

Fish & Wildlife Board  
\*\*APPROVED AS AMENDED\*\* Meeting Minutes  
Wednesday, July 9, 2008

The Fish & Wildlife Board convened a meeting at 5:00 p.m. on Wednesday, July 9, 2008, in the Skylight conference room at the State Office Complex in Waterbury, Vermont.

Attendees:

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

Department Employees: Commissioner Wayne Laroche, Col. Robert Rooks, Major David LeCours, Bill Crenshaw, John Austin, Shawn Haskell, Tom Decker, David Englander, and Cathy Merrill.

Visitors: Roy Kilburn, Berlin; Andrew Page, Humane Society of the United States; L. Brooke Dingleline, Esq., representing Doug Nelson; and Dr. Hank Dimuzio, LedgeEnd Farm in Middlebury.

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

Chair Kittell said he had spoken with Ms. Dingleline and reviewed the process for tonight's meeting, where the Board would review the proposal and then take comments before its first vote.

**Approval of June 18, 2008 Minutes**

A motion was made by Mr. Roy to accept the minutes as written, which was seconded by Mr. Rainville. The Board voted unanimously to accept the minutes as written.

**Vote: Migratory Waterfowl Regulations**

Bill Crenshaw, wildlife biologist for the Department, reviewed the proposed regulation to establish the annual September Canada Goose and Youth Waterfowl Hunt Days for 2008. These proposed seasons are the same as 2007, except for date changes due to the 2008 calendar. Mr. Crenshaw said the timing would be tight for printing the syllabus if the Board did not adopt the late migratory bird seasons until its August 20 meeting (those seasons are combined with the September Canada Goose and Youth Waterfowl Hunt Days).

There will be two public waterfowl meetings, one at the Skenesburgh Rescue Building in Whitehall, New York (August 5), and one at UVM's Billings Center in Burlington, Vermont (August 6).

There were no questions on Mr. Crenshaw's presentation. Mr. Baker made a motion to accept the proposal as presented, which was seconded by Mr. Gallo.

Mr. Baker commended the joint effort of New York and Vermont in scheduling the waterfowl seasons to avoid conflicts with bass tournaments.

Mr. Ames suggested a telephonic vote for the late migratory bird seasons prior to the next Board meeting (August 20) to ease the time crunch. It was agreed to hold a conference call vote a week after the last public waterfowl meeting (August 6).

The Board voted unanimously in favor of the September Canada Goose season and the Youth Waterfowl Hunt Days for 2008, as presented.

### **Second Vote: Tagging Requirement – Section 2A**

Col. Rooks gave an update on the proposed regulation; it passed the Interagency Committee on Administrative Rules (ICAR), and no comments were received from the public.

There were no questions from the Board. Mr. Lefevre made a motion to accept the proposed regulation, which was seconded by Mr. Ames.

The Board voted unanimously to accept the proposal.

### **Second Vote: 2008 Deer Season Recommendations**

John Austin, Interim Wildlife Director, said there had not been any changes to the 2008 deer season recommendations since the Board's first vote, and the proposal was now ready for a second vote. Mr. Baker made a motion to accept the recommendation, which was seconded by Mr. Shannon.

There was discussion whether the antlerless recommendations and third deer proposal would be considered together or separately. It was decided to vote on the proposals as one.

Mr. Armstrong made a motion to change the antlerless permit recommendations for Zone N from 3200 to 300. Mr. Lefevre seconded the motion.

Mr. Armstrong gave his opinion of the recent antlerless harvest and distributed a handout to the Board. He said he had spoken to a biologist in Rensselaer County (New York State) who said NYS wants to harvest 4.3 bucks per square mile, while Vermont's objective is 2. Mr. Armstrong said overbrowsing has not been found on his property and he does not believe there are too many deer in his area.

Mr. Shannon questioned Mr. Armstrong on how he arrived at the figure of 300. Mr. Armstrong said he believes Zone 4C (in NYS) is similar to Zone N (in Vermont), and after speaking with the NYS biologist, and finding out that NYS was recommending a 100 permits, he came up with 300.

Mr. Shannon asked Dr. Shawn Haskell, wildlife biologist for the Department, if there was a number somewhere in the middle that the Department could agree to; as 300 was a significant decrease. Dr. Haskell said the Department does not expect to fill all the permits in Zone N, and believes the deer population will increase despite the large number of permits.

There was discussion on the different success rates and the effect on the harvest in Vermont (20% statewide average) versus New York State (80%).

Chair Kittell said the public is not supporting Mr. Armstrong's position and is more concerned with the outcome if not enough deer are taken. Chair Kittell said has not heard that one zone should be managed differently from the rest of the state.

Mr. Armstrong said the Board was ignoring the petition with 500 signatures, and he had a different assessment of the Rutland public hearing than Mr. Ames. Mr. Armstrong believes hunters were intimidated by the foresters and loggers, and that is the reason they are not showing up at the meetings.

Dr. Haskell said the Department is moving away from using buck harvest objectives in the new ten-year big game management plan, and will be managing does to control the deer herd. Dr. Haskell said the deer team considers many variables when it makes its antlerless recommendations; mostly hard science at the regional level, which is then fine-tuned for the individual WMUs.

Mr. Ames said both public hearings were poorly attended, and thought those in attendance at the Rutland hearing were more in favor of the Department's proposal.

Mr. Gallo asked if, based on science, there was any possibility of movement on the permit numbers. Dr. Haskell said there could be a little. Mr. Gallo clarified that the Department is standing by its recommended numbers based on science; and Dr. Haskell agreed.

Mr. Armstrong said he would rather err on the side of caution, and remained firm with his motion to change 3200 antlerless permits to 300.

A vote was taken on Mr. Armstrong's motion to change the permit recommendation for Zone N from 3200 to 300. Mr. Armstrong voted in favor of the motion; all others voted against, with no abstentions.

Mr. Armstrong asked if there was any number less than 3200 that the Department would accept; Dr. Haskell deferred to the Commissioner, who said the Department would stand by its recommendation. However, Commissioner Laroche went on to say that the Department needs to assess the hunting pressure in each WMU, and 2400 permits were the most ever offered for Zone N, but they were not all filled. Even if it were lowered to 2700, it wouldn't matter, because they wouldn't get filled.

There was discussion on what could be done with unfilled permits.

Mr. Lefevre made a motion to amend the regulation to add either-sex archery to Zone D2, which was seconded by Mr. Rainville.

Mr. Lefevre said he heard plenty of testimony at the Lyndonville hearing in favor of antlerless deer by either muzzleloader or archery in Zone D2.

Asked if the Department had any objections to that proposal, Dr. Haskell responded the deer team had discussed this idea, and was fully prepared to open up Zone D2 to either-sex archery until the winter severity indices were completed. At that time, the team decided not to make such a recommendation.

There was discussion about the different types of habitat in Zone D2, and whether there needs to be a subset of that Zone. Dr. Haskell said the WMU boundaries will be reviewed during the ten-year big game management plan review.

Dr. Haskell distributed an informational sheet on deer sighting rates and youth weekend antlerless deer harvest figures for Zone D2.

There was discussion on the merits of moving forward with an antlerless archery season and the possible impact if the deer bag limit is increased to three at the same time. Commissioner Laroche said if it appears the deer herd is not heading in the right direction, the Department will not wait before it recommends a change to rectify the situation.

A vote was taken on Mr. Lefevre's motion to open Zone D2 to either-sex archery.

Barrows, Rainville, Roy, Driscoll and Lefevre were in favor (5); Ames, Armstrong, Baker, Gallo, Lantagne, Salvador, and Shannon were against (7); Jones abstained. The motion was defeated 7 to 5.

Ms. Jones asked if antlerless permits had been considered for Zone G. Dr. Haskell replied that Zone G had experienced a hard winter, therefore antlerless permits were not recommended for muzzleloader season; however, up to two antlerless deer can be taken in that Zone during archery season.

David Englander, legal counsel to the Department, said the State's Attorney's office had recommended the Department insert into the regulation an explanatory graphic on how to measure one-inch on an antler.

Mr. Shannon made a motion to insert the same graphic found on page 23 of the 2008 Fish & Wildlife Law Digest into the regulation. Mr. Gallo and Mr. Driscoll both seconded.

The Board voted unanimously in favor of the motion.

Discussion began on the Department's recommendation to increase the bag limit to three deer; two of which may be buck.

There was lengthy discussion on the use of muzzleloaders and archery equipment in the different seasons.

Mr. Ames made a motion to allow the use of archery equipment during muzzleloader season, which Mr. Gallo seconded.

The Department did not have any problems with this proposal, and Col. Rooks said there should not be a problem with enforcement.

After much discussion on the effects of the motion, Mr. Ames rescinded his motion, saying it was becoming more complicated than he intended, however, he may resubmit it at another time. Mr. Gallo agreed to rescind his second of the motion.

Chair Kittell called for a vote, and clarified that the Board was voting on both proposed regulations #1502 and 911 as one.

Gallo, Ames, Baker, Lantagne, Salvador, Shannon, and Driscoll voted in favor (7); Jones, Lefevre, Rainville, Barrows, Roy, and Armstrong were against (6). The motion passed 7 to 6. Chair Kittell said for the record, if he had been required to vote, he would have been in favor of the motion.

### **Discussion/1<sup>st</sup> Vote: Captive Hunt**

Mr. Englander gave an overview of the recent history of the captive hunt regulation. Dr. Haskell gave a PowerPoint presentation on captive hunting regulations in Vermont and other states. Mr. Englander then reviewed the highlights of the new proposed rule.

Mr. Ames made a motion to accept the rule, which Mr. Baker seconded.

Mr. Shannon said he and Mr. Barrows had attended a working group meeting with industry representatives, who had reviewed the same version of the rule. He thought as a whole, a lot of the rule was acceptable to all parties, however, there were specific concerns raised by industry regarding the definition of “escape-proof” and facility size re minimum and maximum acreage amounts. Mr. Shannon thought those concerns could be addressed during the public comment phase of rulemaking. Mr. Englander offered that industry had concerns with Section 1.4, which he had clarified by citing four law cases in a footnote.

Mr. Englander said in the new proposal, existing facilities would no longer be grandfathered (as they would have been in the original proposal); those facilities would need to go through the same permitting process as a proposed facility. There was discussion regarding Act 250 and it was made clear that this application process would not trigger Act 250 jurisdiction, however, proof of any required state/local permits would be needed in order for an application to be deemed complete. Mr. Englander said, where applicable, definitions were taken *verbatim* from the Agency of Agriculture, Food & Markets’ rules.

At this point, Chair Kittell allowed L. Brooke Dingledine, Dr. Hank Dimuzio, and Andrew Page to address the Board before a vote was taken.

Dr. Hank Dimuzio, owns LedgeEnd Farm, a fallow deer farm, and is also the Treasurer of the North American Deer Farmers Association and Vice President of the Northeast Deer and Elk Farmers. He urged the Board not to take a first vote at tonight’s meeting. He is a member of the working group on this rule, and wants to give the group a chance to consider the Board’s comments and come back with a proposal where parties could be in 80-90 percent agreement before the proposal goes public. He thought the current document was a major step forward for all parties involved.

Ms. L. Brooke Dingledine, representing Doug Nelson who has facilities in Irasburg and Derby, thanked the Department for its “valiant effort” on reworking the proposed regulation. She admitted she had not been as involved recently as much as she would have liked, however, she did want to isolate issues of disagreement and come to agreement on as many issues as possible. Ms. Dingledine said she was uncomfortable with the language regarding ingress notification and had concerns regarding the logistics and sequence of permitting. She was interested in the Department’s depopulation plans for the 150-250 white-tailed deer and moose and currently within Mr. Nelson’s

enclosure. Ms. Dingledine agreed with the rule being applied consistently, the removal of the grandfathering clause, and applauded the efforts to be in concert with agricultural rules. She also asked the Board to delay voting until its August meeting.

Mr. Andrew Page, representing the Humane Society of the United States, gave the Board an update on additional efforts other states are taking to protect wildlife and the public trust doctrine. Those states mentioned included: North Dakota, Oregon, New York, and West Virginia. Mr. Page also said there is a proposed bill at the federal level which would prohibit the transportation of exotic animals across state lines for the purpose of hunting within enclosures of less than 1000 acres.

Mr. Barrows asked if a depopulation plan from the Department would be ready by next month's meeting.

John Austin, Interim Wildlife Director, said a depopulation plan would not be ready by August; Mr. Englander clarified that depopulation plans are not under the Board's authority.

Mr. Shannon said industry has had numerous opportunities since April to provide input but did not. There have been several months of work that have gone into this new version, and he thought the public process was the next logical step. Delaying the first vote until August would accomplish nothing.

Mr. Englander reviewed the rulemaking process.

Chair Kittell suggested holding a Board meeting where captive hunt would be the only agenda item. Chair Kittell said the Board has been dealing with this issue for nine years, most recently since April and nothing has been put forth by industry since that time.

Mr. Driscoll offered that he would like the first draft to be as close as possible to the final rule.

After more discussion, Chair Kittell asked if there was a motion to table the rule.

Dr. Dimuzio said he thought this version was a good working document, but wanted it to be the best it could be before it goes to the public. He thought the parties were closer to agreement than they ever have been before, and he had been involved in this process for nine years.

Ms. Dingledine said she did not have ample time to review the draft, and said it was her perception that the Board was making a targeted attack against her client to shut him down. She thought this version of the rule might provide a workable situation for the elk facility; however, her client will always disagree on the issue of depopulating the white-tailed deer and moose.

Mr. Englander addressed the assertions made by Ms. Dingledine, characterizing some as misleading.

At this point Ms. Dingledine left the meeting.

Mr. Gallo suggested postponing the first vote until August to allow more input from industry.

Mr. Austin said the Department would continue to work with industry representatives regardless of the timing of the vote.

Mr. Shannon made a motion to table the first vote, which was seconded by Mr. Driscoll.

All members agreed to table the first vote, except Mr. Ames and Mr. Baker, who opposed.

Chair Kittell asked that the captive hunt working group meet prior to the August 20 Board meeting, and asked Board members to provide their comments regarding the proposal via email to Mr. Shannon and Mr. Barrows, who would bring those concerns to the working group. He also requested any revised proposal be submitted to the Board one week prior to its August meeting.

Chair Kittell took this opportunity to characterize Ms. Dingleline's assertions as wrong, that industry had ample opportunity since April to provide input on this rule.

### **Process for Handling Petitions to the Board**

Mr. Englander presented the Board with a proposed process for handling petitions submitted to the Board. Mr. Gallo had provided Mr. Englander with an initial outline from which Mr. Englander worked.

There was discussion and suggestions on the process.

It was decided to change the wording of the second sentence of Item 4 to read: At that time, the Department "will be prepared to" make a recommendation to the Board regarding the petition. It was also decided that once a petition was received by the Chair and the Department attorney, the Chair would distribute a copy to each Board member. Board members would then send their comments to the person in the Department who handles that particular subject.

### **Petition from Vermont Bearhound Association**

Clint Gray, President of the Vermont Bearhound Association, submitted a petition to the Board, via Board member Ms. Jones, asking to prohibit all guided black bear hunts. The petition suggests the wording of Section 4.6 be changed to read: "A person shall not advertise, barter, exchange goods or services for the purpose of taking black bear to include expose or otherwise sell the use of a dog or dogs."

The Department will be prepared to make a recommendation to the Board regarding this petition at the Board's August meeting.

### **Roundtable**

Mr. Baker thought the deer rule process this year was very tiring and a step backwards. He would like the Department to be more transparent next year.

Mr. Armstrong announced his resignation and went on to say he believed Commissioner Laroche purposely put forth extremely high permit numbers in Zone N to upset him. He said the Board is not listening to the public, ignored a petition with 500 signatures, and he is not driving to meetings any more as he is not being listened to. Commissioner Laroche apologized for any misunderstanding, and assured Mr. Armstrong that he is not involved in the antlerless permit allotment calculations.

Mr. Barrows asked for a clear explanation of how extra permits are handled within WMUs, and thought it was irresponsible of the Department not to have a plan for excess permits.

Mr. Salvador raised a concern about the quality of paper that licenses are printed on. Commissioner Laroche said there had not been any changes to the paper in recent years, and in August, on-line licensing could alleviate that concern. Mr. Salvador also suggested the possibility of breaking D2 and H1 into multiple zones. Col. Rooks informed the Board that legislative approval is required to redistrict zones. Any redistricting as a result of the ten-year big game management plan review will have to obtain legislative approval.

Mr. Driscoll asked what the Department can do about decommissioned hunting facilities, as there is an abandoned facility he heard about where wild boar are running around. The Department has no authority over non-permitted facilities.

Ms. Jones said she believes the Department knew it was going to propose a three deer limit, knew the amount of antlerless permits that it was going to propose prior to the public meetings held in the spring, and should have been forthcoming with that information. Commissioner Laroche said the Department never has and never will have that information prior to the public hearings due to the unavailability of all the harvest data at that time of year.

Mr. Lefevre said the Department is coming up short on its antlerless proposal and said the Department is not collecting information on youth hunting at the public meetings.

Mr. Gallo wanted to recognize Mr. Barrows and Mr. Shannon for their work on the captive hunt rule.

Mr. Ames questioned why the Department issued a press release saying that highest bidders in the moose auction could bid year after year, when the Board had voted to make them wait three years like lottery winners. Mr. Englander said there was enough ambiguity in the wording to be confusing; however, the Department recognizes the intent of the Board, and will administer the permits in line with the Board's intent.

Chair Kittell said he hoped Mr. Armstrong would reconsider his resignation, understood his frustration with the process, and said the antler restriction proposal was contentious as well. He went on to say he thinks the Board is strong, even though all the members don't always agree.

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

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

**/s/Catherine Pirie Merrill**

Catherine Pirie Merrill