

**Fish & Wildlife Board**  
**\*\*APPROVED as amended\*\* Meeting Minutes**  
**Wednesday, December 19, 2007**

The Fish & Wildlife Board convened a meeting at 5:10 p.m. on Wednesday, December 19, 2007, in the Skylight conference room at the State Office Complex in Waterbury, Vermont.

**Attendees**

Board Members: Dana Kittell, Chair; Brian Ames; R. Keith Armstrong; Jeremy Baker; Wayne Barrows; Walt Driscoll; Cyndy Jones; Craig Lefevre; Claude Rainville; John Roy; Robert Shannon; and Bruce Therrien.

Absent: Ed Gallo and Michael Popowski.

Department Employees: Commissioner Wayne Laroche, Colonel Robert Rooks, Major David LeCours, Eric Palmer, Tom Decker, David Englander, Shawn Haskell, John Buck, John Austin, Sean Williamson, Mike Wichrowski, Bill Crenshaw, Chet MacKenzie, Shawn Good, Michael Humling, Bernie Pientka, and Cathy Merrill.

Chair Kittell called the meeting to order at 5:10 p.m.

**Visitors**

Robert Carrier, Huntington; Representative Kenneth Atkins, Winooski; Roy Kilburn, Berlin; Andrew Page, Humane Society of the United States; Dan Mitchell, St. Albans, Director/Past President, Lake Champlain Walleye Association; and Mike Bard, Secretary of the Lake Champlain Walleye Association.

**Approval of October 10, 2007 and October 18, 2007 Minutes**

A motion was made by Driscoll, seconded by Roy, to accept the minutes of the October 10, 2007 meeting. The minutes were unanimously approved as written.

A motion was made by Lefevre, seconded by Jones, to accept the minutes of the October 18, 2007 meeting. The minutes were unanimously approved as written.

**Introduction of New Employees**

Eric Palmer introduced Michael Wichrowski, whose duties include access area management and issues concerning Wildlife Management Areas. John Austin introduced Dr. Shawn Haskell, who has assumed the duties of deer project manager. Tom Decker introduced Sean Williamson, the new Hunter Education Training Coordinator for the Department's Outreach Division.

## **Snow Goose Season**

Bill Crenshaw, wildlife biologist for the Department, gave an overview of a possible regulation to license hunters to take Snow and Ross geese during the period March 11 through April 15, 2008 in the Lake Champlain and Interior Vermont Zones. Crenshaw stated there is no guarantee that the USFWS will issue a Record of Decision allowing for a spring hunt for snow geese. Due to the short time duration expected between the release of the Record of Decision and implementation of the Conservation Order, a regulation would have to be considered by the Board under the Emergency Rule provisions, similar to the procedure used for setting fall waterfowl seasons. If the Record of Decision is not issued in time for the Board to act on it, the rule will not be filed. If the Record of Decision is appealed, the proposal will not move forward.

There was a question concerning the expiration of duck stamps, as they are dated with the year of purchase. Col. Rooks clarified that a duck stamp is valid through June 30 of the following year; however, a valid hunting license for the each calendar year is required.

## **Discussion -- Title 10, Appendix 2(a) Tagging Requirement**

Col. Rooks informed the Board that Title 10, Appendix 2(a) is in need of revision due to the statutory suspension of Title 10 V.S.A., §§ 4743 and 4744. Appendix 2(a) references those sections of the statute that are suspended, which effectively suspends Appendix 2(a) as well. Without Appendix 2(a) in effect, big game tagging requirements for archery and muzzleloader seasons are unenforceable. Col. Rooks recommends the tagging requirements for archery and muzzleloader be generic, and not make reference to a statute. This could be addressed when the deer rules are acted on.

## **Discussion/First Vote: Walleye/Muskie Proposed Regulation**

Eric Palmer gave an update on the baitfish rules. On November 28, LCAR approved the emergency rule, which expires on February 19, 2008. The regular rule was approved by ICAR on December 17. Five public hearings will be held in January, 2008.

Palmer said it was the Department's desire to combine three proposed regulations (walleye, muskie, and closing three Winooski tributaries) under one vote, as they all fall under Regulation 122.

Shawn Good, fish biologist for the Department, gave a presentation on the proposed muskellunge regulation and the alternatives that were considered by the Department before making the proposed recommendation.

Good explained that extensive outreach has been done to help anglers differentiate between muskie and pike. There was discussion on reproduction rates, the expiration of the regulation, and incidental take.

Chet MacKenzie, fish biologist for the Department, gave a presentation on the proposed walleye regulation. MacKenzie said the regulation was a result of a cooperative effort between the Department and interested statewide organizations.

Dan Mitchell, Director and Past President of the Lake Champlain Walleye Association, said the LCWA supports the proposed regulations 100%. Mr. Mitchell submitted a letter expressing that support to the Board earlier in the day via email. He offered that a LCWA survey of sportsmen indicated 93% of the respondents supported reduced walleye creel limits. Mike Bard, Secretary of the LCWA agreed, and said the LCWA had wanted a change since the 1990s, and he was very much in favor of proposal.

Chair Kittell questioned whether the three items should be voted on as one, and suggested voting on the muskie/walleye proposals separately from the Winooski proposal.

Roy made a motion to accept the draft proposals on muskie and walleye, which was seconded by Lefevre. All voted in favor, except Baker, who opposed.

### **Proposed Regulation to Close Three Tributaries to the Winooski During Spring Spawning Season**

Eric Palmer explained the Department had received a petition from Trout Unlimited, through Lawton Webber, to change the regulations on the Winooski River tributaries to be consistent with other existing regulations. The petition described specific river sections of concern. Bernie Pientka, fish biologist for the Department, reviewed the current regulations, the proposed regulation, and justification for the proposed changes.

Representative Ken Atkins addressed the Board and said he has received calls in the last five years expressing dissatisfaction with regulations promulgated by the Board and the USFWS. He said the concerned citizens calling him have the perception that the Board/Department are not friendly toward anglers, and encouraged the Board/Department to keep the angling public in mind when making changes to regulations.

There was discussion on the merits of the proposal, and how the Department was going to monitor the effect of the closing the tributaries. Pientka assured the Board that population surveys would continue on these tributaries. There was concern expressed that spawning beds are being destroyed by public access.

Palmer emphasized that this proposal would not lead to closing spawning tributaries statewide; that the Winooski tributaries were specific to the petition to enhance the main stem fisheries with natural reproduction. Palmer emphasized that Fisheries Division staff reviewed the proposal and believed the proposal would not harm the fishery and would be consistent with other regulations.

There was discussion on the Lamoille River regulations and how they compare to this proposal.

Therrien noted the definition of the Lamoille on page 5 reflected the definition prior to the changes the Board made last year. Palmer will correct the error.

There was more discussion on the consistency of the regulations. Kittell questioned if the change as proposed was the result of a petition or because of studies the Department had done. Palmer said the proposed regulation was the result of a petition, however, he re-emphasized that

the petition was reviewed on its biological merits; no potential for adverse biological effects was evident, so the proposal moved forward. If there had been adverse effects, the request would not have been pursued.

Palmer said public meetings will be held in January and changes to the proposal could be made at that time, however, the Department would not change its biological recommendation.

A motion was made by Shannon to vote on the proposal, which was seconded by Lefevre.

The vote was in favor of the proposal, 7 to 4, with Barrows, Armstrong, Roy, and Ames in opposition.

### **Third Vote: Importation and Possession of Wildlife (not for hunting)**

Baker made a motion to accept the proposed regulation on the importation and possession of wildlife (not for hunting), which was seconded by Jones.

The proposal was unanimously approved.

### **Update/Discussion/Motion to Amend Second Vote: Importation and Possession of Animals for Hunting (update re: LCAR-directed meeting held on November 30, 2007)**

Commissioner Laroche introduced David Englander, who will be legal counsel for the Board/Department on this issue, due to the resignation of Steve Hill.

Therrien gave an update on the LCAR-directed meeting held on November 30, 2007. Englander said he made changes in the language of the proposal, not changing the intent, but clarifying the Board's position, as well as providing additional detail as requested by LCAR. Englander reviewed the changes item-by-item as outlined in his memo to Commissioner Laroche dated December 14, 2007. He noted that where applicable, the language reflected the requirements of the Agriculture Agency.

Unless otherwise noted, no concerns by the Board were raised during the item-by-item review.

- 4.1. Therrien mentioned the industry's concern regarding the removal of the language requiring a list of prohibited species. Englander suggested that a list of allowed species be prepared and presented when the rule is brought before LCAR.
- 5.2 Therrien recommended striking the sentence "The animal's identification shall be attached to the application." as it was not the animal that was being permitted.
- 5.3 Therrien informed the Board there was a lot of discussion and disagreement at the November 30, 2007 meeting regarding the wording "such additional information as is necessary" as the industry was concerned it was too vague and open-ended. Therrien thought if there was a clearly-defined application process, the wording would be unnecessary.

- 6.4 Therrien said that LCAR had requested specific requirements for Rule 6.4, so the language now referenced the Agency of Agriculture rules. The only difference was the addition of the wording “ingress of wild deer or moose” and the footnote language on page 7 which reads: “Repeated escapes of captive animals, or the ingress of wild deer or moose, would be evidence of non-compliance with this rule.”

At this point Board member Shannon relayed an incident that occurred this summer where he had personally witnessed an elk that had escaped from the Nelson facility. There was discussion whether the Agency of Agriculture’s fencing requirements fall short of protecting Vermont’s wildlife. Commissioner Laroche said that once a facility was permitted for hunting, then the Board’s rules would apply to that facility.

- 4.3 The “one business day” requirement reflects the Agency of Agriculture’s rules. Jones questioned if “24 hours” would be better for the protection of wildlife in the event of an escape.

Chair Kittell questioned Englander if the Fish & Wildlife Department and Agriculture Agency were on the same page concerning this proposal. Englander said he has had no disagreement in his discussions with that Agency.

- 6.4 Therrien wanted the Board to be aware that there was discussion concerning suitable habitat, density of animals, and overall animal husbandry at the November 30 meeting. The proposed language mirrors the Agriculture Agency’s regulations.

- 6.5 Therrien said the industry was reluctant to provide the names of individuals harvesting animals. The Board felt that the names of people with hunting licenses are public information, so the names of individuals hunting captive animals should be public information as well.

- 6.6 Therrien relayed there was a preference by the industry not to have an expiration date attached to a facility’s permit, and to leave it in effect until the rules are broken. Englander advised that most permits have expiration dates.

There was discussion regarding monitoring requirements and whether to require annual inspections. Englander recommended having the language remain as it is, as it allows more flexibility.

At this point, there was discussion on how to proceed, and it was decided to go through each amendment and then vote on the rule in its entirety. Once a vote was taken, the proposed rule would go back to LCAR. If LCAR approves the rule as amended, it would then return to the Board for a third and final vote.

- 7.1 Therrien relayed that the industry requested the addition of “imminent” to add specificity to the threat of disease. Englander explained that the industry preferred the wording “clear and convincing” as a threshold. Englander stated that a rule could not change an evidentiary standard, and that the civil “preponderance” standard would apply. Englander said the industry wanted an opportunity to cross-examine, and under the current proposal they will be provided that opportunity.

- 7.2 The word “imminent” should be added regarding the threat of disease to be consistent with 7.1.
- 7.4 The language “subject to the Vermont Rules of Civil Procedure” allows the appellant a route of appeal to the Superior Court; the Environmental Court does not have jurisdiction.
- 7.5 This end date was added for clarity for when compliance to the rule is required.

There was discussion about the lack of a timeline for issuance of a denial. It was agreed to add “30 days” as a requirement for the Commissioner to deny an application, and require the reasons for the denial be included in the decision.

Baker made a motion to amend the rule point-by-point, which was seconded by Lefevre.

Baker rescinded his motion, and Lefevre rescinded his second.

Baker then made a motion to accept the amendments, which was seconded by Lefevre.

The motion to accept the amendments was unanimously passed.

Shannon made a motion to amend the just-approved amended version, which was seconded by Baker.

Shannon suggested an amendment to section 6.4 which would require secondary fencing with the same specifications as the original fencing, and allow for eight feet between the two fences. Shannon’s motion was seconded by Driscoll.

Commissioner Laroche cautioned that adding this new requirement might jeopardize the success of having a rule in place to regulate the facilities.

Shannon’s motion to amend was defeated by a 5 to 4 vote, with Shannon, Jones, Driscoll, and Rainville voting in favor of the amendment, and Barrows abstaining.

Therrien reviewed the changes suggested in the previous discussion.

1. Replace “one business day” with “24 hours” in sections 4.3 and 4.4.
2. Strike the entire last sentence in 5.2.2 “The animal’s identification shall be attached to the application.”
3. Add “within 30 days” to 6.7 so it reads: “If the application is denied, the Commissioner shall within 30 days send the person a written denial providing the reasons why the application was denied.”
4. Insert “an imminent” before the word threat in 7.2 to be consistent with 7.1.

Therrien made a motion to accept the above amendments to the rule, which was seconded by Shannon.

The vote was unanimous to accept the above changes. Chair Kittell asked if there were any other concerns.

There was discussion about the purpose of previously removing the requirement to provide a list of allowed species. Therrien suggested the Department have a list of allowed species prepared and available when the rule is presented to LCAR, but not to include it in the regulation. By keeping the approved list separate it would be easier to change if necessary. Tom Decker assured the Board that the Department would prepare such a list as requested.

Jones said she strongly opposes captive hunts, and questioned why captive hunting facilities were being approved by the Board. Chair Kittell clarified that this regulation is not approving the facilities; it is providing an application process for them. Col. Rooks also pointed out that hunting facilities are allowed under section 4714, and the Department is required by statute to regulate them.

Driscoll was concerned whether the proposed minimum fencing requirements would be effective. Lefevre presented a hypothetical situation about a facility having escaping animals and questioned how it would be handled. Englander explained the process of enforcement through the Department and the Courts.

Ames made a motion to accept the amended rule in its entirety, which was seconded by Shannon.

Englander explained that once the vote was taken, the proposed rule would return to LCAR.

Chair Kittell counted the votes and found 8 in favor, 3 opposed.

Cathy Merrill asked for the Board members' names and how they voted. Kittell asked again for a raise of hands, at which point Jones asked to change her vote to "oppose."

The final vote was 7 to 4 in favor of the motion to amend. Rainville, Barrows, Baker, Armstrong, Ames, Roy, and Therrien voted in favor; Shannon, Lefevre, Driscoll, and Jones were opposed.

### **Drawing: Lifetime License Lottery**

Roy drew the winning ticket for the lifetime license. The winner is Erwin C. Hodge from Londonderry, Vermont.

### **Board Member Roundtable**

Ames asked if the Department had reviewed the wanton waste proposal that he had forwarded. Commissioner Laroche said it had not been considered, but had been forwarded to staff.

Chair Kittell said he was receiving a lot of negative feedback regarding the "48 hour" requirement in the baitfish rule.

Therrien made a suggestion to Board members that they may want to provide the reasoning for the just-taken vote, due to the narrowing of the margin from the original second vote (taken on June 27, 2007 the vote was 10 to 1). Shannon distributed his position paper to the Board.

Ames made a motion to adjourn the meeting, which was seconded by Baker, et al. The meeting adjourned at 9:10 p.m.

Respectfully submitted.

**/s/cpm**

Catherine Pirie Merrill  
Executive Staff 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.*