

Fish & Wildlife Board
APPROVED Meeting Minutes
Wednesday, December 16, 2009

The Fish & Wildlife Board held a meeting on Wednesday, December 16, 2009, in the Skylight conference room of the State Office Complex at 103 South Main Street in Waterbury, Vermont.

Attendees:

Board Members: Brian Ames, Chair; Ed Gallo, Vice Chair; Pete Allard, Jeremy Baker, Wayne Barrows, Walt Driscoll, Cyndy Jones, Craig O. Lantagne, Claude Rainville, John Roy, Jeffrey Salvador, Bob Shannon, and Grant Spates.

Absent: R. Keith Armstrong.

Fish & Wildlife Department Employees: Commissioner Wayne Laroche, David Englander (legal counsel), Col. David LeCours (Director, Law Enforcement Division), Scott Darling (Species Section Supervisor), Eric Palmer (Director of Fisheries), Bernie Pientka (fisheries biologist), Mike Wichrowski (FWD lands coordinator), Rich Kirn (fisheries biologist), Jud Kratzer (fisheries biologist), and Cathy Merrill (executive staff assistant).

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

Approval of August 12, 2009 Meeting Minutes

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

At the request of Department employees, Chair Ames agreed to change the order of the agenda.

Access Area Rule

Chair Ames said he had received a request dated October 8, 2009, from Representative David Deen asking the Board to amend the fishing access rule to allow limited commercial use for non-profit organizations at State-owned fishing access areas.

Chair Ames said the Board was under no obligation to re-visit this issue, as the Board believed giving the Department verbal authority to allow such uses was sufficient. Chair Ames asked the Department's legal counsel to draft explicit language that would meet the criteria and allow the Commissioner to issue permits for such uses. Chair Ames said the Board's original intent coincided with Representative Deen's request, and rather than re-open the entire rule, Chair Ames recommended the Board consider specific changes to the rule; e.g. changes to Sections 3.2, 5.15, and 8.2 (and the resulting re-numbering of paragraphs).

Clarification was given as to what non-profit organizations were being discussed (the Special Olympics' penguin plunge, the Putney Rowing Club's regatta – which is a fund-raiser, and a couple of relay races that use the access areas as water stops). Eric Palmer said there have not been any conflicts with allowed user groups in the recent past; however, the rule clearly reads commercial uses are not allowed.

Mr. Shannon made a motion to amend Rule 641, using the language the Department suggested. Mr. Baker seconded the motion.

Mr. Palmer explained how the rule has been interpreted since its adoption; that if a use is explicitly listed as prohibited; a special use permit cannot be issued. However, if a use is not specifically listed as prohibited, and does not conflict with allowed uses, then a special use permit may be issued by the Commissioner. Mr. Palmer added if permits were issued to an organization and conflicts arose, then future permits would not be issued for that organization.

Mr. Gallo said that Gray Stevens, Executive Director of the Vermont Outdoor Guide Association, called him and wants commercial guides to be allowed to use the accesses. Mr. Gallo asked for clarification where the rule prohibited such uses. Commissioner Laroche said that fishing guides are a legitimate use, as they are a user group. Mr. Shannon said that Mr. Stevens also called him and told him that non-paying commercial users want the Board to revisit the rule in its entirety.

Mr. Palmer said the role of the Department and the Board is to protect priority uses, and to allow other uses if they don't conflict with the priority users. If a conflict is identified and not addressed, the Department risks losing federal funding; however, the Department's authority to issue special use permits addresses those conflicts. Mr. Palmer added that no group is granted exclusive use of an access area during an event.

Chair Ames noted that in the case of the Putney Rowing Club regatta, there are two fishing accesses in the area 400 yards apart (one in Dummerston and one in Putney); there is room for overflow parking at the Putney access area, and the event is only held on one weekend.

Chair Ames called for a vote. The vote was unanimous to accept the language changes as suggested by the Department. Specifically, Section 8.1 would be amended to read, "The Commissioner may authorize the use of access areas by an educational institution or a nonprofit charitable organization conducting a fundraising event of limited duration, provided that the event will not conflict with a priority use of the access area."

Chair Ames said he preferred to schedule time at a future Board meeting to take public input on the issue, rather than have a full-blown hearing as the rule recently went through extensive public hearings. The next step is for the amended rule to be considered by the Interagency Committee on Administrative Rules (ICAR) as soon as possible, and then continue through the rulemaking process.

Discussion: Request from Senate Natural Resources Committee Members for a Ban on Coyote Hunt Tournaments

Chair Ames distributed a letter he received from Senators Ayers and Lyons dated November 9, 2009, asking the Board to initiate a rule to ban coyote tournaments and anyone who participates in those tournaments. A broader request was sent to the previous Board Chair on May 12, 2008, but that letter was never responded to. Chair Ames said he would treat the latest request as if it were any other request from a member of the public. He asked the Board members to each give their thoughts on the issue, and said he would then ask for a motion on whether the Board would continue with rulemaking.

Board members recollected the well-attended open public meetings on the subject in 2006, the Board hearing in 2007, and the retrieval and use (wanton waste) hearings in early 2009. The majority of those attending those forums was not in favor of any additional regulation on coyote hunting. The Board members also expressed concern that a rule prohibiting such contests may set a precedent that could possibly threaten future tournaments or contests involving fish or wildlife. It was noted that after 2006, the coyote hunting contests did not appear to be an issue due to self-policing by the sporting community. Each member voiced opposition to pursuing rulemaking to ban coyote hunts.

Mr. Baker asked if it was the “*consensus of [the Senate Committee on Natural Resources and Energy and] the Department of Fish and Wildlife that coyote hunting competitions only succeed in further degrading public opinion of hunting,*” or if the Senators were speaking for the Department when they made that statement. Commissioner Laroche said the Senators were speaking *for* the Department (rather than on its behalf).

Mr. Baker made a motion to deny the request to pursue rulemaking to ban coyote hunts. Mr. Gallo seconded the motion. The vote was unanimous with all those in attendance in favor of denying the request, including Chair Ames.

Chair Ames will draft a letter to the Senators outlining the process the Board had undertaken to consider their concerns and will copy the Board members and the Department. Mr. Englander confirmed there was a 30-day deadline from today’s date to respond.

Big Game Management Plan

Scott Darling distributed a copy of the Big Game Management Plan to each Board member.

Presentation: Section 122 Fish Regulation

Fisheries Division staff gave presentations on proposed changes to Section 122 -- Fish Regulation, that would take effect in January 2011.

Fishing Seasons on Eleven Ponds: Jud Kratzer, fisheries biologist for the Department, gave a presentation on proposed changes to the fishing seasons on Newark Pond, and the addition of eleven ponds to the “seasonally closed waters.”

Ponds Where Use of Fish as Bait is Prohibited: Mr. Kratzer gave an overview of the proposed change to permit the use of fish as bait in seven additional waters and to prohibit the use of fish as bait in 16 additional waters.

Housekeeping Changes: Bernie Pientka, fisheries biologist for the Department, reviewed housekeeping changes to Appendix 122 of Title 10A, Chapter 2 that addressed redundancies and provided consistency. Board members were asked to review the regulation and to let Mr. Pientka or Mr. Palmer know of any additional changes that might be made.

Regulation 110: Regulation 110 is recommended for repeal as it is obsolete. This rule was previously recommended for repeal, but had been overlooked. This proposal will be considered by separate vote, but will be included in rulemaking at the same time as the changes to Rule 122.

Mr. Shannon made a motion to repeal Regulation 110, which was seconded by Ms. Jones. The vote was unanimous to repeal Regulation 110.

Mr. Shannon made a motion to accept Rule 122 as amended by the Department. Ms. Jones seconded the motion.

Mr. Shannon said he is hearing concerns that the daily creel limit for brook trout is too excessive, and he would like some discussion on the brook trout management plan. Mr. Palmer said when the regulation returns to the Board for a second vote that fisheries staff would be available to give a presentation to address those concerns.

The vote to amend Rule 122 as suggested by the Department passed unanimously.

Presentation: Fish Management and Fishing Regulations

Rich Kirn, the chair of the trout team, gave a presentation on fish management and fishing regulations. Mr. Kirn said the Department would be sending out a statewide angler survey in the next week to 4,500 anglers; results would be available by the fall of 2010; included in the survey are questions regarding creel limits. As a courtesy a copy of the survey would be provided to the Board prior to mailing.

Mr. Englander said the proposal to rescind Rule 110 and the amendments to Rule 122 would be presented to ICAR in February. Mr. Palmer asked the Board for suggestions on how many public hearings the Board would prefer. After discussion, it was decided the Department would host three hearings, one in the St. Johnsbury area (possibly Lyndon State College), Montpelier, and the Rutland area (possibly Kehoe Conservation Camp).

Informational Presentation: Commissioner's Test Water Regulation for the Dog River

Rich Kirn gave a presentation on the Commissioner's Test Water Regulation for the Dog River and the fisheries management history of the Dog River. Commissioner Laroche signed a test water regulation for the entire 8.1 mile section of the Dog River from its mouth in Montpelier to the dam in Northfield Falls. The regulation would impose a daily creel limit of zero for a six year period. The intent is to increase the wild trout population in the river as fishing mortality that was once insignificant has now become significant due to other variables that are affecting mortality. Extensive public input was gathered prior to proposing the regulation to the Commissioner.

Drawing: Lifetime License Lottery

Sharon Roy drew the winning lifetime license lottery ticket from 400 applicants. The winner was Brad Lockwood of Berlin, Vermont.

Law Enforcement Recap of Rifle Season

Col. LeCours gave a brief review of the past hunting seasons and said it was a relatively quiet season regarding violations.

Roundtable

There was some general discussion regarding the Big Game Management Plan from a few members.

Mr. Rainville mentioned that raccoon hunters' dog training must end two weeks prior to the start of the hunting season, however, bear hound training ends once the season starts.

Mr. Lantagne asked if changes to antler restrictions (an increase to three points per side) were under consideration. Commissioner Laroche said attendees at the upcoming Yankee Sportsmen's Classic would be queried on this subject. Commissioner Laroche said any antler restriction change would take considerable discussion at the Department level before being proposed to the Board.

Mr. Barrows said he is hearing hunters complain that hunting is harder, and predicts the Department will hear similar complaints at the spring deer meetings.

Mr. Shannon complimented Eric Palmer and his staff for their efforts in simplifying the fishing regulations. Mr. Shannon will propose changes at the next step in the rulemaking process. He offered his unscientific results of the 2009 deer season by observations from his reporting station: the total was up seven deer from

last year, the average weight was 144.9, 25% of the deer checked in were going to be mounted, and hunters were thrilled with the quality of the animals.

Commissioner Laroche said his prediction of 8800 deer harvested was not that far from the actual total; the total harvest as of this date is 7639, which is 500 fewer than last year at this time. Shawn Haskell, deer team leader, has reported the weights of the deer being checked in were the heaviest they had been since the 1940s. There were 606 moose harvested compared to 601 last year. The turkey harvest was 699 compared to a three-year average of 634. The bear harvest was 606; only one other time since statistics began has the total exceeded 400.

Mr. Salvador suggested reducing the number of antlerless permits in the areas where they aren't being purchased. Commissioner Laroche said the model may need to be adjusted, and the Department will know more once the data from the check stations is received.

Mr. Driscoll asked about an email he received regarding an enforcement incident concerning a spike horn. Col. LeCours said that incident is being reviewed internally. Mr. Driscoll asked if the Board had the authority to change the antler length requirement for moose, as it is hard to see a six-inch antler on a 12-inch eared moose. Mr. Englander said such a change would be under the Board's authority.

Commissioner Laroche said the forward-looking infrared (FLIR) camera study on moose had been postponed due to weather conditions.

Mr. Baker asked if there were no further chronic wasting disease cases in New York State if the restriction on importation of harvested deer would be lifted. Commissioner Laroche said that would probably not happen for at least ten years due to the length of time it takes for CWD to show up.

Mr. Englander told the Board that the captive hunt rule goes into effect on January 5, 2010. Commissioner Laroche will hand-deliver applications to the affected facilities next week and ask their intent at that time.

Mr. Spates said he had heard of a lot of conflicts during youth weekend, where young hunters did not receive permission from the landowners prior to hunting. He thought the Department could do a better job educating the youth of this requirement.

Ms. Jones said she had heard nothing but complaints from hunters in her area who did not see any deer. She also heard of two large thousand-acre tracts of land where no deer were harvested.

Mr. Englander told the Board that the emergency rule for the special spring Snow Goose conservation order and the proposed regulation for the Snow Goose conservation order would be on the agenda for January's meeting.

Mr. Palmer offered if the Board would like more specific information regarding the fish regulations to let him know, and he would arrange for a presentation at a future Board meeting.

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

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Catherine Pirie Merrill
Executive Staff Assistant