

Fish & Wildlife Board
APPROVED Meeting Minutes
Wednesday, August 20, 2008

The Fish & Wildlife Board convened a meeting at 5:00 p.m. on Wednesday, August 20, 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, John Austin, April Moulaert, Shawn Haskell, Tom Decker, David Englander, and Cathy Merrill.

Visitors: Roy Kilburn, Jon Valsangiacomo, Brooke Dingleline, Hank Dimuzio, Andrew Page, and Clint Gray.

Chair Kittell called the meeting to order at 5:05 p.m.

Approval of July 9, 2008 and August 13, 2008 Minutes

July 9, 2008 Minutes: Mr. Driscoll made a motion to accept the July 9, 2008 minutes, which was seconded by Mr. Rainville. Mr. Baker noted on page 4 the wording regarding the three deer bag limit stated “two of which must be buck” is incorrect; it should be “two of which may be buck.” All agreed the wording should be changed, and the minutes were unanimously approved as corrected.

August 13, 2008 Minutes: Mr. Roy made a motion to accept the minutes, which was seconded by Ms. Jones. The vote was unanimous to accept the minutes as written.

New Department Employee

John Austin, Interim Director of Wildlife, introduced April Moulaert, a new Department employee who oversees the Clean & Clear initiative providing support to wetlands, specifically within the Lake Champlain basin.

Third Vote: Section 2A (Big Game Tagging Requirement)

Col. Rooks informed the Board the proposed rule was approved by the Legislative Committee on Administrative Rules (LCAR), no changes had been made, and the rule was ready for a third vote. Mr. Driscoll made a motion to approve the regulation, which was seconded by Mr. Gallo. The vote was unanimous to approve the rule.

Third Vote: 2008 Deer Season Proposal

Mr. Austin informed the Board the rule had been unanimously approved by LCAR and was ready for a third vote. Mr. Ames made a motion to accept the 2008 deer season proposal, which was seconded by Mr. Lefevre.

Mr. Lefevre asked if the two proposals (Regulation 1502 and Regulation 911) would be voted on as one or if they would be voted on separately. Chair Kittell said both proposals would be combined in one vote.

There was no further discussion.

Those voting in favor of the 2008 deer season recommendation: Gallo, Ames, Driscoll, Salvador, Lantagne, Baker, Barrows, and Rainville. Those opposed: Jones, Armstrong, Roy, and Lefevre. Shannon was absent for this vote.

The proposal was approved, 8 to 4.

Discussion/Decision: Vermont Bearhound Association Petition

David Englander, legal counsel for the Department, said the Department's recommendation is to consider the proposal to ban guided bear hunts in the ten-year big game management plan (see attached recommendation). Mr. Austin said John Buck, wildlife biologist for the Department, is working with the Vermont Bearhound Association and will be speaking on this issue at the Association's September meeting.

A motion was made by Mr. Ames to accept the Department's recommendation, which was seconded by Mr. Gallo. There was no further discussion, and the Department's recommendation was approved unanimously.

Chair Kittell asked Mr. Englander to draft a response to the petitioner for Mr. Kittell's signature indicating the Board's decision.

Discussion/First Vote: Captive Hunt Regulation

Chair Kittell reviewed the rulemaking process and said he would give the parties an opportunity to address the Board prior to its vote. Mr. Barrows gave a summary of the recent meetings with representatives of the Department, Board, and captive hunt industry. He said the meetings had been constructive, and felt there had been give-and-take on both sides. Mr. Barrows thought the first vote should be fairly easy as a majority of the draft rule was acceptable to those affected.

Mr. Austin expanded on Mr. Barrows comments and said that substantive issues were addressed, and for the most part addressed to industry's satisfaction.

Chair Kittell reminded the Board that tonight's vote was not a final vote and there would be ample opportunity for public input and changes.

Mr. Englander clarified that all members of the working group were not in agreement with the entire document, and the areas of disagreement were noted in the margins of the draft regulation. Chair Kittell acknowledged that this version would probably be as close as the parties would get to agreeing on most of the issues.

Mr. Barrows said the most contentious issues were: native species; the penalty of revocation; the acreage limitation; and the timing and method of depopulating native species from a facility. The method of depopulation is not within the Board's authority; however, the Board can set a time frame for completion.

Mr. Armstrong asked if this regulation would have an effect on the deer park in Bennington [at the Veterans Home]. Mr. Englander said this rule would not affect the Bennington deer park, as those deer are not being held captive for the purposes of hunting.

The Board reviewed the proposal section by section.

Mr. Rainville asked if double fencing would still be needed if the white-tailed deer and moose inside a facility were removed. Commissioner Laroche said at this time there would be no need for double fencing once the white-tailed deer and moose were removed.

Commissioner Laroche left the meeting at this point due to a scheduling conflict.

Mr. Gallo asked if the Richters (from West Fairlee) participated in the working group. Mr. Austin said the Richters attended the initial meeting, but chose not to attend subsequent meetings. Mr. Austin said he and Mr. Englander spoke with the Richters' representative, who said they are largely in agreement with the proposal. The Richters' sole concern appears to be the requirement that a person would need to obtain a hunting license to hunt animals at their facility. Mr. Austin noted this is a statutory requirement.

Section 2

Mr. Lefevre said he believed there is a conflict between section 4718 and 4081 and questioned whether the Board is obligated to establish a permitting process. Mr. Englander said it was his opinion that the plain terms of the statute require the Board to establish a permitting process.

Section 3

There was discussion regarding the definition of "escape-proof." Mr. Barrows said the definition of fencing used in this proposal mirrors the language used by the Agency of Agriculture, which is what the facilities are following now. Mr. Driscoll questioned proposing the use of the same fencing requirements as there are animals escaping now, which makes it obvious that the current fencing is not escape-proof. Mr. Englander responded the Agency of Agriculture's fencing requirements are industry standards. Mr. Driscoll cautioned the rule may be setting up facilities to fail as they are not meeting the standards now, and thought the fencing requirements were too lenient. Mr. Englander said if there were repeated escapes or ingress of animals, fencing improvements would have to be made.

Section 4

Language had been added to authorize a permittee or designated employee to take any entrapped animal; it was agreed to require any white-tailed deer or moose taken for that reason be field dressed and then become the property of the Department.

Mr. Lefevre wanted clarification of allowed species in Section 4.5 (b).

There was discussion enclosure size. There was no consensus on the size limits; however, Mr. Englander noted that the size limitations would be applied equally to existing facilities as well as to future facilities.

There was discussion on the vagueness of the definition of overbrowsing.

Mr. Lefevre asked what was meant by a “CWD Certified Herd.” Mr. Englander explained that was an existing program administered by the Agency of Agriculture.

Section 5

There was discussion about the fencing requirements. Agriculture Agency rules on fencing apply to those facilities raising elk for meat purposes, and that fencing language is used in this rule.

Mr. Lefevre noted there was no time limit specified for a permit to be approved/issued.

Section 9

There was discussion regarding facility decommissioning, and whose responsibility it was to ensure a facility was clear of captive animals. Mr. Barrows suggested a clause be added in Section 9.3 to require inspection of the property prior to removal of fencing. The requirement for fencing removal could be a condition of the permit, and the decommissioning expenses would fall to the permittee.

Section 10

Mr. Driscoll questioned the requirement of a big game license to hunt non-big game animals. Col. Rooks said any person taking an animal by hunting is required to have a hunting license; licenses are not specifically issued for big game, they are “hunting” licenses, and are required by statute.

Mr. Lefevre noted there was no language requiring an insurance bond to ensure compliance, and no specifics on fines.

Mr. Ames made a motion to accept the proposal; which was seconded by Mr. Gallo.

Chair Kittell gave the interested parties an opportunity to comment.

Ms. Dingleline addressed the Board and said she and her client (Doug Nelson), were pleased that their comments had been incorporated into this draft. She still had concerns regarding the permit revocation process; specifically that repeated violations (escaping animals) would be grounds for revocation. She also had concerns regarding the fencing requirements, and wants a higher level of confidence that there would not be unintended interpretation of the rule, which could lead to revocation. Ms. Dingleline thought one year was not long enough for depopulating the approximately 150 white-tailed deer currently within the enclosure, and proposed a five year time frame to allow depopulation to bring the facility into compliance. Ms. Dingleline said her client would like to engage in negotiations with the Department regarding a depopulation plan for those native animals. Overall she said she was very pleased with this draft of the rule.

Dr. Dimuzio commended the working group on the draft and said he had no qualms supporting it. He did say there were still some sticking points. He said he did not want to see small parcels of land fenced off and called hunting facilities; and recommended a minimum of 100 acres. He said he was willing to negotiate on the maximum acreage limits and suggested after the public comment period that the working group reconvene and present a revised proposal to the Board.

Mr. Barrows suggested that industry and the Department outline their outstanding issues and have them available to the public prior to the public meetings.

Chair Kittell said that once the public comment period was over, the working group would meet again and come back to the Board with a working document. He did note there would continue to be issues where all the parties would disagree. Chair Kittell called for the vote.

All voted in favor of the proposal, except Mr. Driscoll who opposed.

Mr. Englander said he would file the rule with the Secretary of State on Friday (August 22). It was decided by the Board to hold one public hearing in the central part of the state.

Board Roundtable

Mr. Baker asked about the release date for the ten-year big game management plan, and if any attempt had been made to split the Wildlife Management Units (WMUs). Mr. Austin said the plan would be ready for public review at the end of October/early November, and the WMU delineations were being considered in the review.

Mr. Armstrong was concerned about recent radio advertisements advocating for a land trust that prohibits hunting and trapping. Mr. Decker said he was aware of the land trust, however, the Department does not engage in any land acquisitions that restrict hunting or trapping.

Mr. Rainville reported cormorants on Maidstone Lake.

Mr. Lantagne said he was hearing from archers who want to be able to bait deer with apples under tree stands, and from proponents for dividing WMU D2.

Mr. Barrows said he begrudgingly voted for the deer regulations, and chastised the Department for not working with people and not providing information when asked. He is concerned the Department increases antlerless permits when it can't issue all of them, and questioned why the Department doesn't reduce the numbers if it knows the permits won't be used. He also said the Department should have let the public know it was going to recommend a three deer limit.

Mr. Driscoll asked about the wanton waste work group. Mr. Ames, one of the Board's representatives on the group, said he was finding the process extremely frustrating, with group members changing, and time spent rehashing the purpose of the group. Another meeting is set for September. Mr. Austin said the Department would provide the group with a rough proposal to get the process moving. Mr. Driscoll asked if there was a shortage of wardens in the Northeast Kingdom. Col. Rooks said there would be adequate coverage by moose season; however, there was a warden shortage due to injuries and resignations.

Mr. Lefevre thought the wanton waste work group was unbalanced in favor of various groups and cautioned that their emails and blogs represent only a small portion of the public. He also thought it was unnecessary to encumber the antlerless proposal by packaging it with the three deer limit.

Ms. Jones said she agreed completely with Mr. Barrows' comments. She then thanked the Department for its recent work with the NRA firearm range operators' workshop.

Mr. Gallo spoke about the makeup of the wanton waste work group and reminded the Board the reason for including the sporting groups was to ensure the Department work with all interested parties before the issue is reintroduced to the Board.

Chair Kittell said the Board would consider testimony in all formats, including emails pro and con.

Mr. Barrows asked Shawn Haskell, wildlife biologist for the Department, how many deer he thought would be harvested in the 2008 season. Dr. Haskell estimated roughly 10,000.

Mr. Gallo made a motion to adjourn, which Mr. Rainville seconded.

The meeting adjourned at 7:10 p.m.

Respectfully submitted,

/s/Catherine Pirie Merrill

Catherine Pirie Merrill
Executive Staff Assistant
Fish & Wildlife Department