

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:

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={\)

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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

[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 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.

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.



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: Monday, March 13, 2023, virtually via Microsoft Teams
Members Present: Chair Sean Brown, Brendan Atwood, Jared Adler, John Kessler, Diane Sherman, Michael Obuchowski, Donna Russo-Savage and Nicole Dubuque
Members Absent: Jennifer Mojo
Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the February 22, 2023 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- Note: An emergency rule titled 'Emergency Administrative Rules for Notaries Public Remote Notarization', by the Office of Professional Regulation was supported by ICAR Chair Brown on 03/09/23
 - These Emergency Rules allow an individual to satisfy the "personal appearance" requirement for the performance of notarial acts by appearing before a notary public through a secure communication link using specific protocols and standards.
 - If these Emergency Rules expire before rules are adopted to implement Act 171, Vermont notaries public will no longer be permitted to perform remote notarial acts, thus hampering the performance of crucial transactions.
- No public comments made.
- Presentation of Proposed Rules on pages 2-4 to follow.
 1. 10 V.S.A. App. § 141 Baitfish Regulation, Vermont Fish and Wildlife Board, page 2
 2. Manufactured Food Rule, Vermont Department of Health, page 3
 3. Rule Governing Outage Reporting Requirements for Originating Carriers and Electric Power Companies, Vermont Enhanced 911 Board, page 4
- Next scheduled meeting is Monday, April 10, 2023 at 2:00 p.m.
- 2:50 p.m. meeting adjourned

Proposed Rule: 10 V.S.A. App. § 141 Baitfish Regulation, Vermont Fish and Wildlife Board
Presented By: Catherine Gjessing and Margaret Murphy

Motion made to accept the rule by Brendan Atwood, seconded by Mike Obuchowski, and passed unanimously with the following recommendations:

1. Proposed Filing – Coversheet
 - a. #8: Begin with a statement as to what the rule does overall. Include some language from #9 as to how the list was being amended and why protect the trout fisheries.
 - b. #9: Change ‘amendment’ to ‘amendments’. Clarify ‘housekeeping change’ and state that it’s not a substance change. Add language to the last sentence to clarify that there is no longer a sustainable trout fishery there.
2. Adopting Page, #4: Remove last parenthetical.
3. Economic Impact Analysis
 - a. Clarify that fishing will still be allowed, however they won’t be using bait in those waters.
 - b. #3: Include the list in #11 of the Proposed Filing – Coversheet.
 - c. #8: Add a period at the end of the sentence.
 - d. #9: Add based upon information for biological protections.
4. Environmental Impact Analysis
 - a. #3: Change ‘not’ to ‘no’.
 - b. #4: Include language that this is part of a water quality analysis and the impact pertaining to that.
5. Public Input Maximization Plan, #4: Define and broaden ‘other interested individuals’ to be more specific and include bait fish dealers and others as appropriate.

DRAFT



Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

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

2. ADOPTING AGENCY:

Vermont Fish and Wildlife Board

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Affected persons include the Department staff including biologists and wardens; individuals who fish, fishing guides, and individuals and businesses who sell baitfish. The proposed rule modifies terminology used to describe waters where baitfish use is restricted and revises the list of waterbodies where baitfish use is prohibited. Restricting the use of bait in waterbodies

does not mean that fishing is prohibited, only that bait cannot be used from other waterbodies. As such, there will be a negligible economic impact on affected parties, and will continue to provide ample fishing opportunities in Vermont.

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No effect on schools

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

No effect on schools

6. **IMPACT ON SMALL BUSINESSES:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

No effect on small businesses

7. **SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.**

Because the rules are only changing terminology, and a handful of waterbodies where baitfish is not allowed, there are no burdens or costs to small businesses to comply with the proposed rule change.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

If this proposal is not implemented, the angling public would not experience any change in current baitfish use opportunities.

9. **SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.**

The proposed rule removes terminology that may exclude persons of color from participating in fishing

activities and also adds a few waterbodies to those listed as prohibited from baitfish use in order to protect trout fisheries. The selection of certain waterbodies was based on surveys conducted by Department fisheries biologists. The economic effects, if any, will be positive overall and this analysis is sufficient.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

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

2. ADOPTING AGENCY:

Vermont Fish and Wildlife Board

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

The proposed rule will have no impact on the emission of greenhouse gases.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

There will be no impact on water from the proposed rule except that the rule protects existing trout fisheries from the invasive bait species and diseases, and is designed to protect existing ecosystems.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
There will be no impact on land use from the proposed rule.
6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*
The proposed rule may slightly increase recreational angler activity in the state.
7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
There will be no impact on the state's climate from the proposed rule.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
The proposed rule makes the baitfish regulations more inclusive by changing terminology while still providing needed biological protections in coldwater trout ponds.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
This analysis clearly explains the potential environmental impacts and benefits associated with this rule.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

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

1. TITLE OF RULE FILING:

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

2. ADOPTING AGENCY:

Vermont Fish and Wildlife Board

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Board meetings regarding all rulemaking are open to the public and the public is allowed to comment at every Board meeting. The Board votes to initiate the rulemaking process before filing with ICAR, votes after the public comment period, and then again before final adopted rules are filed with the Secretary of State. The public is free to comment to individual Board members and to the Department at any time during the rulemaking process. In addition, the board will hold two public hearings (one virtual, one in person) on the rule and have a public comment period that exceeds thirty days. The rule will be posted on the Department and Board websites; and the Department will publicize the rule amendments in social media and press releases.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Public Input

Board members, Department staff including wardens and biologists, individuals who fish, fishing guides, and individuals and businesses who sell baitfish.

From: Janet Potter <jsharkeypotter@gmail.com>
Sent: Tuesday, May 9, 2023 1:58 PM
To: ANR - FW Public Comment
Subject: bait fish

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello,

I was out canoeing early on Lake St. Catherine with my husband (over April break 4/12), and there were a number of bait fish floating and washed along shore...one was swimming in circles belly up--it really felt like this was littering, and the fish still alive was sad, given the ice was out so it must have been suffering there for a while.

Janet Potter,
White River Junction

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From: ANR - FW Information
Sent: Monday, May 15, 2023 9:30 AM
To: ANR - FW Public Comment
Subject: FW: May Wild Baitfish Public Hearings

From: ANR - FW Information <ANR.FWInformation@vermont.gov>
Sent: Monday, May 15, 2023 9:07 AM
To: ANR - FW Information <ANR.FWInformation@vermont.gov>
Cc: Good, Shawn <Shawn.Good@vermont.gov>
Subject: FW: May Wild Baitfish Public Hearings

From: steve fiske <stevefiskevt@gmail.com>
Sent: Saturday, May 13, 2023 12:58 PM
To: ANR - FW Information <ANR.FWInformation@vermont.gov>
Subject: Fwd: May Wild Baitfish Public Hearings

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

FYI from Rich Langdon

----- Forwarded message -----

From: Richard Langdon <richlangdon01@gmail.com>
Date: Wed, May 10, 2023 at 9:37 PM
Subject: Re: May Wild Baitfish Public Hearings
To: steve fiske <stevefiskevt@gmail.com>

I'm close to submitting a manuscript for publication on the zoogeography of vermont fishes showing which species are native Where. FWD could probably use the information. The only species I object to using for bait in the Connecticut drainage blunt nose minnow it's not native there. I was on the baitfish team for a while the original regulation took a while to come up with cause it was pretty complicated.

Sent from my iPhone

On May 10, 2023, at 8:05 PM, steve fiske <stevefiskevt@gmail.com> wrote:

----- Forwarded message -----

From: Vermont Fish & Wildlife Department <fwinformation@vermont.gov>
Date: Tue, May 9, 2023 at 11:58 AM
Subject: May Wild Baitfish Public Hearings
To: <stevefiskevt@gmail.com>




Wild Baitfish Public Hearings

The Vermont Fish and Wildlife Department proposes a change to the state's baitfish regulations that will update some terminology and the lists of waters where baitfish may not be used. The Vermont Fish and Wildlife Board will hold two public hearings about the changes in May and invites public comments. [Read the Baitfish Regulation Proposal here.](#)

Hearing 1: May 10th, 6:30pm


ANR Annex
190 Junction Road
Berlin, VT 05602



Hearing 2: May 11, 6:30pm

Virtual Meeting on Microsoft Teams
[Microsoft Teams Link to Join](#)

In addition to the public hearings, anyone can leave a comment on the proposals by emailing ANR.FWPublicComment@vermont.gov by May 19.




Vermont Fish & Wildlife Department's Public Hearings Schedule can be found [here](#).

Thank you for supporting Vermont's fisheries with a 2023 fishing license!

Vermont Fish & Wildlife
802.828.1000
fwinformation@vermont.gov
www.vtfishandwildlife.com

Connect with us



Vermont Fish & Wildlife Department | 1 National Drive, Davis 2, Montpelier, VT 05620-3208

[Unsubscribe stevefiskevt@gmail.com](mailto:Unsubscribe_stevefiskevt@gmail.com)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by fwinformation@vermont.gov

Annotated
Text

APPENDIX 141

TITLE 10 Conservation and Development APPENDIX

CHAPTER 2. FISH

Subchapter 2. Seasons, Waters, and Limits

§ 141. Baitfish Regulation

1.0 Authority

This regulation is adopted pursuant to 10 V.S.A. §4081(b). In adopting this regulation, 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 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 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 applies to fish used as bait. This regulation shall apply to all persons who take, possess, transport, use, purchase, or sell baitfish.

2.2 The purpose of this regulation 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.

APPENDIX 141

- 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, 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, 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

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- 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.
- 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.
- 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.

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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.
- 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. Outside of the baitfish zone or ~~black-listed 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.
- 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, 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, 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 regulations 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.

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.

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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 regulation.
- 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 regulation.
- 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 ~~67.0~~, 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

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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 regulation; a violation of any regulations 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 Regulations 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 shall be posted at all waters affected.

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

§ 141. Baitfish Regulation

1.0 Authority

This regulation is adopted pursuant to 10 V.S.A. §4081(b). In adopting this regulation, 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 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 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 applies to fish used as bait. This regulation shall apply to all persons who take, possess, transport, use, purchase, or sell baitfish.

2.2 The purpose of this regulation 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, 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 regulation, 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 regulation.
- 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.
- 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 regulation.
- 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 regulation.
- 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 regulation. 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 regulation.
- 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 regulation, 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 regulation, 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

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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 regulations 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.
 - 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.
 - 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 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.
- 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 regulation.

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- 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).
- 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:

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- 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 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 regulation.
- 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.

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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*

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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.