

Fish & Wildlife Board
****APPROVED** Meeting Minutes**
Thursday, October 18, 2007

The Fish & Wildlife Board convened a telephonic meeting at 4:00 p.m. on Thursday, October 18, 2007, at the Air Division conference room of the Agency of Natural Resources in Waterbury, Vermont.

Attendees via phone:

Board Members: Dana Kittell, Chair; Bruce Therrien, Vice Chair; Brian Ames; Keith Armstrong, Jeremy Baker; Wayne Barrows; Walt Driscoll; Cyndy Jones; Michael Popowski; Claude Rainville; John Roy; and Bob Shannon.

Absent: Craig Lefevre and Ed Gallo.

Department Employees: Eric Palmer, Tom Jones, and Cathy Merrill.

Chair Kittell called the meeting to order at 4:00 p.m.

Eric Palmer informed the Board that he had sent an email earlier in the day with a pdf version of the rule with the Board's changes in case there was trouble with formatting in the earlier version.

Chair Kittell reviewed the purpose of the meeting, which was to: 1) vote on the emergency rule; and 2) take a first vote on the proposal to get the rulemaking process started.

Kittell asked if there were any questions regarding changes to the proposal. Kittell said he had received two or three calls on this issue, and he had explained the rulemaking process, and how that process would afford the public a chance to provide input. He acknowledged there may be changes to the proposal along the way, but the votes being taken today are to get the process started.

Palmer announced that Steve Hill had resigned as General Counsel for the Department, would not be participating in this call, and that his last day in the office would be October 26.

Shannon asked for clarification on the emergency rule vote. Palmer explained that the emergency rule would require one vote; the rulemaking forms would be signed by the Commissioner on behalf of the Board, filed with the Secretary of State's Office and the Legislative Committee on Administrative Rules (LCAR), and would take effect immediately on the date the forms are filed. The emergency rule would then be in effect for 120 days.

Shannon asked when the public input would take place. Chair Kittell said as there was no Board meeting scheduled for November; if the first vote was not taken today, it would not be taken until December, and time would run before the rule could be effective. Kittell went on to say that by taking both votes today, the process gets started which includes hearings and public input, and which may make the final rule look very different.

Palmer reiterated that the emergency rule addresses the time period in the fall which is the prime baitfish collection period for commercial dealers prior to the winter ice fishing season. The emergency rule will expire prior to the rulemaking process being completed. However, taking a first vote today, would avoid a large time gap between the two regulations. Rulemaking could be completed before the ice goes out and before minnow seines/traps are back in the water in the spring.

Palmer reviewed the changes made to the rule as a result of the Board's October 10th meeting.

5.3.6 – provides a more complete definition of the “Lake Champlain Zone,” which coincides with the definition in Rule 122.

5.3.7 – refines the definition of the “Interior Zone” to be consistent with 5.3.6, above.

5.4.3 – clarifies information required on the receipt to include: 1) a unique receipt identification number; 2) name, telephone number, and Baitfish Zone of the bait dealer; 3) time and date of sale; 4) species purchased; 5) quantity purchased; 6) water body (limited to one) on which the bait will be used; and 7) signature of purchaser.

5.4.5 – strikes the word “live” when referring to baitfish so the section reads: “Anglers must not depart waters of the state with baitfish in their possession.”

5.5.2 – language changed to: “Commercial bait dealers must declare in their permit application if they will be a Lake Champlain Zone bait dealer or an Interior Zone bait dealer.”

5.5.3 – original language struck; now reads: “Commercial Bait Dealers in the Lake Champlain Zone must be located on or have facilities that discharge directly to Lake Champlain as defined in paragraph 7.0 “Lake Champlain Boundaries” of this regulation.”

5.5.4 – original language struck; now reads: “Commercial Bait Dealers located in the Lake Champlain Zone may only harvest wild baitfish in that zone. Wild baitfish harvested in the Lake Champlain Zone may not be transferred to or held in facilities outside of the Zone.”

5.5.5 – language now reads: “Commercial Bait Dealers located in the Lake Champlain Zone may only sell baitfish, wild or cultured, for use within the Lake Champlain Zone. Baitfish sales receipts issued as per 5.5.10 below must clearly state that baitfish sold are only permitted for use within the Lake Champlain Zone.”

5.5.6 – now reads: “Commercial Bait Dealers located in the Lake Champlain Zone may harvest, buy, possess, transport, sell, and use as bait, only those species of fish listed under section 5.6.”

5.5.7 – now reads: “Commercial Bait Dealers located in the Interior Zone are prohibited from selling wild caught baitfish. Baitfish sold in the Interior Zone must originate from a fish hatchery approved by the Commissioner.”

5.5.8 – now reads: “Baitfish sold by Interior Zone Commercial Bait Dealers may be used in both the Interior Zone and the Lake Champlain Zone.”

5.5.9 – now reads: “Commercial Bait Dealers located in the Interior Zone may buy, possess, transport, sell, and use as bait, only those species of fish listed under section 5.6.”

Baker questioned if it was the Department's opinion that the above changes accomplished what the Department wanted in the original proposal; i.e., protect the state's waters from VHS. Palmer responded that the Department's two main objectives with the emergency rule were to shut down the vectors for moving VHS around the state, and to get the public informed and engaged in the process. The emergency rule as revised by the Board will accomplish both of those objectives and allow wild baitfish collection in Lake Champlain. Palmer said the proposed changes have made the regulation less restrictive and protective; however, for 120 days this is an adequate proposal, and he recommended it move forward. The emergency rule would allow bait dealers to gather baitfish for the next 120 days, but not to transport the bait to bodies of water other than Lake Champlain.

Ames made a motion to vote on the emergency rule; which Popowski seconded. Chair Kittell took a roll call vote. The rule passed with Ames, Rainville, Jones, Baker, Roy, Popowski, Barrows, and Armstrong voting in favor. Therrien and Driscoll were opposed, and Shannon abstained. Lefevre and Gallo were absent.

Ames made a motion to take a first vote on the proposed rule as revised, which was seconded by Popowski.

There was no discussion, and Chair Kittell called the question.

The first vote passed with Ames, Rainville, Jones, Baker, Roy, Popowski, Barrows, and Armstrong voting in favor. Therrien and Driscoll were opposed and Shannon abstained. Lefevre and Gallo were absent.

Baker asked if the Department was planning any public education or additions to the current syllabus regarding the emergency rule.

Palmer responded that a press release had been prepared to inform the public, the Department will be doing direct outreach to the bait dealers, post the rule on the Department's website, include a section in the 2008 Digest of Laws, as well as public outreach during the Board's rulemaking process, which would include public notices in newspapers, and conducting hearings.

Baker asked who the Board should refer inquiries to. Shawn Good would be listed as the primary contact on the press release, so questions should be referred to him.

There was discussion on the timing of the public hearings and how many would be recommended. Chair Kittell recommended at least two, maybe three around the state. Palmer said the Department would get feedback from ICAR regarding the number of hearings, and if the Department hears something before the Board's next meeting (December) he will inform the Board.

Barrows asked if the Enforcement Division foresees problems enforcing this regulation. Palmer responded that a warden is on the baitfish team, and provided input on the receipt requirement. However, it was acknowledged that enforcement in any state is very difficult with regard to the personal use of baitfish, and educating the public is key.

The phone call was ended at 4:45 p.m.

Respectfully submitted.

/s/cpm

Catherine Pirie Merrill
Executive Assistant

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