

Fish & Wildlife Board  
\*\*APPROVED\*\* Meeting Minutes  
Wednesday, February 20, 2008

The Fish & Wildlife Board convened a meeting at 5:00 p.m. on Wednesday, February 20, 2008 in the Skylight conference room at the State Office Building Complex in Waterbury, Vermont.

Attendees:

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

Department Employees: Commissioner Wayne Laroche, Col. Robert Rooks, Major David LeCours, Eric Palmer, Tom Decker, John Austin, Cedric Alexander, Tom Jones, Shawn Good, Tom Wiggins, Bernie Pientka, John Hall, Michael Humling, and Cathy Merrill.

Chair Kittell called the meeting to order at 5:00 p.m., and welcomed Jeff Salvador as the new Board member representing Washington County, who replaces Michael Popowski. Mr. Salvador gave a brief background on himself.

**Approval of January 16, 2008 Minutes**

A motion was made by Driscoll and seconded by Gallo to approve the minutes. The minutes were unanimously approved as written.

**Second Vote: Baitfish Regulation**

Chair Kittell outlined the process for the proposed baitfish regulation.

Shawn Good, Department Fish Biologist, began a review of changes the Department is recommending to the proposed baitfish regulation as a result of input received at the public meetings. It was noted that language to sunset the emergency rule was not included in this version, but would be added prior to the second vote.

Chair Kittell asked the Department to give the reasoning behind each change that was made.

**5.3.2** The Department added the definition of “baitbox” for personal use. There was discussion on the dimensions of the baitbox.

It was noted that discussion was taking place before a motion was on the floor. Shannon made a motion to vote on each item as it was reviewed; which was seconded by Baker. All agreed with this process.

Therrien made a motion to amend Section 5.3.2 to strike “10 square feet in size” and replace it with “25 cubic feet in volume” which was seconded by Lefevre. The change was accepted unanimously.

5.3.2 will now read: “Baitbox” means a receptacle used for holding or keeping baitfish alive for personal use. A baitbox shall not exceed 25 cubic feet in volume.”

**5.1.3** There was discussion on whether the Board had the authority to regulate the movement of water. That point needs clarification by legal counsel, and that section may be removed before the second vote if it is not within the Board’s authority.

**5.3.7** The Department added the definition of “waterbody.” There was discussion on the differences between a waterbody and watershed. Therrien questioned if the Department would be providing watershed maps to the dealers. Therrien said he would not propose any amendments at this time, but would like have further discussion on this section prior to a vote on the overall proposal.

Baker made a motion to strike the second sentence “Sections of river or stream located between 2 impassable barriers shall be considered distinct waterbodies.” Shannon seconded. Two members were in favor of striking the sentence; the majority of the Board was opposed.

**5.4** The Department added the entire section on personal baitfish harvest to allow personal harvest and use of baitfish.

**5.4.7** Therrien made a motion to delete the first sentence in Section 5.4.7: “It is unlawful to leave the water with baitfish in your possession.” This was seconded by Lefevre. The motion was unanimously approved.

**5.4.9** There was discussion whether Section 5.4.9 was redundant, as the language was the same as Section 5.3.7. It was decided to leave Section 5.4.9 in for clarity.

**5.4.10** Gallo made a motion to strike the entire Section 5.4.10, which was seconded by Ames. There was discussion whether Section 5.4.10 increases enforceability regarding movement of baitfish where there is an identified risk. A vote was taken: 5 were in favor of striking the section; 8 were opposed. The section will remain.

Therrien made a motion to strike “confirmed positive for Viral Hemorrhagic Septicemia (VHS)” and insert “defined as closed to baitfish harvest” and, in the second sentence, replace the last two words “infected waters” with “closed waters.”

Therrien asked Col. Rooks if his suggested language would be enforceable; Col. Rooks responded that it would be.

Therrien clarified his motion that Section 5.4.10 would now read: “The personal harvest of baitfish is prohibited on any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters.” Shannon seconded. All voted in favor of the motion, except Baker, who opposed.

**5.5.2** There was discussion on the transportation receipt and whether it would be transferrable. Col. Rooks said the signature of the purchaser on the transportation receipt was important for proof of chain of ownership, but it is not clear whether it is assignable. Col. Rooks said if the Board’s intent is to allow someone other than the purchaser to transport baitfish, the current language would be acceptable for enforcement. It is not “cleanly” enforceable, but it allows what the Board desires.

**5.5.3** Gallo made a motion to replace “48” hours with “96” hours. Ames seconded. There was discussion on the length of time needed to transport baitfish and the intent of the hour restriction. Palmer said the 48 hour limit was to restrict the length of time a person has available for transportation of baitfish throughout the state. A vote was taken on the motion to change 48 hours to 96 hours: 7 were in favor of the change to 96 hours; 6 were opposed.

**5.5.1** Gallo made a suggestion to print in bold on fishing licenses that: “It is unlawful to import baitfish into the State of Vermont” as a means to educate anglers from out-of-state. Eric Palmer said as a housekeeping change the wording “without a fish importation permit” needs to be inserted after the words “State of Vermont” to clarify that this section applies to anglers only, not commercial dealers with importation permits.

Gallo made a motion to insert Palmer's suggested wording, which was seconded by Rainville. All were in favor of the change.

**5.5.6** The Department added language to clarify restrictions on disposal of baitfish.

**5.5.4 and 5.5.5** Rainville asked about restrictions on out-of-state bait dealers; Good responded that out-of-state dealers would have to be Vermont-licensed, which would ensure they were using certified baitfish. Humling suggested adding language to both 5.5.4 and 5.5.5 that would specify access to Lake Champlain by Vermont roads, as no Vermont permit is needed to access Lake Champlain by water.

**5.5.7** Roy wanted assurance that commercially-preserved baitfish are disease-free. Good explained the processing procedure renders the baitfish as virus-free; they are basically embalmed fish. Roy did not want to suggest an amendment, he just wanted clarification.

**5.6.1** The Department replaced the word "bait" with "baitfish" everywhere "bait" was mentioned as this regulation does not regulate grubs, worms, or crayfish, etc.

**5.6.2** The Department added this section. It was noted again that "bait" needed to be changed to "baitfish."

**5.6.3** The Department deleted the reference to the Lake Champlain zone as the regulation no longer specified zones.

**5.6.4** This new section outlines restrictions on commercial baitfish dealers and describes what a statewide baitfish dealer is. This section also restricts the use of water from unsecured sources as to avoid contaminating certified/approved baitfish with unwanted pathogens.

**5.6.5.3** Palmer said the language should mirror the language in 5.4.10 regarding closed waters. "The commercial harvest of baitfish is prohibited on any waterbody of the state that is defined as closed to baitfish harvest. The Department will maintain and make available a list of closed waters." Shannon made a motion to make that change, which was seconded by Baker. The majority of the Board was in favor of the change.

Therrien noted that if the wording "bait" was to be changed to "baitfish" throughout the document, that legally the Board needed to vote to make that change.

Kittell would like legal counsel to look at this document and questioned whether it had been reviewed. He also asked if waiting for legal review would delay the implementation of the rule too long.

Palmer verified the time line: the original emergency rule expired on February 19; the new emergency rule that was voted on in January was filed yesterday; it is in effect with same language for another 120 days. If a second vote was taken in March, and LCAR's review and third and final vote occurred in May, there would be time to have the final rule filed with LCAR and the Secretary of State's office prior to the expiration of the second emergency rule.

Baker made a motion to change "bait" to "baitfish" in the entire document. Palmer said where "commercial bait" dealers are mentioned, it should remain "commercial bait" dealers, not "commercial baitfish" dealers. Also, in 5.1.1 Palmer mentioned the wording should remain: "This rule applies to fish used as bait" rather than "fish used as baitfish." The motion was amended with Palmer's exceptions, and was seconded by Ames. The motion passed unanimously.

It was noted that the Department's legal counsel had not reviewed the document, however, Steve Hill (prior Department legal counsel) did review the first drafting of the first vote proposal, which was the same as the emergency rule proposal.

**5.6.5.4** This section was in the previous baitfish rule, before the emergency rule.

**5.6.6** Good suggested the words under item 2) “. . . and Baitfish Zone of the bait dealer” be stricken as they don't apply. Gallo made a motion to accept the change as suggested by Good; which was seconded by Jones. All were in favor of the motion.

**5.6.7.** The length of time a transportation receipt is valid needs to be changed to “96” hours to be consistent with 5.5.3. Gallo moved to make the change, which was seconded by Lefevre, and passed by a majority.

**5.6.9** The Department made revisions for clarity.

**5.7.1** This section separates the commercial activity of netting rainbow smelt and yellow perch, but allows them to be taken by angling.

**5.8.1** This section allows movement of water to transport live fish to fishing derby weigh-in stations. This section may be unnecessary if legal counsel finds the Board does not have legal authority over the movement of water.

It was noted that Sections 5.8 and 5.1.3 are on hold until legal jurisdiction is decided.

**10.1.1.1** This section allows commercial baitfish dealers who are harvesting on waters to transfer and sell those baitfish alive at their bait shops.

Shannon questioned if there was a need to insert a clause regarding the sunset of the emergency rule. Palmer said it would be more appropriate under Section 5. Shannon made a motion to add a Section 5.1.4 that would state: “Any emergency rule regarding baitfish shall expire once this baitfish rule takes effect.”

It was decided that legal counsel would need to draft and insert the appropriate wording.

Lefevre wanted to make two points: 1) why is it advisable to bring in baitfish from outside of the state (e.g. Arkansas); and 2) what is the Department's position on trapping, isolating, and testing native baitfish, and then allowing their sale.

Palmer said the Department is not saying “it's good to go to Arkansas and get baitfish;” the Department doesn't think it's wise to collect baitfish from one waterbody and transport it to another waterbody, a practice which was allowed in the previous baitfish rules. There were no restrictions on transportation. Now, the only approved sources would be those commercial sources with a good history of biosecurity measures, which would prevent anglers from moving baitfish from one waterbody to another. Palmer said testing procedures aren't 100% and that is the challenge with testing baitfish from the wild. For a small, innocuous disease, those testing measures would be acceptable, however, with VHS, the impacts on fisheries are significant and testing wild baitfish to allow their use commercially is not worth the risk.

Baker asked if once VHS arrives in Lake Champlain, and the commercial and personal harvest of baitfish is prohibited, how would anglers legally fish with baitfish on Lake Champlain?

Gallo said this regulation would have a huge impact on the commercial dealers in Vermont and puts Vermont at a disadvantage with New York, as those dealers would still be allowed to sell baitfish on the lake.

Palmer said out-of-state commercial bait dealers (e.g. New York) would have to be certified to sell baitfish in Vermont, and admitted that New York's regulations are a huge loophole in this process.

Chair Kittell said anglers need to be educated on the risk of VHS; not the risk of getting caught with illegal baitfish.

Gallo said there was an extra level of protection for commercial bait dealers, and they should have the ability to trap and sell bait in any body of water. He sees it separately from the personal baitfish collector, and believes it is an economic impact on people's livelihood.

Gallo then made a motion to strike Section 5.6.5.3 (which Therrien noted should be changed to mirror the language in amended 5.4.10); Ames seconded.

Baker asked what the Department's position would be on Gallo's motion. Palmer said the Department would not agree with this amendment, as there would be a greater risk to the resource.

Baker asked Enforcement's opinion on Gallo's motion, to which Col. Rooks answered there would be an increased opportunity for violation.

There was discussion on the differences between Vermont's and New York's regulations.

Palmer emphasized that the Department is trying to address disease vectors by being proactive, and making it less likely to transfer disease from one waterbody to another within the state.

A vote was taken on Gallo's motion to strike Section 5.6.5.3. "The commercial harvest of baitfish is prohibited on any waterbody of the state that is confirmed positive for Viral Hemorrhagic Septicemia (VHS). The Department will maintain and make available a list of infected waters." A vote was taken: 7 in favor; 7 against. Gallo said that Chair Kittell's vote did not count, as the Chair is only allowed to vote to break a tie, therefore the final vote was: 7 in favor; 6 against. The Board proceeded as if the motion passed.

Roy took the opportunity to explain his vote in opposition. He was concerned if baitfish continued to be taken from Lake Champlain that 2% could go (illegally) to another body of water; if none were taken from Lake Champlain, then diseases could not travel. Enforcement would have to watch those who would take baitfish from other parts of the state.

Palmer clarified the impact of the vote: the "yes" vote means that if Lake Champlain is declared VHS positive, that commercial dealers could still continue to harvest baitfish for sale from Lake Champlain.

Chair Kittell said there were sections of the rule that needed specific review by legal counsel. Those sections are: 5.1.3; 5.8.1; 5.3.7; and 5.4.9.

Ames made a motion to table the regulation until legal counsel has the opportunity to review the entire regulation. Shannon asked that the Board be provided with a fresh copy of the regulation with all the amendments made before the second vote.

Chair Kittell wants clarification on the sections above, a clean copy of the regulation, and to schedule a telephone conference call to take the second vote. After discussion, it was decided by straw vote to delay the vote until the Board's March meeting.

David Ross from Cabot spoke to the Board and said that none of his comments at the public meeting prior to the regular Board meeting were addressed. Ross was then provided minutes of the meeting held immediately prior to the Board's regular meeting. Chair Kittell assured Mr. Ross that his comments were included in the 35 pages of comments the Board had received, and said the Board took into consideration all concerns.

Gilbert Gagner from Highgate Springs applauded the Board for the time spent on this issue. He believed that the rules appear to treat all of Vermont as VHS positive, but if baitfish are going back into the same body of water, it wouldn't hurt anything. Making new laws won't stop people from breaking them. The rule minimizes the impact by allowing commercial harvest; having records, having receipts, and it still promotes business. The current emergency rule has hurt his business; numbers at his tournaments are way down, bait sales are way down, and his license sales are down. He applauds the Board for allowing people to harvest their own bait and thanked the Board again for dealing with this issue.

Chair Kittell outlined the next steps for the rule. It would come back to the Board at its March meeting for further discussion and a second vote; it would then go through the LCAR process, and finally back to the Board for a third and final vote.

Baker asked if spawn were addressed in this rule. Palmer said spawn would be addressed under "fish or fish products" but that language only appears in Section 5.7.1. The Department would come back to the Board on whether that should be specified further in the rule.

David Ross commented that he too was impressed with the Board and vowed to keep buying his fishing license.

Shannon said he thought the Department's presentation at the public meetings were the best ever and were a good example of how the process works, as 32 amendments were made based on public input.

Ames gave the Chair two petitions that he received at the Montpelier and Springfield meetings.

Noel Sudol, a commercial bait dealer, spoke and said there were many issues not addressed in the regulation, including commercial harvest of baitfish in beaver ponds.

### **2008 Moose Season Proposal – First Vote**

Cedric Alexander, Department Wildlife Biologist, gave an overview of the 2007 moose harvest and outlined the Department's proposal for 2008.

The Department recommended 1,260 moose hunting permits (including five to be auctioned) for the 2008 season. This is five permits more than the total authorized by the Board in 2007.

The total permit quota for Wildlife Management Units (WMUs) E1 and E2 would remain at 600, but 48 permits would be shifted from E2 to E1. The antlerless permit quota for D2 would be increased from 140 to 170 to compensate for consistently lower success rates. In response to decreased population estimates, permit numbers would be reduced by five each in WMUs J2 and M, and by 15 in WMU P. Subunits O1 and O2 would be combined and 30 permits are proposed for WMU O. This would be the first time subunit O2 would be open to moose hunting. For the remaining ten WMUs open to moose hunting, the Department is recommending allocating the same number of permits in 2008 as were allocated in 2007.

Two minor changes are recommended in the general moose hunting rules: 1) Section 3.0 would be changed to codify that moose season always begins on the third Saturday of October; and 2) Section 7.5 would be changed to allow successful applicants to request a one year deferment, no less than three days (versus 14 days), before the start of the season.

There was discussion on the success rates for the various WMUs. Alexander said he had spoken to lumber company owners, who said they are starting to see differences, but want to see what happens with regeneration.

Regarding the deadline for receipt of lottery applications, it was recommended by John Austin that Section 7.4 be deleted as it is redundant with 6.7, and the numbering corrected to reflect that change.

Section 6.7 should read: "Complete applications must be received at the Department's Headquarters in Waterbury either by mail postmarked no later than the first Tuesday in June or hand-delivered by 4:30 p.m. on this date."

Shannon made a motion to accept the above-mentioned change, which was seconded by Gallo. The motion passed.

Lefevre made a motion to delete Section 10.0 which allows the auction of five moose permits. This motion was seconded by Driscoll.

Commissioner Laroche said the auction was an economic benefit to the Department, and as a fundraising opportunity provides \$20,000 per year to the youth education program. This \$20,000 is leveraged to \$80,000 with federal funds. There was disagreement among the Board whether conservation camp activities would be cut if those funds were eliminated.

Col. Rooks cited Title 10 V.S.A., Section 4254, which states "up to five moose permits shall be set aside," and said the Board did not have authority to eliminate Section 10.0 as the auction was authorized by statute.

Chair Kittell declared Lefevre's motion out of order.

Lefevre then made a motion to amend the "up to five" permits to be "one" permit. Driscoll seconded.

Lefevre then withdrew his motion.

Gallo made a motion to strike the wording "three calendar years" in Section 6.5 because there is now a point system, and by making successful applicants wait three years to apply again, he believes the Department is losing up to \$30,000 for no reason. Gallo's motion was seconded by Ames.

Driscoll mentioned that instead of eliminating the waiting period, he would favor increasing the wait to five years; that it was a herd management issue, not an economic one.

A vote was taken; two members voted in favor of the motion; the remainder were opposed.

Therrien made a motion to strike Section 7.9 that states: "No successful permit applicant may be designated as a subpermittee on another Vermont moose hunting permit in the same year." Gallo seconded the motion. Discussion ensued. It was noted that a successful permit applicant could be designated as a guide.

Three voted in favor of the motion; the remainder were opposed.

Gallo made a motion to strike Section 10.8, which exempts auction "winners" from the three-year waiting period to participate in the public lottery. Ames seconded the motion.

The motion passed with 11 members voting in favor.

It was questioned whether the Department had received a petition to allow an archery season for antlerless moose. David Englander knew the status of the petition, however, he was not in attendance due to illness. Austin said a petition had been received, and a copy of the petition would be provided to the Board.

Shannon made motion to accept the moose rule as amended; which Ames seconded. The rule was unanimously approved as amended.

### **Update: Snow Goose Rule**

Austin told the Board that the USFWS did not issue a Record of Decision to allow hunters in the Atlantic Flyway to take snow geese from March 10 through April 15 in the Lake Champlain and Interior Zones. As no Record of Decision was issued, there was no need for the Board to adopt a regulation for a new Snow Goose season through emergency rule.

### **Discussion: Wanton Waste**

Commissioner Laroche said the Department has established a committee to develop a rule to govern wanton waste of fish and wildlife. This committee will be comprised of: Kim Royar, Wildlife Biologist for the Department, who will serve as Chair; Jud Kratzer, Fish Biologist for Department; Game Warden Dave Gregory; and Clint Gray, Vermont Bear Houndsmen Association; John Lapre, Vermont Trappers Association; and Paul Karczmarczyk, Ruffed Grouse Society, who all expressed an interest, and will serve on the committee.

Chair Kittell appointed Bob Shannon and Brian Ames as the Board's representatives. Gallo said he would provide the name of someone from HAT for consideration. Therrien recollected that Vermont Traditions Coalition was interested in the rule, and may want representation on the committee as well.

### **Update: Captive Hunt**

Discussion on this issue was deferred until the March Board meeting due to David Englander's absence. The plan is to meet with industry representatives and others between now and the March meeting; provide a detailed overview of what other states are doing; and the report on the current status and threat of Chronic Wasting Disease. The Department will provide a new proposal to the Board at its March meeting.

### **Roundtable**

Gallo's and Therrien's terms have expired. Therrien has not asked to be reappointed. Gallo said he would be willing to serve another term.

Therrien addressed the Board and said overall serving on the Board had been a good experience. He said he had gained a new respect for Department employees and public servants. He thought the highlight of his tenure on the Board was the passage of the access area regulation. The "lowlight" was his desire to have questions posted to the public on the Department's website has still not been realized. In closing, he wished the remaining Board members good luck.

Shannon said he rode with Warden Reinhardt in November, found it eye-opening, and encouraged other Board members to go along for a ride with their warden while they work.

Ames asked about the three deer proposal, and when that would be brought before the Board. Commissioner Laroche said that comments would be received at the public deer meetings, and that issue would be brought before the Board at that time. The meetings are being scheduled.

Roy asked if the Department was planning to hold a public moose hearing; the answer was no.

Baker asked to have legislative updates put back on the agenda. Commissioner Laroche said the legislative session had been relatively quiet. The Department had been asked to testify on a bill to designate five moose permits specifically for veterans of the Iraq and Afghanistan conflicts.

Baker commended the participants of the Vermont Public Television program that recently aired regarding big game management plans.

The Department will provide information to the Board at its March meeting regarding the requirement in Section 4742 that requires the Department to collect information on the youth hunting season.

Roy made a motion to adjourn, which was seconded by Ames.

The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

/c/cpm

Catherine Pirie Merrill