



## Agency of Natural Resources

103 South Main Street, Center Building  
Waterbury, VT 05671-0301  
802-241-3600

### Endangered & Threatened Species Takings Permit

Statutory Authority: 10 VSA Section 5408

#### 1. Permittee

**Donald Mason**  
**Normandeau Associates, Inc**  
25 Nashua Rd, Bedford, NH 03110-5527  
603-637-1172 (w), 603- 345-9814 (c), dmason@normandeau.com

#### 2. Permit Period

**Effective Date:** 10/10/2012  
**Expiration Date:** 10/15/2013  
**Authorization #** ER-2012-29  
**Amendment #** 0

3. **Principal Officer:** Pamela S. Hall.

4. **Subpermittee(s):** Chris Baker, Allan Frizzell, Erik Fel'dotto, Miles Waniga.

5. **Authorized Species:** Pink Heelsplitter (*Potamilus alatus*), Fragile Papershell (*Leptodea fragilis*), Pocketbook (*Lampsilis ovata*), Giant Floater (*Pyganodon grandis*), Fluted shell (*Lasmigona costata*).

6. **Authorized Activity:** A survey to determine presence/absence and relative abundance of the species listed in Section 5.

7. **Location Where Authorized Activity May Be Conducted:** Lamoille River in the vicinity of the I-89 North and Southbound bridges in Milton, VT.

#### 8. Findings

- A. The Permittee seeks an Endangered and Threatened Species Takings Permit under 10 V.S.A. § 5408 to authorize a pre-construction survey to determine the presence of the species listed in Section 5.
- B. Said research has been determined to be non-de minimis in nature and will have the following benefits: determination of the presence of the species listed in Section 5.
- C. The Permittee is an aquatic ecologist with Normandeau Associates, an environmental consulting firm and has expertise in the location and identification of the species listed in Section 5.
- D. The Endangered Species Committee has approved, as a class, species surveys such as that proposed here, and reviews a summary of such permits annually.

#### 9. Statutory Determination

- A. 10 V.S.A. § 5408(a) provides: "[A]fter obtaining the advice of the Endangered Species Committee, the Secretary of the Agency of Natural Resources (Secretary) may permit, under such terms and conditions as the Secretary may prescribe by rule any act otherwise prohibited by this chapter done for any of the following purposes: scientific purposes; to enhance the propagation or survival of a species; economic hardship; zoological exhibition, educational purposes; or special purposes consistent with the purposes of the federal Endangered Species Act."
- B. The Permittee has requested an Endangered and Threatened Species Taking Permit for the following purpose: Scientific
- C. The state of Vermont recognizes the value which plants, fish and wildlife in their natural environment have for public enjoyment, ecological balance, and scientific study. See 1981, No. 188 (Adj. Sess.), § 1(a).
- D. The state of Vermont recognizes the need for protection and preservation of these plants, fish and wildlife in their natural environment. *Id.*
- E. The General Assembly of Vermont intends that the species of wildlife and wild plants normally occurring within this state which may be found to be threatened or endangered within the state should be accorded protection as necessary to maintain and enhance their numbers. *Id.* at § 1(b).
- F. The General Assembly of Vermont intends that the state should assist in the protection of species of wildlife and wild plants which are determined to be threatened or endangered elsewhere pursuant to the federal

Endangered Species Act. *Id.*

- G. Pursuant to 10 V.S.A. § 5408(a), the Secretary hereby determines, based upon the findings detailed above and after receiving advice from the Endangered Species Committee, that the proposed activity is consistent the purposes of the 10 V.S.A. ch. 123. An Endangered and Threatened Species Takings Permit is authorized, as conditioned below.

#### **10. General Conditions & Authorizations**

- A. General conditions set out in 10 V.S.A. ch. 123 are hereby made a part of this permit. All activities authorized herein must be carried out in accord with and for the purposes described in the application submitted. Continued validity or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
- B. The validity of this permit is expressly conditioned upon compliance with all applicable federal and state laws, regulations and permits.
- C. This permit does not confer upon the Permittee the authority to conduct research without the acquiring necessary landowner permission including, but not limited to, state lands.
- D. By acceptance of this permit, the Permittee and its heirs, successors and assigns agree to provide the Agency of Natural Resources with unrestricted access, at reasonable times to the animal or plant specimens and/or animal or plant parts collected under this permit, and otherwise ensuring compliance with this permit.
- E. The Agency maintains continuing jurisdiction over this activity, and may, at any time, order the permittee to undertake remedial measures if necessary to ensure the protection and conservation of listed species.
- F. This permit is not valid for Federal and/or State endangered and threatened species not identified in section 5.
- G. The permit is valid for use by the named Permittee and subpermittees(s) only and may be revoked by the Secretary at any time for cause, or violations of any terms or conditions of this permit or state wildlife law.
- H. The Permittee and subpermittee(s) shall carry this permit whenever performing authorized activities.
- I. Pursuant 10 V.S.A. § 5410, the locations of listed species shall be kept confidential and the sharing of such information is a violation of this permit and the law.

#### **11. Specific Conditions & Authorizations**

- A. Authorized to conduct a mussel survey within the permit period using mask and snorkel and SCUBA to document the presence and abundance of the species listed in section 5.
- B. The Permittee shall consult with the Vermont Fish & Wildlife Department's (VFWD) mussel specialist as needed on survey protocol, standards and conditions.
- C. All areas included in the study shall be surveyed by qualified biologists with experience in locating freshwater mussels. Species identification shall be determined by biologists with experience in identifying all mussels species listed in Section 5 of this permit as well as other species likely to be encountered.
- D. Surveys shall be shall not be conducted when water visibility is poor, as this may negatively affect the surveyor's ability to find and identify target species.
- E. All mussel species found shall be identified to species and documented. For extensive mono-specific mussel beds, relative abundance of each species shall be estimated.
- F. Freshwater mussels may be removed from substrate for identification, measurement and photographic documentation. Care shall be taken to prevent damage to mussels, particularly to the foot which can extend deep into the substrate during removal and during handling.
- G. To reduce stress on collected specimens, mussels shall be replaced into the substrate in the locations where each originated as soon as possible after data collection. Permittee shall ensure that mussels are oriented correctly when placed back in the substrate, so that each mussel's foot (anterior end) is pointed downward. If

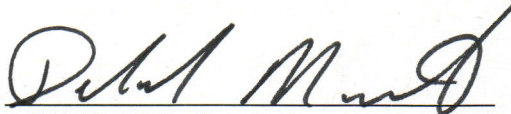
the substrate is firm or rocky, it may be necessary to create an opening to place the mussel in using a hand trowel or other implement; this will help prevent damage to the shell that can occur from attempting to push a mussel directly into hard substrate.

- H. This permit does not authorize the translocation of listed species.

## 12. Reporting Requirements

- A. Any mortality/morbidity related to the activities authorized under this permit that was/were not specifically requested, anticipated and/or authorized shall be reported in writing to the VFWD Permits Specialist within 72-hours of each occurrence. Reports shall include the preserved specimens and a plan for reducing the likelihood of future occurrences.
- B. A report shall be submitted to the Permits Specialist (electronic format preferred) within 30-days of the completion of the survey, unless an extension is specifically requested and granted, and shall include, at a minimum:
- A list of all detected species (target species and non-target species), species name, location, photographs, any shell measurements and shell condition data.
  - Survey area map(s) documenting the spatial extent of habitats including substrate types, the location of all listed specimens that were detected and estimated or relative densities by species; and the depth and flow where mussels aggregate.
  - Survey dates.
  - Measurement of survey effort.
- C. The Permittee shall accommodate requests by Agency of Natural Resources staff for additional information from collection activities (e.g., copies of original field sheets, computerized data in usable format). Reports of results of any subsequent analyses and copies of subsequent publications resulting from the collections made under this permit shall be forwarded to the Vermont Fish & Wildlife Department.
- D. If during the authorized activity the Permittee or subpermittees encounter rare (S1-S2), threatened and/or endangered species, a rare species reporting form ([http://www.vtfishandwildlife.com/wildlife\\_nongame.cfm](http://www.vtfishandwildlife.com/wildlife_nongame.cfm)) shall be submitted or the data shall be submitted in a format acceptable to the Vermont Fish & Wildlife Department's Biotics Data Manager. It is most important to provide species name(s), the name of the person(s) that identified these species, the date of the observation and geographic coordinates (taken from a GPS unit in the field) or a topographic map (1:5000) indicating the precise location where the species was located

Issued by:



Deb Markowitz, Secretary  
Agency of Natural Resources

Date:

10-10-12

## Appeal

If you wish to appeal this determination, please contact the Vermont Environmental Court. Appeals to that Court must be filed within 30 days of the date of an appealable decision. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Court; and must be signed by the appellant or its attorney. The appeal must give the address or location and description of the property, project or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For more information, see the Vermont Rules for Environmental Court Proceedings, available online at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Court is 2418 Airport Road, Suite 1, Barre, Vermont 05641 (Tel. 802-828-1660).