

Fish & Wildlife Board
APPROVED Meeting Minutes
Wednesday, June 27, 2007

The Fish & Wildlife Board convened a meeting at 3:00 p.m. on Wednesday, June 27, 2007, in the 4th floor conference of the Pavilion Office Building in Montpelier, Vermont.

Attendees

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

Absent: Cyndy Jones and Michael Popowski.

Department Employees: Commissioner Wayne Laroche, Colonel Robert Rooks, Major Dave LeCours, Steve Hill, Tom Decker, John Buck, and Cathy Merrill.

Chair Kittell called the meeting to order at 3:00 p.m.

Visitors

Dr. Kerry Rood, State Veterinarian, Vermont Agency of Agriculture; Andrew Page representing the Humane Society of the United States; Bill Richter, Eric Richter, and Billy Richter from Wild Hill Preserve, West Fairlee; Steve Hill from Fairlee; Amy Record from Fairlee; Richard Nelson, Cow Town Elk Ranch in Derby Line/Irasburg; and Jon Valsangiacomo and Brooke Dingledine, attorneys representing Mr. Nelson.

Second Vote -- Importation and Possession of Animals for Hunting

Chair Kittell reminded those in attendance that this was a special Board meeting scheduled to address the second vote on the proposed rule regarding the Importation and Possession of Animals for Hunting.

Steve Hill, General Counsel for the Fish & Wildlife Department, distributed a summary of the public input received during the public comment period, and had available copies of written materials received by the Department during the public comment period.

As a result of the public comments received, Hill said the Department is recommending amendments to sections 7.1, 7.2, and 7.3 of the proposed rule. Hill addressed assertions made in Ms. Dingledine's submission, item-by-item. He said the Department is recommending a regulatory ban on new facilities. The Department is also recommending that section 5.4, which requires a bond, be removed from the proposed rule. Hill reminded the Board of its rulemaking authority, and said applicants can ask for reconsideration of a permit denial through the court system.

Hill said an animal identification process would have to be implemented and the Department would follow the Agriculture Agency's lead. The Department does not recommend establishing a special committee to look at this issue. However, if the Board elects to do so, it should request an extension from the Legislative Committee on Administrative Rules (LCAR) as the eight-month period to adopt a rule expires September 12, 2007.

Hill reviewed the Department's recommendations made in Draft 3.8, 070627.

- Delete section 5.4 regarding a bond requirement.
- Change wording in section 7.1 to read “. . . when there is a threat of a disease from the facility to any wildlife species of the state, for failure to comply . . .” (Replaced the word “concern” with “threat” and deleted the word “developing.”)
- Delete the words “for hunting” in section 7.2 as they are unnecessary. Add the wording “. . . or there is a threat of disease from the hunting facility to any wildlife species of the state” to be consistent with section 7.1.
- Add the wording in section 7.3 “. . . or whether there is a threat of disease from the hunting facility to any wildlife species of the state.” for consistency with sections 7.1 and 7.2.

Therrien noted that the rule as written, does not allow new facilities, and asked if section 1.5 should be stricken, as it states “shall apply to all existing hunting enclosures and any new or proposed hunting enclosure.” After discussion it was decided to leave section 1.5 as written.

There was discussion whether new and/or existing facilities would come under Act 250 jurisdiction; Hill said that was not under the Board's authority.

Therrien made a motion to accept Draft 3.8, 070627, which was seconded by Shannon.

Discussion began. Gallo suggested listing the points the Board agreed on at the time of the first vote in an effort to build a framework around the major points at hand. Therrien was the scribe.

Major Points

- Moose and white-tailed deer are the property of the public held in trust by the State of Vermont, would not be hunted, and there would be a plan to deal with those animals over a period of time.
- No new facilities would be permitted.

No one disagreed with either of those statements in theory.

The Board agreed it would be the burden of a facility to prove its existence on July 1, 2006. It is the Department's belief there are only two facilities that meet that definition, but recognizes there may be more. Hill said the regulation would allow any facility to apply for a permit from the Department. Section 4.2 does not specify a number of facilities, it states: "Those facilities in existence on July 1, 2006 will be allowed to continue their operations subject to this rule."

Steve Hill (from Fairlee) stated that his facility was in operation on that date, however, Col. Rooks countered that the Town had denied Mr. Hill a change of use on his property, and on appeal to the Environmental Court, that denial was upheld.

Armstrong asked whose responsibility it would be to remove the native animals. Commissioner Laroche replied it would be the Department's responsibility. Hill said the method of removal and timeframe are within the Department's authority, which will ultimately be at the discretion of the Commissioner. The Board does not have authority to set a timeframe for removal, but could make suggestions to the Department.

There was discussion on grandfathering the facilities. Hill reminded the Board that it could reassess a situation after a period of time to ensure the wildlife of Vermont is protected. There was discussion on the length of time facilities would be grandfathered. The Board decided it preferred "indefinite" rather than "forever."

An informal vote was taken on where the Board stood with the rule according to Therrien's outline on page 1. All agreed with what was written. It was decided that a straw vote on page 2 was not needed.

There was further discussion about the removal of native animals. Commissioner Laroche said the Department would work with landowners regarding de-population. The Department realizes this is a sensitive issue and would use different methods of removal to match the situation or enclosure. Commissioner Laroche suggested the Department could enter into a Memorandum of Agreement or contract with individuals to accomplish the goal of removing animals from an enclosure.

The Board reviewed the proposed regulation item-by-item.

1.1 -- Driscoll questioned whether the Board had authority to act on this rule. Chair Kittell said the majority of the Board made a decision to pull the request for an Attorney General's opinion, and the Board is now acting upon the assumption that it has the authority. Kittell said if Driscoll (and Lefevre) had a concern about the authority, that it would follow through the whole process. Kittell said if the Board did not have authority, that question would be answered when the rule goes before LCAR.

1.2 – 1.5 No changes suggested.

2.1 – 2.7 No changes suggested.

2.8 It was the Board’s recollection that it wanted “bear” removed from the language. It was decided if animals can come and go at will, they should not be considered “enclosed.” The words “black bear” will be stricken.

3.1 – 3.6 No changes suggested.

3.7 There was discussion on the definition of “enclosure” and whether 3.9 should be amended for consistency. It was decided to leave the wording of 3.7 the way it is.

3.8 – There was concern that the definition of “hunting” was too broad. Col. Rooks responded that for enforcement purposes a broad definition was preferred. Hill clarified the definition would be specific to this rule. Hill also said if a facility advertises for hunting, it would be considered a hunting facility; if people pay to shoot an animal, that is also considered hunting.

3.9 It was decided to strike the word “game” where it says “game animals” and replace the word “placed” with “confined.”

3.10—3.14 No changes suggested.

A typographical error was noted (there were two sections numbered 3.9). The sections would be numbered accordingly and would now end with 3.15.

At this point Dr. Rood addressed questions regarding the process used by the Agency of Agriculture for testing captive cervidae. Dr. Rood said the Agency works in conjunction with the Fish & Wildlife Department to have animals tested when captive cervidae are older than 16 months of age, or if there has been an unexpected death. The Agency will look to the Fish & Wildlife Department regarding testing on white-tailed deer and moose. Commissioner Laroche said the Department will recommend absolute testing on every native animal removed from a facility.

4.1 Ames suggested removing “Commissioner” and replacing it with “Board.” Discussion ensued on the ramifications of the word change. It was noted that bison was not listed in the table in section 4.5. Ames then made a motion to strike 4.5; which was seconded by Gallo. All voted in favor to strike section 4.5, and to strike “black bear or” in section 4.1 for consistency with section 2.8.

4.2 No changes suggested.

4.3 No changes suggested.

4.4 Amended to read: “Any species of animal to be hunted in any hunting facility must be on an approved list maintained by the Commissioner. The list shall be published on the Department’s website and available from the Department headquarters and regional offices. Animals possessed in any hunting facility may be taken notwithstanding

the provisions of Title 10 Appendix, § 31. Species approved must not have an adverse effect on the State's wildlife, and the proposed importation and or possession will maintain the best health, utilization and population levels of wildlife.

4.5 Stricken.

4.6 (to be re-numbered 4.5) There was discussion whether hunting licenses should be required. The Department recommends the requirement to ensure public safety, as the possession of a license would prove that a hunter safety education course had been completed. It was also suggested this could be a funding mechanism for managing these facilities as the Board has no authority to charge for a facility permit. The Board recommended leaving the section as written.

5.1 – 5.3 No changes suggested.

5.4 The Department recommends deleting the bonding requirement.

6.1 – 6.3 No changes suggested.

6.4 It was decided that due to the deletion of section 4.5, and the changes made to 4.4, that section 6.4 be stricken.

6.5 (to be re-numbered 6.6) There was discussion on the length of the permit, and whether "may" or "shall" should be used. It was suggested the wording be changed to: "If the application is complete, and if the application meets the criteria established by this rule, then the Commissioner shall issue the applicant a permit good for three years to import and possess animals for hunting."

6.6 (to be re-numbered 6.4) There was discussion regarding fencing requirements. Fencing requirements are currently established by the Agriculture Agency and that Agency is required to conduct annual inspections. The Secretary of Agriculture would retain authority over the fences required for cervidae.

Ms. Dingedine requested the Fish & Wildlife Department be consistent with the Agency of Agriculture's fence requirements and not establish a separate set of standards for captive cervidae.

Chair Kittell requested that the Board move on in its discussion.

Ms. Dingedine asked that it be on the record that she was very disappointed at the disrespect shown to her and her clients, and felt that they were being shut out of the process. Chair Kittell took exception to that comment, reminding Ms. Dingedine that she was told earlier in the day how the meeting would be run, and that she was repeating information that had already been brought before the Board. Chair Kittell said he respects everyone's opinion; however, he wants to get through the process.

Bill Richter addressed the Board and said the proposed rules would affect his children's livelihood and future. Chair Kittell said he appreciated those comments, however, he wants to get through the process and get the job done tonight.

Baker acknowledged to Richter that he was compromising his morals and personal opinion in dealing with this issue. Gallo echoed Baker's sentiments, and said the Board was trying to provide a mechanism to allow existing facilities flexibility in the future. Gallo said if the Board was not being flexible, as some were alleging, there would be no grandfather clause.

6.7 – No changes suggested. Will be re-numbered 6.5

6.8 – No changes suggested. Will be re-numbered 6.7

7.1 – 7.3 -- No changes suggested; the Board will accept Department's proposed language for sections 7.1, 7.2, and 7.3.

The Board reviewed the suggested changes made above.

Barrows made a motion to have it added to the beginning of section 6.4 that regarding any animal not regulated by the Agriculture Agency, that the Commissioner at his discretion, could establish minimum fencing requirements. The motion was seconded by Lefevre.

There was more discussion on the fencing regulations, what the Department would require, and the authority of the Commissioner.

Hill suggested language for section 6.4 that would reference 6 V.S.A. §1152(f): "Subject to 6 V.S.A. §1152(f), the Commissioner shall establish minimum requirements to safeguard the State's wildlife that may include, but are not limited to suitable habitat, fence specifications, capture chutes and pens for testing, enclosure size, feeding requirements, testing, monitoring, exclusion of native species from the enclosure and recapture requirements, animal density, availability of animals for inspection, and testing of harvesting animals. The requirement shall be included in any permit as an order of the Commissioner."

The Board then voted on Barrows' motion as amended with Hill's language. The vote was in favor of the amended language 7 to 4. This language would be in re-numbered section 6.4.

Shannon made a motion to accept the draft as proposed by the Department, and as amended above, which was seconded by Baker.

There was no further discussion, and the regulation passed by a margin of 10 to 1, with Lefevre opposing.

Chair Kittell asked the public in attendance if they had any comments.

Valsangiacomo expressed concern with section 6.4, the Commissioner's authority, and the possibility for abuse of permit requirements by future Commissioners.

Chair Kittell assured Valsangiacomo that was not the Board's intent, and specific criteria will be spelled out in the application process that would have to be followed.

Kittell went on to say neither the Department nor the Board can step where the Agriculture Agency has authority, and both the Department and Board are willing to work with the affected facilities.

Dingledine was concerned about the jurisdiction over fencing, the fencing standards, and believed there was a historical agenda to put Mr. Nelson out of business. Dingledine will provide additional comments prior to the Board's third vote.

Bill Richter, Wild Hill Preserve in West Fairlee, extended an invitation to the Board members to come and visit his facility.

Richard Nelson also extended an invitation to the Board to visit his facility, Big Rack Ridge.

Baker requested the Department provide the Board with a copy of the revised updated version of the rule. Hill agreed to send the Board a copy.

Driscoll asked how the Department intends to implement section 4.3. Commissioner Laroche replied the Department will discuss options with each facility covered under this regulation to determine the best way to handle each individual situation.

Kittell thanked everyone for their perseverance.

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

The meeting was adjourned at 6:50 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.