

Fish & Wildlife Board
APPROVED Meeting Minutes
Tuesday, October 28, 2008

The Fish & Wildlife Board convened a meeting at 5:00 p.m. on Tuesday, October 28, 2008, in the Chapel conference room at the State Office Complex in Waterbury, Vermont.

Attendees:

Board Members: Brian Ames, Vice Chair; Jeremy Baker; Wayne Barrows; Walt Driscoll; Cyndy Jones; Craig O. Lantagne; Claude Rainville; John Roy; Jeff Salvador; and Robert Shannon.

Absent: Dana Kittell, Chair; R. Keith Armstrong, and Ed Gallo.

Department Employees: Commissioner Wayne Laroche, Col. Robert Rooks, Major David LeCours, John Austin, Shawn Haskell, Tom Decker, David Englander, and Cathy Merrill.

Visitors: Roy Kilburn, Berlin; L. Brooke Dingledine, Esq.; and Dr. Hank Dimuzio.

Vice Chair Ames called the meeting to order at 5:00 p.m.

Approval of August 20, 2008 Minutes

Mr. Driscoll made a motion to accept the minutes, which was seconded Mr. Rainville. There was no discussion and the minutes were unanimously approved as written.

Second Vote: Importation and Possession of Animals for Taking by Hunting (Captive Hunt)

David Englander summarized the status of the proposed rule. Vice Chair Ames suggested the Board review the rule section-by-section.

There were no concerns expressed by the Board until Section 3.12.

Section 3.12

There was discussion whether the proposed fencing requirements were adequate, the definition of “escape-proof,” and the reporting requirements for escaped animals. Some Board members recommended more stringent fencing requirements (double-fencing), but expressed concern about the economic impact this could have on facilities, and its possible effect on the passage of the rule. Mr. Barrows suggested the Department contact the Agency of Agriculture to inquire about the number of animal escapes reported to date.

Dr. Dimuzio addressed the Board and acknowledged that no fencing is “escape-proof.” He said that most facility owners want to ensure the confinement of their animals, and facilities can be designed and operated to alleviate escapes without double-fencing. He went on to say that if an owner has an animal escape and does not report it, he/she should be severely punished. He said the industry would not agree to double-fencing and it is not a national standard.

Section 6.0

Mr. Driscoll reviewed his research into the legislative intent of Section 4714. He said he had listened to the relevant tapes of the House Fish & Wildlife Committee and the Senate Natural Resources Committee and found that Section 4714 was lumped together with H.557, an omnibus fish and wildlife act. He said it was apparent to him after listening to the tapes that the intent of the rule was to protect wildlife and not restrict

game preserves; however, throughout all the meetings the Committees were in favor of not allowing any new hunting preserves in Vermont.

At this point, Mr. Driscoll asked to make a motion which would become Section 6.1 and read: “Only those facilities in existence prior to October 28, 2008, will be eligible to apply for a permit subject to this rule. No new facilities for the taking of animals behind fences will be established or permitted.”

Mr. Shannon asked if the Department had received any inquiries from people interested in establishing new facilities. Col. Rooks said he had received three or four calls from non-residents inquiring about setting up facilities in Vermont, and whether they were legal. He was under the impression the callers were waiting to see what the Board did in this regard.

It was decided that Mr. Driscoll’s motion was out of order at this time as the Board was just reviewing the rule section by section, not accepting formal amendments.

Section 4.10

There was discussion regarding the suggested facility size limitation and it was decided to keep the 1280 acre limit.

Section 9.1

Mr. Lantagne thought this would be the appropriate section to insert a financial bond requirement for decommissioning a facility. There was discussion on what an appropriate bond amount would be, inspections of facilities after fencing had been taken down, and when/if the federal government would step in.

Mr. Shannon made a motion to accept Draft 6.2 of the rule, which was seconded by Mr. Barrows.

Mr. Driscoll then made a motion to amend the rule by adding the following language to be included as Section 6.1: “Only those facilities in existence prior to October 28, 2008, will be eligible to apply for a permit subject to this rule. No new facilities for the taking of animals behind fences will be established or permitted.”

Ms. Jones seconded the motion.

Mr. Englander suggested adding “by hunting” after the word “animals,” and Mr. Baker suggested adding “hunting” before “facilities” to be consistent with the definition in Section 3.16.

The Board voted on the following language for Section 6.1: “Only those hunting facilities in existence prior to October 28, 2008, will be eligible to apply for a permit subject to this rule. No new hunting facilities for the taking of animals by hunting behind fences will be established or permitted.”

The vote was unanimous in favor of the amendment.

There was more discussion whether to require a financial bond to cover the expense of decommissioning a facility, the method of determining the amount of such bond, and the proper section to insert that requirement.

While Mr. Englander Mr. Austin were composing the language for the bond requirement, Mr. Shannon made a motion to amend the second sentence of Section 9.3 to read: “Exceptions to this clause will be made for facilities that test positive for communicable diseases at the discretion of the Department in accordance with most recent scientific evidence for environmental resilience of communicable disease pathogens.” Mr. Salvador seconded the motion.

There was concern whether this was the appropriate wording, and Mr. Baker pointed out this would necessitate a definition for “disease.” After further discussion, Mr. Shannon withdrew his motion, and Mr. Salvador withdrew his second.

After more discussion, Mr. Shannon made a motion to add “and/or tuberculosis” after CWD in both instances where CWD is mentioned in Section 9.3. Mr. Salvador seconded the motion.

The Board voted on the following language for the second sentence of Section 9.3: “Exceptions to this clause will be made for CWD and/or tuberculosis-positive facilities at the discretion of the Department in accordance with most recent scientific evidence for environmental resilience of CWD and/or tuberculosis pathogens.”

The vote to approve the new wording for the second sentence of Section 9.3 was unanimous.

Continuing discussion concerning the method of calculation for a financial bond, it was suggested that the amount could be determined during the permitting process, and that Section 6.2(k) should be written to give the Department authority to calculate the amount.

Mr. Englander suggested the following language after input from Members Lantagne, Baker, and Salvador: “A permittee shall provide a bond, secured note of credit or equivalent instrument, equal to the cost of decommissioning the facility. Factors in determining the cost of decommissioning shall include, but not be limited to: acreage, number of animals, and linear feet of fencing.”

Mr. Lantagne made a motion to accept the language, which was seconded by Mr. Driscoll.

The motion to insert the bonding language (as new Section 6.2(k)) passed by a vote of 6 to 3, with Members Barrows, Roy, and Shannon opposed.

Mr. Driscoll asked if the Board should be on the record regarding the language in Section 4.2 concerning native species. It was decided the timing of a Board statement would be more appropriate at the third vote. Mr. Englander reminded the Board that it has no authority over the confinement of white-tailed deer or moose in a facility, but it could give its recommendation to the Department.

At this time, Vice Chair Ames allowed Ms. Dingleline and Dr. Dimuzio address the Board. Ms. Dingleline said she believed Section 9.3 regarding fence removal goes beyond the authority of the Board as it relates to private property interests. She also believes the Board has no jurisdiction over taking fencing down, and that amounts to “government taking without compensation.” She said the prohibition of future facilities is not allowed by statute and the financial bonding requirement will be of grave concern to her client, Mr. Nelson, and it is an example of unfettered discretion given to the Commissioner.

Dr. Dimuzio said he was disappointed with the Board and believes Section 4714 conflicts with Sections 4081 and 4082. He said the Department’s current practices conflict with the rule, as it raises fish that are released into the wild, allows game birds to be released without control, and allows animals to come in from other states. He believes the Board has ignored how CWD is occurring, and how it has arrived in states without captive hunt facilities (e.g. Wyoming). He also admonished the Board that by prohibiting future facilities, it was caving to the public’s agenda to ban hunting.

A vote was taken on the proposed rule; the vote to accept Rule 6.2 as amended was unanimous.

Board Training Schedule

Mr. Englander said he will provide training to the Board on the following subjects: 1) the Board's scope of authority; 2) the rulemaking process; and 3) Roberts Rules of Order. The training will be provided 30 minutes prior to the next three Board meetings, beginning with the December meeting.

Update: Retrieval and Utilization Rule (Wanton Waste)

Mr. Shannon provided an update on the status of the Retrieval and Utilization Rule (Wanton Waste). Mr. Austin indicated that two weeks prior to the December meeting, the Department will provide the Board with a packet which will include the proposed language, a justification statement, and data from the wardens on relevant cases from the past year.

Roundtable

Mr. Driscoll brought up the subject of the increased number of crossbow permits. He also said hunters were upset by the lack of moose weigh-in stations staffed by biologists after the first four days of the season. He mentioned a critical deer yard had apparently been "flattened" by a logging company in Bloomfield.

Mr. Baker questioned the quality of the paper used for antlerless permits, and said they could be easily photocopied.

Mr. Lantagne said there was interest in allowing fall turkey hunting north of Route 2.

Mr. Rainville gave the Department a letter from a non-resident who would like to see a reduced license fee for non-residents who are landowners. The Department will respond to the letter and copy Mr. Rainville on the reply. Mr. Rainville asked if private individuals could plant food plots on State land. Tom Decker said that is allowed in some wildlife management areas and organizations have worked with Department biologists in the past. Interested parties should contact John Austin for more information.

Mr. Barrows asked how many deer had been harvested during the archery season, how many moose were harvested, and how many antlerless permits were left over. It is early for accurate moose harvest numbers, but the Department believes the harvest will be on par with last year (316). The archery harvest is also on par with last year. John Austin provided the numbers on leftover antlerless permits.

Commissioner Laroche said the Department is proceeding with on-line license reporting and once that is up and running, the day-to-day harvest numbers will be more readily available.

Ms. Jones noted that the Ruffed Grouse Society had done a lot of habitat work on Ricker Mountain.

Mr. Salvador checked in with R&L Archery in Barre, and their reported harvest total is running higher than last year's numbers and the deer being reported are in good physical shape.

Mr. Shannon questioned the length of time it takes for reporting stations to receive payment. Tom Decker will check into the situation and report back to Mr. Shannon. Mr. Shannon also said there is a movement among the angling industry to eliminate the wholesale sale of felt-bottom boots in an effort to curb the spread of Didymo. In order for the State to prohibit the sale of those boots, there would have to be a change in the statute.

There were concerns noted about the distribution of antlerless permits this year. Some hunters received their second choice WMU, but then discovered there were leftover permits in their first choice WMU. Commissioner Laroche said this was a processing error that allocated the required 10% non-resident quota to each WMU, rather than statewide. This will be corrected next year.

Vice Chair Ames asked when the ten-year big game management plan would be available to the Board. Commissioner Laroche admitted the delay was due to his review of the plan, but thought the plan would be available in either December or January.

Mr. Englander said the Board received a petition asking for changes to the fishing regulations on the Clyde River. The Department prepared an acknowledgment letter for the Chair's signature, and will be prepared to give the Board its recommendation at the Board's December meeting.

Mr. Englander urged Board members to attend the LCAR meeting regarding the captive hunt rule to voice their support for the rule. The Department will inform the Board once a date is scheduled.

Commissioner Laroche noted this was Col. Rooks' last Board meeting, as he is retiring from State service on December 1, after being a warden for 30 deer seasons. Major LeCours will be Acting Director of the Law Enforcement Division until a replacement is found.

Mr. Roy made a motion to adjourn the meeting, which was seconded by Ms. Jones.

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

/s/cpm

Catherine Pirie Merrill
Executive Staff Assistant
Fish & Wildlife Department

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.