

Fish & Wildlife Board
APPROVED as amended Meeting Minutes
Wednesday, March 26, 2008

The Fish & Wildlife Board convened a meeting at 5:00 p.m. on Wednesday, March 26, 2008, in the Skylight conference room at the State Office Building Complex in Waterbury, Vermont.

Attendees:

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

Absent: Jeff Salvador and R. Keith Armstrong.

Department Employees: Commissioner Wayne Laroche, Col. Robert Rooks, Major David LeCours, Tom Decker, Eric Palmer, Shawn Good, David Englander, Tom Wiggins, Shawn Haskell, and Cathy Merrill.

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

Visitors: Roy Kilburn, Berlin; Gilbert and Mindy Gagner, Highgate Springs; Tom Torti, Lake Champlain Regional Chamber of Commerce; L. Brooke Dingleline, Esq., representing Doug Nelson.

Approval of February 20, 2008 Minutes

A motion was made by Shannon and seconded by Roy to accept the minutes of the February 20, 2008 Board meeting. The motion passed unanimously and the minutes were approved as written.

Elect Vice Chair

Chair Kittell took nominations from the floor for a new Vice Chair to replace outgoing Board member Bruce Therrien. Gallo nominated Brian Ames, which was seconded by Roy. No other nominations were offered and Ames was unanimously approved as the new Vice Chair.

Discussion: Two Petitions for Archery Moose Season

Ames gave background on two petitions requesting the Board to consider allowing an archery moose season, and said there was a third petition being circulated. Mr. Torti said he submitted one petition on behalf of the members of the Lake Champlain Regional Chamber of Commerce and believed an additional moose season would be good for generating revenue and give archers an additional hunting opportunity. Mr. Torti added he thought it would be good from a tourism perspective and would lure hunters into the state.

Chair Kittell said he knows of four petitions asking the Board to: 1) review the cross bow regulations; 2) consider a one-buck-only season; 3) consider a separate moose season; and 4) allow the use of bow and arrow during rifle season. Kittell questioned how petitions should be handled, as they are being received by both Board members and the Department.

David Englander said the Department would review each petition and bring the Department's recommendation to the Board.

Kittell said he would like a list of the pending petitions received to date, their status, and the Department's recommendations on each before the Board's May meeting. He would also like the Department to outline the administrative process for handling petitions to the Board. Commissioner Laroche said that any petitions received by Board members should be forwarded to Englander's attention, who will acknowledge their receipt, and schedule the petition for discussion at the next scheduled Board meeting. The Commissioner said a process would be finalized and provided to the Board at its April meeting.

Commissioner Laroche said regarding the moose season petitions, the Department is recommending that this issue be considered during the big game management plan review. That avenue would provide an opportunity for public input on the proposals. Commissioner Laroche said the Department does not oppose the idea of an archery moose season; it is a social issue how moose are harvested to manage the herd, not a biological issue. A draft of the big game management plan is now being reviewed internally, and will be released for public comment in a couple of months.

Shannon asked that in the future the exact language of a petition be given to the Board with the Department's recommendation to avoid any misunderstanding of the intent of the petition. Commissioner Laroche said the Department would copy the Board with the petition's language, but not include all the signatures.

Presentation: Captive Hunt Regulations in Other States; Status of CWD Threat in North America

Chair Kittell said a meeting is scheduled for April 3 with representatives from the Board, Department, and the industry to discuss captive hunt regulation. Shannon will replace outgoing Board member Therrien as the Board's representative; Wayne Barrows is the other Board representative.

Shawn Haskell gave a PowerPoint presentation on captive hunt regulations in other states and the status of the Chronic Wasting Disease (CWD) threat in North America. He also gave a brief overview of pertinent sections of the statutes that charge the Board with generating a rule to regulate captive hunt facilities. Haskell said the Department would be drafting new rule language as a result of the Legislative Committee on Administrative Rules (LCAR) requesting more specificity in the regulation.

After the presentation there was discussion on the probable effects of CWD on Vermont's deer herd, the economy, and the dynamics of hunting in Vermont.

Haskell said the Department is proposing to keep white-tailed deer and moose out of captive hunting facilities, due to the public trust doctrine and other statutory authority. Driscoll asked if the Board needed to promulgate a separate rule to deal with native species. Commissioner Laroche said a separate rule was not necessary as it is against existing statute to keep native wildlife behind fences. The Department intends to address this issue by working with the facilities to bring them into compliance with the law.

The Department plans to submit a proposed captive hunt regulation for discussion at the Board's June meeting.

Ms. Dingleline disagreed with Haskell's interpretation of LCAR's rejection of the most recent captive hunt rule, and asked if the Board would be scrapping references to Agency of Agriculture rules. Haskell said it was the Department's understanding that LCAR thought the rule was not specific enough by referring to the Agency of Agriculture's rules, so the Department would draft its own language. Ms. Dingleline believed LCAR had a problem with the Board's jurisdiction and a lack of specificity.

Chair Kittell ended the discussion by saying the Board has the right to regulate native species behind fences, and what happens with elk is another situation. He went on to say he had given legislative testimony recently, and was given praise for the Board's recent actions.

Lefevre asked about Englander's interpretation of the legislative intent of section 4714. Englander said all the LCAR tapes had been reviewed and it is his opinion that LCAR's intent is to have the Board establish a permitting system for captive hunt facilities.

Second Vote: Baitfish Regulation

Englander addressed the legal questions on the regulation that the Board had at its last meeting. Eric Palmer reviewed the changes made to the regulation item by item, and noted that some language was revised for clarity at Englander's suggestion.

Regarding Section 5.1 and the transportation of water; Englander said regulating the transportation of water is beyond the Board's authority. Englander also said he had reviewed the entire revised document and did not see any legal problems with the language.

Palmer said there were three major changes to the regulation since the Board's last meeting: 1) the movement of water sections were deleted due to the Board's lack of authority; 2) the definition of water body was simplified; and 3) the issue of using fish eggs as bait was addressed by adding the language "fish (or parts thereof)" in Section 5.2.3. The Department would recommend allowing river anglers to use eggs from the river they are fishing as bait.

Regarding Section 5.9 permit revocation; Englander recommended deleting the text as it was confusing, and replaced it with new specific language.

Palmer noted that Section 5.3.9 should be deleted on this revised version as it is redundant with Section 5.2.7. Section 5.3.4 needed clarification to reflect that the closed waters are seasonally closed trout waters. It was decided to return to Section 5.3.4 later in the review.

Section 5.4.7 was amended to clarify the allowed use of prepared and preserved baitfish.

Section 5.6.5.3 was deleted to reflect the Board's vote at the March 26, 2008 meeting.

It was noted by Commissioner Laroche that the Agency of Natural Resources would be taking a comprehensive look at its authority over the movement of water as various divisions within the Agency deal with this issue. An Agency group will be tasked with working collaboratively on this issue, which will include legal review. Commissioner Laroche said that in-state movement of fish is the biggest concern for in-state disease contamination; the movement of water is a loophole at this point in time, but the magnitude of risk by moving water is lower.

Driscoll made a motion to approve the rule; which was seconded by Gallo.

Driscoll made a motion to amend the rule and replace the language in Section 5.6.5.3 that was deleted at last month's meeting, and insert language that would mirror the language in Section 5.3.10, except substitute "personal" harvest with "commercial" harvest. The Section would read: "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 seconded the motion.

There was lengthy discussion on the motion and its effects on anglers and commercial bait dealers.

Col. Rooks said any time there is increased opportunity for violation of the law (e.g. allowing the transport of baitfish); there would be an increase in violations.

Kittell gave Gilbert Gagner, a commercial bait dealer, an opportunity to address the Board. Mr. Gagner said he believed that Vermont is going beyond what any other state is doing, VHS-infected or not, and is concerned how this regulation will affect commercial bait dealers. Mr. Gagner said other VHS-infected states are allowing the use of baitfish in infected waters, and this regulation would break the backs of anglers.

Baker called the question.

Kittell clarified that the motion to amend would have Section 5.3.9 read: "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." Kittell asked for those in favor to raise their hands.

Those in favor (5): Driscoll, Shannon, Lefevre, Baker and Therrien. Those against: Gallo, Barrows, Rainville, Jones, and Ames (5). Roy abstained. Kittell voted in the affirmative, which broke the tie. The motion to amend was approved 6-5.

The approved language will become Section 5.5.5.4 of the rule.

Shannon made a motion to: 1) delete Section 5.3.9 as it is redundant; 2) accept the proposed language for Section 5.3.11 (on handout); and 3) accept the language for Section 5.4.7 (on handout). The motion was seconded.

Shannon's motion was unanimously approved.

There was discussion on the language of Section 5.3.4 regarding closed waters. Col. Rooks suggested the following language: "The personal harvest of baitfish is unlawful in Seasonally Closed Waters as listed in Section 9.0 of this regulation, except by angling or the use of minnow traps no longer than eighteen inches with an entrance for fish not exceeding one inch in diameter, and only during the open season for trout."

Shannon made a motion to accept the suggested language, which was seconded by Gallo.

All voted in favor, except Roy, who opposed.

There was discussion on Section 10.0 and the addition of Section 10.1.1.1. Palmer said concerns about movement of baitfish by commercial bait dealers would be addressed as conditions of a commercial dealer's permit.

Kittell asked for a vote on the rule as amended, which would be the second vote on the rule itself.

Those in favor: Driscoll, Shannon, Rainville, Lefevre, Baker, Ames, and Roy.

Those opposed: Jones, Therrien, Gallo, and Barrows.

The motion carried 7-4.

Palmer reviewed the next steps: the rule would be on LCAR's agenda for April 9. If it is approved in the morning of April 9, the Board will be cleared to take a third vote at its meeting that evening.

Second Vote: Muskie/Walleye/Winooski Tributaries Regulation

Palmer said the Department's recommendations are the same as they were for the first vote, except for a few corrected typos (one of significance was the rule referred to old language when referring to a section of the Lamoille river).

Shannon made a motion to approve the regulation, which was seconded by Rainville.

There was discussion whether the regulation was proposed primarily due to a petition or if it were for biological reasons. Palmer answered that the Department was responding to a petition, found there would be no direct threat to the resource, and drafted the proposal. He went on to say if it was believed there would be a threat to the resource, the Department would not be proposing a change.

Barrows asked if this regulation would be setting a precedent, to which Palmer said no. Shannon asked if this regulation would make it necessary to take another look at the trout management plan, to which Palmer responded no.

A vote was taken on the motion, and the rule passed unanimously.

Palmer reviewed the process for the rule and said this rule will move at a slower pace than the baitfish regulations, as it is not intended to take effect until January 1, 2009. Palmer expected a third vote at either the Board's May or June meeting.

There was discussion whether the Department should post affected areas now to educate the anglers of the upcoming change. Palmer said the point was well taken, however, he cited the cost of signage. He said the Department would educate the public through press releases, articles, and through the warden force.

Kittell thanked Palmer, Shawn Good, and the Fish Team for their work over the past few months on this regulation.

First Vote: Section 2a (Big Game Tagging Requirement)

Col. Rooks explained the request for an amendment regarding the big game tagging requirement. Statutory authority previously suspended two sections of law dealing with the tagging requirement, and this proposal was a housekeeping effort to put that requirement back in. Section 2a would begin as follows: (a) A person taking big game, as defined by 10 V.S.A. § 4001 (31), pursuant to the seasons provided by law or regulation of the Fish and Wildlife Board, shall immediately tag the big game carcass upon taking...."

Ames made a motion to accept the proposal, which was seconded by Lefevre.

The proposal was unanimously approved.

Legislative Update:

Commissioner Laroche gave an update on the legislative session. Both Commissioner Laroche and Chair Kittell testified on a special moose lottery for Iraq/Afghanistan troops, and extending the authority of the Board until the year 2014.

Commissioner Laroche said a committee had been created to deal with the wanton waste issue which would address a major part of the concerns regarding coyote tournaments.

The bill proposing to set aside five moose permits for Iraq and Afghanistan front-line troops as an incentive to those who put their lives on the line at war was initiated by Congressman Welch. Commissioner Laroche said there may be as many as 500 applicants a year; they would pay the same entry fee and license fees, however, they would be entered in a separate lottery. The Department does not object to this proposal.

There has been no movement on the "hunter orange" bill. Commissioner Laroche gave a brief budget update, and said a new on-line licensing system would be demonstrated in August. There was a bill introduced that would prohibit the feeding of moose. The Department suggested to the Senate Natural Resources Committee that this would be better regulated through Board rule. An update was given on the necropsy performed on the Route 73 moose, a.k.a. "Rocky."

Shannon informed the Board about a hearing on the evening of March 27 regarding Department funding, and groups would be suggesting an increase to the Department's budget be funded by 1/8 of one percent of the existing sales tax.

Roy Kilburn distributed statistics he had compiled regarding the 2000, 2004, and 2006 deer seasons, as well as three petitions he is circulating. Chair Kittell offered that Mr. Kilburn could speak to that information at the April Board meeting.

Therrien distributed information that he received from Cedric Alexander at the Orleans deer meeting about a spruce grouse recovery project taking place in Victory Basin.

Shannon, Ames, and Gallo gave the hand-count results regarding the three-deer limit question from the recent public deer meetings and said the results were posted on the HAT website.

Gallo suggested an additional muzzleloader season to run concurrently with the third week of archery season. Commissioner Laroche said he would be attending a cervid team meeting next week and would bring that suggestion to the team's attention.

Ames suggested allowing hunters to fill their muzzleloader tag with archery equipment during muzzleloader season in WMUs open to antlerless hunting. Ames said he had received a petition suggesting that, and would give it to the Department.

Ames asked if the Department was going to propose a third deer tag when it submits the 2008 deer season proposal at the April meeting. Commissioner Laroche said yes.

Barrows commended Shawn Haskell on the deer hearings.

Gallo mentioned that an attendee at the public deer meeting held at U32 in East Montpelier chastised the Board for its members being cited for illegal activities. Gallo took issue with that comment, and responded that he, as well as other members of the Board, were disappointed and embarrassed by the recent events.

Englander asked if the Board had ever formally adopted rules of order for conducting its meetings. Kittell said nothing had been formally adopted, however, former Board Chair Borowski said he understood the Board followed Roberts Rules of Order. Englander suggested the Board formally adopt the Rules as its procedure.

The meeting adjourned at 9:10 p.m.

Respectfully submitted,

/s/cpm

Catherine Pirie Merrill
Executive 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.