

## Vermont Fish and Wildlife Board

### Meeting Minutes from Wednesday, September 19<sup>th</sup>, 2018

The Vermont Fish and Wildlife Board held a meeting at 6:15 p.m. on September 19<sup>th</sup>, 2018 at [1 National Life Drive, Montpelier VT 05620](#) in the Dewey Building.

**Members of the Board in attendance:** Kevin Lawrence (Board Chair), Theresa Elmer (Vice Chair), Johanna Laggis, Cheryl Frank Sullivan, Wendy Butler, Tim Biebel, Dennis Mewes, Mike Kolsun, Bryan McCarthy, Bill Pickens, Pete Allard, David Fielding, and David Robillard.

**Fish and Wildlife Department Staff:** Louis Porter (Commissioner), Mark Scott (Director of Wildlife), Eric Palmer (Director of Fisheries), Col. Jason Batchelder (Director of Law Enforcement), Susan Warner (Director of Outreach) Catherine Gjessing (General Counsel), Kim Royar (Wildlife Biologist), Will Duane (Executive Assistant), Lt. David Gregory (Game Warden), Will Seegers (Game Warden), Adam Miller (Fish Culture Operations Manager) Bernie Pientka (Fish Biologist), Corrinna Parnapy (Fish Program Manager), Lee Simard (Fish Biologist),

**Members of the Public in Attendance:** Rozz Finn, Sherry Saint-Germain, Kristen Cameron, Brenna Galdenzi, Rhonna Gable, Barry Londeree

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The Board meeting was called to order at 6:15 PM, by Board Chair Kevin Lawrence

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#### 1. Approval of May 23<sup>rd</sup>, 2018 Meeting Minutes

**Motion:** Vice Chair Theresa Elmer moved that the minutes of the May 23<sup>rd</sup>, 2018 Board meeting be approved as drafted. Cheryl Frank Sullivan seconded the motion.

**Vote:** 10-0 voice vote in favor of the motion. 3 Members who were absent during the previous Board meeting abstained.

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#### 2. New Member Introduction

Commissioner Porter introduced Department staff to new Board Members Wendy Butler from Addison County and Bryan McCarthy from Grande Isle County.

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#### 3. Public Comments (2 minutes per speaker)

**Roz Finn:** 3 Comments to share with the Board: **(1)** Why is the Fish and Wildlife Department not prohibiting toothed leghold traps; they are inhumane. Licensed trappers are not allowed to use these traps, why are those who trap for compensation not prohibited from using them? **(2)** VT statute on cruelty to animals states that all animals are sentient beings. If a wild animal is a sentient being like a domestic animal, why are there no humane standards for killing them, if they must be killed. Trapping is not a humane way of killing. **(3)** Why are young children who go to conservation camp being taught to trap, this is deliberately teaching them to be cruel to animals

**Kristen Cameron:** The Vermont State Code of Ethics states that a public official shall not engage in any business, employment, or transaction or professional activity that conflicts with the performance of their duty as a public official. Also, a public official shall avoid any actions that create a potential or actual conflict with their official duties, or any appearance of a potential or actual conflict. As the Board considers regulations on trapping for compensation, I recommend that board members who trap for compensation recuse themselves from any deliberation or decision that would in effect regulate their profession. Also, please consult with groups like Protect Our Wildlife, in addition to the Vermont Trappers Association, when seeking public input on trapping regulations.

**Rhonna Gable:** I'm interested in the composition of the Board because I don't feel it represents the views of wildlife advocates. A healthy Board would represent various constituents and not just the hunting and trapping community. I'd like to have a conversation about how the Board can cultivate diversity so that it can represent all of its constituents. I'd like to advocate for the ban of toothed leghold traps. A large portion of the population would like to see trapping banned, the proposals being offered are compromises. Please remain open minded and think about the interests of all of your constituents.

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#### **4. Nuisance Trapping Petition Action**

The Department and Board received a petition for regulatory action from Protect Our Wildlife on the regulation of trapping animals in defense of property for compensation. Brenna Galdenzi, President of Protect Our Wildlife, presented for the group. The text of the petition is attached at the end of these minutes.

The petition presentation focused on several specific concerns: consumer protection, public safety, humane practices, and increased regulation. The comments are summarized here:

**Permitting:** Trapping for compensation is different than in-season trapping where people trap for recreation or hobby interest. Trapping in defense of property has a different motivation. The Department should institute a permitting and training program. Fees should be paid to the Department and used for wildlife rehabilitation. Training should focus on avoiding conflict and non-lethal options. The trapping in defense of property often happens during the spring and summer leaving animals orphaned.

- New Hampshire had a NWCO training session. That could be a model for a Vermont program

**Consumer protection:** People want humane solutions to conflicts. There is an opportunity for abuse if the practice goes unregulated.

**Public Safety:** Those who want humane options may injure themselves if they cannot hire a humane operator.

**Best Management practices:** Why are toothed leghold traps and snares allowed for nuisance trapping? These cause suffering and make it impossible to release non-target species. How is a Warden going to know if a toothed-trap they find is a legal nuisance trap or an illegal out of season trap?

Protect Our Wildlife asked for feedback on the petition.

The Board Chair requested that the Board take action on the petition when it reviews the Department's proposal on trapping for compensation as required under Act 170. The petitioner was agreeable to that suggestion.

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## **5. Fish Regulatory Proposal**

Commissioner Porter provided background on the recent process of revisiting the baitfish regulations in Vermont. The Department provided proposals for modifying the regulations of 3 specific bodies of water and 3 potential options specifically on baitfish for the Board's review.

Eric Palmer, Director of Fisheries, explained to the Board the process and timeline used to evaluate the regulations that the Department is proposing. In addition to the substantive changes proposed he Fisheries staff recommends that the baitfish regulations be removed from 10 VSA app., section 122 of the fish regulations and added as a new section number 141.

Fisheries Biologist Bernie Pientka explained the changes to section 122 of the fish regulations. Jobs Pond in Newark and Martin's Pond in Peacham are currently under a test water designation. The proposed change would remove this designation and place them under regulations with a two-trout limit.

The Department also proposed changes for a certain section of the Lamoille River. In 2007 this section was put under special regulations to promote wild trout. There was no observable increase in catch rate and the Department observed that water temperatures in this section were not beneficial to wild trout. The proposal presented would rescind this special regulation and move this section back to general regulations.

**Motion:** Board Chair Kevin Lawrence Motioned to open section 122 of the Fish and Wildlife regulations for rulemaking, to add Job's and Martin's Ponds to the list of 2-trout limit waterbodies, to rescind the special regulations on the Lamoille River, and to separate out and vote on the baitfish recommendations as presented by the Department. The motion was seconded by Board Member Tim Biebel.

**Vote:** 13-0 in favor of the motion.

Fish Culture Operations Manager Adam Miller and Fisheries Biologist Lee Simard presented 3 options to the Board for the regulation of Baitfish in Vermont. The options presented to the Board are attached to these minutes.

After a discussion between the Board and the Department staff a non-binding straw-vote was taken to gauge support for the 3 presented options. Option 3 was supported unanimously.

**Motion:** Pete Allard motioned to approve “Option 3” as presented by the Board. Bill Pickens seconded the Motion.

**Vote:** The Board voted 13-0 to commence rulemaking in support of Option 3 in addition to the previously approved rulemaking proposal concerning Job’s and Martin Ponds and the Lamoille River and the relocation of the baitfish rules.

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## **6. Nuisance Trapping Regulatory Proposal and Presentation; and Action on Trapping Petition**

The Board Chair requested that the Department make its presentation before the Board take action on the petition presented earlier in the meeting.

Commissioner Porter and Wildlife Director Mark Scott provided background to the Board on recently enacted legislation ([Act 170 of the 2018 Legislative Session](#)) charging the Department with enacting regulations regarding the trapping furbearers and rabbits in defense of property for compensation. The Legislature directed the Board to adopt regulations from the current [Rule 44](#) that shall apply to those who trap furbearers and rabbits for compensation. Director Scott and Furbearer Biologist Kim Royar presented the Department’s proposal which is attached to these minutes. Royar also indicated that she discussed trapper education with the outreach staff and the Department intends to design and offer additional voluntary training relating to trapping furbearers in defense of property.

Department General Council Catherine Gjessing explained that there are sections of the petition that the Board and the Department do not have authority to act on. The Board and Department do not have statutory authority to issue or administer a nuisance operator permit program. All licenses or permits that have a fee component need to be directly authorized by statute. The Department and the Board do not have the authority to charge license fees on their own. Additionally, when the Department denies a license or permit due to a prior conviction, the Department relies on specific statutory provisions to do so. The Department cannot act in this manner without explicit statutory authorization.

Department Staff, Board Members and Members of Protect Our Wildlife discussed the ability of the Board to act on parts of the petition, the current enactment requirements of Rule 44, the administrative rulemaking timeline and process (including the opportunity for the petitioners to comment during the public comment period of the rulemaking), and the Board’s options related to the petition currently at the Board. Members of the Board asked Protect Our Wildlife for more information on the length of a license suspension contained in their proposal, which methods for euthanasia of a trapped animal are acceptable, and what type of training should be required.

**Motion:** Board Chair Kevin Lawrence motioned to amend the Department's Proposal to include the portion of section 4.6 of Rule 44 prohibiting the use of toothed traps. Vice Chair Theresa Elmer seconded the Motion.

**Vote:** 13-0 in favor of amending the Department's proposal as set forth in the motion.

**Motion:** Cheryl Frank Sullivan motioned to approve the Department's proposal as amended and to commence rulemaking. Bill Pickens seconded the Motion.

**Vote:** 13-0 in favor of the motion.

**Motion:** Bill Pickens motioned to accept the petition with the condition that Protect Our Wildlife supply further written comments and to use it to inform and enhance the rulemaking process. There was no second to the motion.

The Board and Department Staff further discussed their options as to the disposition of the petition with advice from the Department's General Counsel.

**Motion:** Joanna Laggis motioned that the petition be denied. David Fielding seconded the Motion.

**Vote:** 13-0 to deny the petition.

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## 7. Commissioner's Update

Chronic Wasting Disease (CWD) was found in a captive red deer facility in Quebec. The Department of Fish and Wildlife has been in contact with the Agency of Agriculture Food and Markets about coordinating a response for Vermont.

Several Department staff members will be attending Atlantic Flyway Council in Massachusetts next week

The Annual Dead Creek Days are coming up. This is an annual event hosted by the Department that provides incredible access to many educational programs ranging from waterfowl and several, mammals to fishing and bird watching.

The next meeting of the Fish and Wildlife Board will be on October 24

There has been a larger-than-usual gray squirrel population across the state resulting in higher-than-average inquiries into squirrel roadkill. An abundant wild food crop in 2017, followed by a relatively mild winter may be the causes.

The Commissioner attended the North Country Longspurs Jakes Day. A fantastic event encouraging youth participation in hunting and the outdoors.

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## 8. Board Member Roundtable Discussion

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**Motion:** Vice Chair Theresa Elmer motioned for the meeting to adjourn. Tim Biebel seconded the motion.

**Vote:** The Board voted unanimously to adjourn.

The Board Meeting was adjourned by the Chair at 9:45 PM

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*The mission of the Vermont Fish and Wildlife Department is the conservation of all species of fish, wildlife and plants and their habitat for the people of Vermont.*



September 6, 2018

Dear Members of the Vermont Fish & Wildlife Board:

As a result of legislation (H.636) that was passed in 2018, your Board now has the authority to promulgate rules pertinent to killing wildlife for compensation performed by Nuisance Wildlife Control Operators (NWCOs). Currently, NWCOs - also known as Animal Damage Control (ADC) operators - are not required to undergo any training specific to NWCO work, including humane standards, safety protocols, or non-lethal conflict resolution options. Other states have successfully implemented NWCO training and registration requirements, with some states such as NY and CT having robust training manuals and programs. The furbearer biologist from New Hampshire Fish & Game actually provided testimony to the Vermont legislature on H.636 last January speaking in favor of their state's NWCO program.

This issue is of particular interest to us as we see it as an opportunity for both wildlife advocates and your Board to work together to ensure NWCOs are well trained, offer sustainable solutions and operate in the most humane manner possible. We are happy to read that Board Chair Kevin Lawrence recognized that NWCOs deserve some scrutiny in an email exchange with a POW member attached.

Due to lack of regulation, NWCOs operate in the absence of any meaningful guidelines or oversight. They charge homeowners significant money to trap and kill wildlife, which results in the

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killing of non-targeted animals and leaves dependent young orphaned. If the original attractant isn't addressed (den site sealed, food sources removed), then the homeowner finds they have a recurring problem. Trapping and killing doesn't solve nuisance conflicts, it merely creates a vacuum for other animals to inhabit. That is why the most effective wildlife conflict control strategies involve evicting and excluding wild animals as a family unit, then sealing their entry holes so that the problem is solved permanently.

Training specific to NWCO work would address out of season trapping scenarios that may not be covered in the newly required trapper-training course. For example, if a NWCO is trapping "nuisance" beaver in the spring or summer, s/he should know the Best Management Practices (BMPs) to avoid non-target otter capture and more importantly, how to install water flow control devices so that landowners or municipalities who prefer a long-lasting solution, can opt for this highly effective method.

We've come across a number of incidents in which animals were injured or killed unnecessarily due to what appears to be gross negligence or a lack of training for NWCOs. One of them is included in an attachment titled: Fairfax Turtle. The photo is from a Fairfax, VT NWCO who **trapped a turtle** in a body gripping "kill" trap while trapping for beaver in the summer. Perhaps if he had undergone NWCO training, this could've been avoided. Another example is a **Canada goose** who was seen by a turkey hunter in May 2017 flapping her wings with a body gripping "kill" trap attached to her leg. The hunter ended up putting the goose out of her misery. The party trapping was a NWCO and was hired to trap muskrats at a culvert in Hubbardton. There was another recent case of a **blue heron who was trapped** in a beaver trap set by a NWCO in Proctorsville in August 2017. A NWCO in Bennington was routinely killing opossums because he thought they were a rabies vector species. Not only are opossums not a RVS, they rarely contract the disease due to their low body temperature.



We have experienced too many examples of NWCOs who act unethically in their business, with the consequences being extreme animal suffering. One such example is a NWCO who was hired to trap skunks and groundhogs in White River Junction in July 2017. A mail carrier reported that an animal had been caught in a cage trap and was left in the trap in the hot sun for days – the animal ultimately died, likely due to heat stress and dehydration.

Another example of extreme suffering was two summers ago in Windsor. Traps were set for beaver by a NWCO, but trapped a mother raccoon and her baby instead. The raccoon kit chewed through her leg to free herself, but ultimately both the kit and the mother died. You can view the photo attached that was taken by a by-stander - see: [Windsor raccoon](#).

These are just a few examples – we are looking to the Board to use its rulemaking authority to take all steps possible to prevent needless injuries and death of non-target species like these and also prevent potential public safety and consumer protection issues.

**Below you will find an outline of our three requests for conditions to include in the rules that cover permitting, criteria for issuance, and training of NWCOs.**

## **A. Permit required**

A wildlife control operator permit may be issued by the Commissioner and will be valid for a term of two years and may be renewed according to a schedule established by the Commissioner. Prior to issuance of permit, the applicant must complete a VT NWCO training course. Applicants must have no convictions for any animal-related offenses.

## **B. Training course**

The Commissioner of Fish and Wildlife will establish a NWCO course. The course shall provide training or instruction addressing:

1. Site evaluation
2. Methods of nonlethal conflict resolution including training that covers: frightening and hazing devices; repellants; one-way door and other eviction methods; exclusion methods (home-proofing strategies, etc); habitat modification; preventing orphaning; release and relocation considerations/protocols, and live trapping
3. AVMA-approved euthanasia methods for wildlife; and
4. Techniques to prevent problem recurrence
5. Public education – the public should be given a “Client Notification” flier that outlines the types of non-lethal and lethal methods available for resolving wildlife conflicts. That way the client can make an informed choice.

## **Other states including NH, NY and CT require NWCO training/ certification and so should Vermont.**

In Connecticut, wildlife advocates (from the state wildlife rehabilitator association and the state NWCO association) actually worked directly with their CT Department of Environmental Protection to create a robust NWCO training/certification program, which their agency saw tremendous value in.

## **C. Require reporting**

NWCOs kill untold numbers of wildlife each year, including some species whose populations may be on the decline, such as grey fox and otter. Trappers are required to report what they kill each year (as of 2017), so why would we not require NWCOs to report? How can Vermont Fish & Wildlife be confident in their management of furbearers if they have no idea how many of these animals are killed in addition to the regulated trapping

season? Of course, this reporting is only as good as the data the trappers/NWCOs choose to submit, but it is better than no data at all.

Vermont's licensed wildlife rehabilitators are required to submit detailed monthly reports to Fish & Wildlife on the animals in their care, so why would people who are killing wildlife for profit not be required to file reports as well? It only makes sense for the Department to capture as much information as possible in order to effectively manage wildlife.

### **Contradictions with regard to current Fish & Wildlife policy**

- Under the current regulatory regime, when a Good Samaritan finds an orphaned raccoon, for example, the Department requires the person follow very strict protocols to get the animal to a rehabber who is licensed to handle RVS. At the same time, NWCOs who are not regulated in any meaningful way, and who have no restrictions with respect to the handling of RVS, are able to handle RVS unhindered. Unlike volunteer wildlife rehabbers, NWCOs don't even have to be rabies vaccinated. There is no logical explanation for this inequitable treatment.
- Furbearer biologist Kim Royar routinely states that her Department's priority is the "utilization" of wildlife. Given that position, they should be seeking to avoid the wanton waste killing of wildlife when possible. For example, a fox trapped and killed in the summer has zero "utilization" because the fur is not marketable – *actually, even prime fox pelts aren't selling, but that's another matter*. And if fox kits starve to death as a result of the mother being killed, that further contributes to wildlife not being utilized.

### **Other considerations**

- Since most of the nuisance trapping occurs in the spring/summer months when animals have dependent young and seek out dens in and around homes, it results in an additional

burden on wildlife rehabilitators. This happens when animals become unnecessarily orphaned as a result of NWCOS' commercial activities. A NWCO license fee should be established that will not only help cover the Department's expenses with regard to regulation and education of NWCOS, but also establish a fund to provide some much needed financial assistance to rehabilitators.

We are hopeful that we can use this as an opportunity to come together to ensure that wild animals who are handled for profit by NWCOS are not killed and orphaned unnecessarily; that the most sustainable, non-lethal methods will be used when possible; that customers are informed about their options (both lethal and non-lethal) and can make an informed choice, and that if a wild animal must be killed, that it is done in the most humane and professional manner possible.

**This petition does not seek to ban, or even limit trapping.**

It simply seeks to put long-overdue controls in place that will benefit wildlife, the general public, the Fish & Wildlife Department (through data collection on animals handled, released or killed) and the NWCOS themselves by:

- 1) Professionalizing the industry
- 2) Expanding business opportunities by offering non-lethal and sustainable solutions.

Sincerely,



Brenna Galdenzi  
President and Founder

## **Baitfish Regulation Revision Proposal to Vermont Fish and Wildlife Board**

### ***9.19.18 Meeting – 1 National Life Drive, Dewey Building, Montpelier, VT***

#### ***Goal***

To review the way that we manage baitfish in Vermont and adjust regulations as needed to maintain an adequate balance between protection to Vermont's fisheries resources, providing angling opportunity, and maintaining enforceability with regards to the regulations.

#### ***Current baitfish regulations***

- Significant changes to baitfish use regulations in 2008
  - No movement of wild caught bait away from a waterbody.
  - Implementation of a baitfish receipt program for commercially purchased baitfish
  - Wild harvest of baitfish permitted but must not leave the water it was harvested on.
- Most recent change to baitfish regulations was in 2012
  - Extended the amount of time that a baitfish receipt is good for to 96 hours.
- Since 2008 there has been a considerable amount of negative feedback on the baitfish regulations regarding angler opportunity.
  - High cost of using baitfish for angling due to regulations
  - Inflexibility of use of "certified" baitfish
  - Perception that imported bait is higher risk than native bait
  - Baitfish can't be used on connected waterbodies or within a watershed
- There have also been a number of potential suggestions to improve the baitfish regulation.
  - Prohibit the importation of baitfish from out of state sources
  - VTFWD should test / certify certain waterbodies to allow for wild harvest and movement of baitfish.
  - Allow wild harvest and movement of baitfish in some sort of a geographic zonation approach.
  - Extend the time that certified baitfish can be used to 10 days to allow for greater flexibility of use.

#### ***Baitfish regulations review process***

- In May 2017 a baitfish regulations review team comprised of select fish division staff and two VTFW Board members began reviewing the baitfish regulations with the strong likelihood of coming back to the Board with a revised proposal in the future to regulate baitfish use in a manner that is in the best interest of the public and protects VT's fisheries resources.
- The team met between May 2017 and April 2018 nearly on an every other week basis to research, review, and discuss the baitfish regulations.
- The team additionally held additional "baitfish public discussion sessions" to gather public feedback and suggestions on improving the baitfish regulations.
  - 1.30.18 – Springfield

- 2.13.18 – Richmond
- 2.28.18 – Orleans
- Staff also met with the board on a regular basis to keep them updated and educated on the baitfish regulations review process.
  - 9.20.18 – General presentation to the board regarding the review process.
  - 1.17.18 – 30-minute educational update to the board on “Baitfish geographic areas of risk / use”
  - 2.21.18 – 30-minute educational update to the board on “Comprehensive evaluation of fish pathogens / aquatic nuisance species and their spread (including VHS)”
  - 4.4.18 – 30-minute educational update to the board on “Baitfish preservation techniques”
  - 4.25.18 – Presentation of concept proposal options for revising the baitfish regulations
- Fish management section staff also met internally on a number of occasions to further develop a number of options for the board to consider.
  - 2.21.18 – General presentation to the fish division regarding the baitfish regulations review process
  - 3.21.18 – Initial presentation to the fish management section of a concept baitfish regulations revision proposal
  - 4.10.18 – Special fish management section meeting to further discuss the baitfish regulations revision options.
  - 7.19.18 – Special fish management section meeting to further develop the baitfish regulations revision options.

***Baitfish Regulation Revisions Proposed (Applicable to all options)***

- Changes that do not require a board rule change:
  - Consolidated messaging regarding fish stocking and importation with various partner organizations
  - Requiring an out-of-state importation source facility to hold a separate fish importation permit from the recipient in-state facility.
  - Work with the out-of-state baitfish farms and haulers as part of a larger effort in the Northeast to create a solid chain of custody and physical safeguard program for baitfish that are imported into the Northeast.
  - Increased bait shop / wholesaler inspections from Department staff
  - Increased outreach and education regarding the dangers and risk vectors of AIS and fish pathogens and how it relates to movement of baitfish.
  - Vermont Fish and Wildlife Department would include the salt / borax method in their list of allowable methods for commercial baitfish preservation.
- Changes that would require a board rule change:
  - Clarify in the regulation what constitutes a “Commercial Bait Dealer” so that it includes operations selling live fish as bait, and not other sporting goods stores (i.e. Dicks, Walmart, Kmart) that may be selling commercially preserved baitfish in packages.
  - Change the baitfish receipt duration from 4 days to 10 days

- Baitfish receipts will list either a geographic zone that baitfish can be used within or a specific “blacklist water” that baitfish can be used on.
- Removal of baitfish regulations from §122 and create a separate section (§141)

***Baitfish Regulation Revision Option #1*** – Allowing the movement of only commercially purchased baitfish in zones (least broad proposed option)

- Establishment of two interior zones (East zone / West zone) in which commercially purchased baitfish can be moved within.
  - Exception: Certain “blacklist waters” will still remain waterbody specific and commercially purchased baitfish that are used on a blacklist water cannot be used elsewhere.
- Movement of wild harvested baitfish still remains waterbody specific.
- Establishes a different baitfish dealer designation
  - Previous regulations only permitted a “statewide” or “waterbody specific” baitfish dealer
  - This option would permit a “zoned” baitfish dealer
- Commercially purchased baitfish can be held in waters of the same baitfish zone that is listed on the baitfish receipt provided no contact with a black list water.

***Baitfish Regulation Revision Option #2*** – Allowing the movement of commercially purchased baitfish & wild harvested smelt in zones.

- Like Option 1; however, this option also allows the wild harvest and movement of rainbow smelt within zones.
- Personally harvested wild smelt can be sold to commercial “zoned” baitfish dealers provided that the smelt were caught in the same zone that the dealer is permitted for.
- Personally harvested wild smelt can be used within a baitfish zone provided that the smelt were caught in the same zone.
- A “zoned” baitfish dealer would be able to sell wild harvested rainbow smelt for use in the same zone that the dealer is permitted for (not a black-list water).
- Movement of personally harvested rainbow smelt from a black-list water is prohibited.
- Anyone who wishes to move wild harvested rainbow smelt away from a waterbody shall possess an annual wild baitfish endorsement on their fishing license.
- Personally harvested wild rainbow smelt can be held in waters of the same baitfish zone in which they were caught provided no contact with a black list water.

***Baitfish Regulation Revision Option #3*** – Allowing the movement of commercially purchased and wild harvested baitfish in zones (broadest proposed option)

- Like Option 2; however, this option extends the wild harvest and movement of baitfish from just rainbow smelt to include all other allowable baitfish species.

- Only personally harvest wild smelt can be sold to commercial “zoned” baitfish dealers provided that the smelt were caught in the same zone that the dealer is permitted for.
- A “zoned” baitfish dealer would be able to sell wild harvested baitfish for use in the same zone that the dealer is permitted for (not a black-list water).
- Personally harvested wild baitfish can be used within a baitfish zone provided that the baitfish were caught in the same zone.
- Movement of personally harvested wild baitfish from a black-list water is prohibited.
- Anyone who wishes to move wild harvested baitfish away from a waterbody shall possess an annual wild baitfish endorsement on their fishing license.
- Personally harvested wild baitfish can be held in waters of the same baitfish zone in which they were caught provided no contact with a black list water.

### ***Next steps***

- Preferred outcome of 9.19.18 – Board would take first vote to initiate rulemaking on one of the specific options proposed.
- Baitfish regulation review teams public input recommendation (5 public meetings in winter 18/19)
  - Rutland
  - St. Albans
  - SE Vermont (Springfield or Brattleboro)
  - NEK (St. Johnsbury, Newport, or Orleans)
  - Montpelier
- Fully develop wild baitfish endorsement curriculum / program (if Option 2 or 3 voted for rulemaking)



### **Baitfish Zones**

**-West Baitfish Zone** - A baitfish zone including waters lying west of a line starting at the Massachusetts border following Route 8A north to Route 112, north on Route 112 to Route 100 in Whitingham, north on Route 100 to East Jamaica, northwest on Route 30/100 to Rawsonville, north on Route 100 to Ludlow, north on Route 103 to Grahamville, north on Route 11 to Route 4, west on Route 4 to Killington, north on Route 100 to Morrisville, west on Route 15 to Hyde Park, north on Route 100 to Troy, north on Route 101 to Route 105, north on Route 105 to route 243 in North Troy, north on Route 243 to the Canadian border.

**-East Baitfish zone** - A baitfish zone including waters lying east of a line starting at the Massachusetts border following Route 8A north to Route 112, north on Route 112 to Route 100 in Whitingham, north on Route 100 to East Jamaica, northwest on Route 30/100 to Rawsonville, north on Route 100 to Ludlow, north on Route 103 to Grahamville, north on Route 11 to Route 4, west on Route 4 to Killington, north on Route 100 to Morrisville, west on Route 15 to Hyde Park, north on Route 100 to Troy, north on Route 101 to Route 105, north on Route 105 to route 243 in North Troy, north on Route 243 to the Canadian border.

### **Black List Waters**

**-Connecticut River** – defined as all waters of the river including the bays, setbacks, and tributaries, only to the first highway bridge crossing said tributaries on the Vermont side. Also including the following tributaries to the following boundaries:

- Ottaquechee River to the top of the North Harland Dam in the town of Hartland
- West River to the Interstate 91 highway bridge in the town of Brattleboro

**-Lake Champlain** (see 10 App. §122 Section 7.0) including setbacks at the same level and tributaries to the following boundaries:

- Dead Creek to Panton Road bridge in Panton
- East Creek to the falls in Orwell (downstream of Mount Independence Road)
- Lamoille River to the top of the first dam (Peterson Dam) in Milton
- LaPlatte River to the falls in Shelburne (under Falls Road bridge)
- Lewis Creek to falls in North Ferrisburgh (just upstream of Old Hollow Road)
- Little Otter Creek to falls in Ferrisburgh Center (downstream of Little Chicago Road)
- Malletts Creek to the first falls upstream of Roosevelt Highway (US 2 and US 7) in Colchester
- Mill River in Georgia to the falls in Georgia (just upstream of Georgia Shore Road bridge)

- Missisquoi River to the top of Swanton Dam in the Village of Swanton
- Mud Creek to the dam in Alburg (just upstream of Route 78 bridge)
- Otter Creek to the top of the dam in the city of Vergennes
- Poultney river to Central Vermont Power Dam at Carver Falls in West Haven
- Rock River to the first Canadian border crossing
- Winooski river to the Winooski One hydropower dam west of Main Street (US 7) in Winooski and Burlington

**-Lake Bomoseen**

**-Lake Carmi** including the outflow to the top of Mill Pond Dam in the town of Franklin.

**-Lake Memphremagog** including the following tributaries:

- Clyde River to the top of the abandoned Mill Dam immediately upstream of the Number 1, 2, 3 hydroelectric powerhouse in Newport City
- Barton River to the downstream side of the US Route 5 bridge southernmost and closest to the village of Barton.
- Johns River to the downstream edge of the bridge on Beebe Road (TH #3) in the town of Derby
- Halls Brook to the headwaters
- Black River to the top of the falls at Old Harmon Mill in the town of Coventry

**-Lake St. Catherine**

**-Battenkill** and its associated tributaries

## Baitfish Option Comparisons

			"Status Quo" Option	Option 1 - Commercial baitfish in zones	Option 2 - Commercial baitfish + wild smelt in zones	Option 3 - Commercial and wild baitfish in zones
Changes not necessitating a board rule change	Public outreach and education	Consolidated messaging regarding fish stocking and importation with various partner organizations	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
		Increased education and outreach regarding the dangers / risks of fish pathogens and aquatic invasive species related to baitfish movement	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
	Commercial Baitfish	Requiring out of state importation source facilities to hold a separate fish importation permit from the recipient in-state facility	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
		Work to improve baitfish chain of custody for imported baitfish	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
		Increase Department bait shop / wholesaler inspection	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
	Baitfish Preservation	Include salt / borax method in list of allowable methods for commercial baitfish preservation	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
	Changes necessitating a board rule change	Administrative	Removal of baitfish regulations from §122 to its own separate section (§141)		<b>X</b>	<b>X</b>
Commercial Baitfish		Clarify what constitutes a "commercial bait dealer" to not include operations selling only commercially preserved baitfish		<b>X</b>	<b>X</b>	<b>X</b>
		Establishment of a "zone-specific" baitfish dealer that can sell baitfish for a specific baitfish zone		<b>X</b>	<b>X</b>	<b>X</b>
		Use or holding of commercially purchased baitfish is not allowed in other waters of the state if collected, used, or held in black-list waters		<b>X</b>	<b>X</b>	<b>X</b>
		Movement of commercially purchased baitfish is allowed within an East or a West baitfish zone		<b>X</b>	<b>X</b>	<b>X</b>
		Purchased baitfish can be held in waters of the same baitfish zone listed on the baitfish receipt (provided no contact with a blacklist water)		<b>X</b>	<b>X</b>	<b>X</b>
Baitfish Receipts		Change baitfish receipt duration from 4 days to 10 days		<b>X</b>	<b>X</b>	<b>X</b>
		Baitfish receipts will list either a geographic zone that baitfish can be used within or a specific "blacklist water" that baitfish can be used on.		<b>X</b>	<b>X</b>	<b>X</b>
Wild Baitfish		Establish a list of black-list waters in which wild caught baitfish cannot leave that specific waterbody		<b>X</b>	<b>X</b>	<b>X</b>
		Movement and use of wild harvested rainbow smelt is allowed within an East or a West baitfish zone			<b>X</b>	<b>X</b>
		Allow the sale of personally harvested wild rainbow smelt to "zone specific" commercial baitfish dealers			<b>X</b>	<b>X</b>
		Personally harvested smelt can be held in water of the same baitfish zone in which they were caught (provided no contact with a blacklist water)			<b>X</b>	<b>X</b>
		Movement and use of wild harvested baitfish is allowed within an East or a West baitfish zone				<b>X</b>
		Personally harvested wild baitfish can be held in water of the same baitfish zone in which they were caught (provided no contact with a blacklist water)				<b>X</b>
	A annual wild baitfish endorsement is required to transport or use wild caught baitfish away from the water in which they were collected				<b>X</b>	<b>X</b>

**Gradation of Angler Opportunity / Risk to the Resource**

**Proposed Response to Act 170  
of the 2017-2018 Legislative Session**

**Related to Changes to 10 V.S.A. § 4828 and § 4254c  
September 6, 2018**

**Prepared for the Vermont Fish and Wildlife Board**



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## I. Summary

The Department is making the following recommendations in response to 2018 statutory changes. The rules proposed below will increase accountability for those individuals or commercial entities trapping furbearers or rabbits in defense of property for compensation. However, we also recognize that public attitudes towards wildlife often change for the worse when wildlife damage issues cannot be resolved quickly and effectively. Therefore, the Department has worked to maintain some flexibility for individuals, landowners, or municipalities experiencing furbearers or rabbits doing damage. Through this proposal, we have tried to maintain the ability to successfully address situations where problems occur, while at the same time minimizing the application of unsuitable or inappropriate actions.

The proposal also includes a recommended approach to addressing Sec. 10 of Act 170 - 10 V.S.A. § 4254c, the requirement to report any incidentally trapped cats and dogs.

## II. Background

The following sections of Act 170 (10, 11, and 13) relate to this proposal and are taken from the bill as enacted into law. Underlined sections indicate new language added to the statutes, strikethroughs indicate language removed.

### Sec. 10:

10 V.S.A. § 4254c is added to read:

#### § 4254c. NOTICE OF TRAPPING; DOG OR CAT

A person who incidentally traps a dog or cat shall notify a fish and wildlife warden or the Department within 24 hours after discovery of the trapped dog or cat. The Department shall maintain records of all reports of incidentally trapped dogs or cats submitted under this section, and the reports shall include the disposition of each incidentally trapped dog or cat.

### Sec. 11:

10 V.S.A. § 4828 is amended to read:

#### § 4828. TAKING OF RABBIT OR FUR-BEARING ANIMALS BY LANDOWNER; SELECTBOARD; CERTIFICATE; PENALTY

(a)(1) The provisions of law or ~~regulations~~-rules of the Board relating to the

taking of rabbits or fur-bearing animals shall not apply to:

(A) an owner, the owner's employee, tenant, or caretaker of property protecting the property from damage by rabbits or fur-bearing animals; or

(B) ~~to a member of the~~ selectboard of a town protecting public highways or bridges from such damage or submersion with the permission of the owner of lands affected.

(2) A person who for compensation sets a trap for rabbits or fur-bearing animals on the property of another in defense of that property shall possess a valid trapping license.

(3)(A) ~~However, if~~ If required by rule of the ~~board~~ Board, an owner, ~~the owner's employee, tenant, or caretaker, or the members;~~ a member of the selectboard, ~~;~~ or a person who sets a trap for compensation who ~~desire~~ desires to possess during the closed season the skins of any fur-bearing animals taken in defense of property, highways, or bridges shall notify the Commissioner or the Commissioner's representative within 84 hours after taking ~~such~~ the animal, and shall hold ~~such~~ the pelts for inspection by such authorized representatives.

(b) Before disposing of ~~such~~ pelts taken under this section, if required by rule of the Board, the property owner; the owner's employee, tenant, or caretaker, ~~or;~~ a member of the selectboard; or a person who sets a trap for compensation shall secure from the Commissioner or a designee a certificate describing the pelts, and showing that the pelts were legally taken during a closed season and in defense of property, highways, or bridges. In the event of storage, sale, or transfer, ~~such~~ the certificates shall accompany the pelts ~~described therein~~.

**Sec. 13:**

**FISH AND WILDLIFE BOARD RULES; TRAPPING**

On or before January 1, 2019, the Fish and Wildlife Board shall adopt by rule those requirements of Fish and Wildlife Board Rule 44 regarding the trapping of fur-bearing animals that shall apply to persons trapping for compensation under 10 V.S.A. § 4828.

**III. Proposal**

The following proposed rule changes are in response to Act 170. The proposal addresses changes to 10 V.S.A. § 4828: THE TAKING OF RABBIT OR FUR-BEARING ANIMALS BY LANDOWNER; SELECTBOARD; CERTIFICATE; PENALTY and, requires that individuals taking furbearers or rabbits in defense of property have a valid trapping license: A person who for compensation sets a trap for rabbits or fur-bearing animals on the property of another in defense of that property shall possess a valid trapping license.

In addition, Section 13: FISH AND WILDLIFE BOARD RULES; TRAPPING, requires that the Board adopt additional rules related to the taking of furbearers or rabbits in defense of property for compensation: On or before January 1, 2019, the Fish and Wildlife Board shall adopt by rule those requirements of Fish and Wildlife Board Rule 44 regarding the trapping of fur-bearing animals that shall apply to persons trapping for compensation under 10 V.S.A. § 4828.

The Department and the Vermont Trappers Association (VTA) have long discussed the benefits of regulations related to 10 V.S.A. § 4828 and, in the past, have worked together in an attempt to jointly tackle related concerns.

For section 13, the statutory language directs the Department and the Board to adopt, as written, those sections in rule 44 deemed appropriate to addressing human/furbearer conflicts. Therefore, the rules proposed below are drawn directly from those listed in 44 and are an attempt to provide additional accountability for those individuals taking furbearers or rabbits in defense of property while at the same time maintaining some flexibility for landowners and municipalities experiencing conflicts with these animals.

**A. Section 13: FISH AND WILDLIFE BOARD RULES TRAPPING**

On or before January 1, 2019, the Fish and Wildlife Board shall adopt by rule those requirements of Fish and Wildlife Board Rule 44 regarding the trapping of fur-bearing animals that shall apply to persons trapping for compensation under 10 V.S.A. §4828

*Proposed Regulations for Board review:*

- 4.1. A person trapping for fur-bearing animals under this rule shall visit his/her traps at least once every calendar day, except as provided in paragraph 4.2, and dispatch or release any animal caught therein

- 4.2 A person who sets body gripping traps in the water or under the ice, or foothold or cage traps under the ice shall visit his/her traps at least once every three calendar days and remove any animal caught therein.
- 4.3 A person shall not set a trap on lands other than his/her own which does not have his/her name and address permanently and legibly stamped or engraved thereon, or on a tag of rustless material securely attached thereto
- 4.4 All traps under ice will be marked with a tag visible above the ice.
- 4.5 A person shall not set a body gripping trap with a jaw spread over eight inches measured inside the jaws unless the trap is set five feet or more above the ground, or in the water.
- 4.10 A person shall not possess a furbearing animal unlawfully taken.
- 4.11 A person shall not take a fur-bearing animal by use of any poisonous mixture.
- 4.14 (e) A person who takes bobcat, fisher, and otter pursuant to 10 V.S.A. § 4828 and who desires to keep the pelt shall notify authorized Department staff with 84 hours of the taking. Pelts shall be presented to authorized Department staff for tagging. Such tags shall remain affixed to the pelts until tanned. Carcasses shall be surrendered to authorized Department staff at the time of tagging.
- 4.16 (b) Any person who incidentally captures a lynx shall notify the Department immediately.
- 4.17 (a) Any person who obtains a trapping license shall complete and submit an annual biological collection trapper survey for the license season to the Department within the timeline specified by the Commissioner.
  - (b) The failure to complete and submit a biological collection survey to the Department shall be a non-point violation under 10 VSA 4502.

**Proposed Rule Language:**

6.0 Taking Rabbits and furbearers in Defense of Property for a Fee

6.1 In accordance with Sec. 11 of Act 170 from the 2017-2018 Adj Session, no provisions of law or rules of the Board are applicable to trapping nuisance rabbits and fur-bearing animals for compensation except the following sections and subsections of the Furbearing Species rules set forth in Title 10, Appendix 44: 4.1, 4.2, 4.3, 4.4, 4.5, 4.10, 4.11, 4.14 €, 4.16 (b), and 4.17 (a) and (b).

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The Legislature also added 10 V.S.A. § 4254c which reads:

**B. 4254c. NOTICE OF TRAPPING; DOG OR CAT**

A person who incidentally traps a dog or cat shall notify a fish and wildlife warden or the Department within 24 hours after discovery of the trapped dog or cat. The Department shall maintain records of all reports of incidentally trapped dogs or cats submitted under this section, and the reports shall include the disposition of each incidentally trapped dog or cats.



*The Department proposes the following process for addressing this change:*

Record in Spillman (Warden Cad system)

Calls can be taken by warden, biologist, dispatchers, or Administrative Assistant. Reports will include the following and will be forwarded to Fish & Wildlife Department's Law Enforcement Division for entering into the Spillman system.

Town

Date

Cat or dog

Disposition of animal (i.e. returned to owner, released, dispatched, taken to a vet, other (please explain))

Collared/Licensed/I.D. (yes/no)