2/0?context={\"tid\":\"20b4933b-baad-433c-9c02-70edcc7559c6\", \"oid\":\"4ee62ede-e470-4393-b256-52d026796782\"}](http://teams.microsoft.com/l/meetup-join/19:meeting_ytjhytbnwetytk0oc00owrhltk2mjctzdk5mwr_iogi2zthh@thread.v2/0?context={\)

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

5/19/2023

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

fish

fishing

angling

bait

restricted waters

**Fish & Wildlife Department**  
1 National Life Drive, Dewey Building  
Montpelier, VT 05620-3208  
[www.VTFishandWildlife.com](http://www.VTFishandWildlife.com)

[phone] 802-828-1454  
[fax] 802-828-1250  
[tdd] 802-828-3345

*Agency Of Natural Resources*

May 25, 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 Regulations.

The purpose of the baitfish regulations are to protect Vermont waters from invasive species and diseases that would adversely impact fisheries and aquatic ecosystems, while still providing fishing opportunities to anglers. The proposed rule amendments revise the terminology describing the waters where baitfish is "restricted" and specifically cannot be used on other waterbodies or transported. The proposed amendments to the terminology does not change the meaning of the rule. The rule also amends the list of bait prohibited waters to protect the fisheries in the appropriate waterbodies based on updates from biologists on waterbodies where a pond trout fishery is located and is being sustained. Beck Pond, Newark; Cary Pond, Walden; Lake Pleiad, Hancock; Mud Pond, Hyde Park; and West Mountain Pond, Maidstone were added to the list of waters where baitfish use is not allowed. The use of baitfish on these waters could undermine the trout fisheries. The rule is also amended to allow the use of baitfish on McIntosh Pond, Royalton because there is no sustainable trout fishery there.

The Board received two comments on this rule which are attached to this letter. The comments were well beyond the scope of the rule and as such, no changes were made to the rule.

- The comment from Ms. Potter was a complaint about finding dead baitfish, but did not suggest any changes to the rule.
- The comment forwarded by Steve Fisk from Rich Langdon repeated a concern Mr. Langdon had raised previously about the use of Bluntnose Minnow as bait in the Connecticut River drainage. As Mr. Langdon indicates, he was a member of the baitfish team when this species was discussed in 2002. He was concerned that the species was not native to the Connecticut River. The baitfish team decided that this species, though not native, was already widespread in the Connecticut drainage, and was not a threat to

other native species. Mr. Langdon was present for these discussions. There is no new information that would change how this issue was addressed in 2002.

Thank you for your assistance and do not hesitate to contact me at 802-595-3331 or [catherine.gjessing@vermont.gov](mailto: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

## Adopting Page

### **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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1. TITLE OF RULE FILING:

**10 V.S.A. App. § 141 Baitfish Regulation**

2. ADOPTING AGENCY:

Vermont Fish and Wildlife Board

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

19-023, Baitfish Regulation, eff. Jan. 1, 2020.