

**Testimony of Barbara Felitti, resident of Huntington, VT
to the Legislative Committee on Administrative Rules (LCAR) regarding the
Proposed Rule for Furbearer Species from the Vermont Fish & Wildlife Department (Department)**

The following are reasons why LCAR should object to the proposed furbearer rule:

The revised definition of trapping in the rule was not intended by the Legislature and has constitutional implications that are beyond the authority of the Department to make.

Act 159 stated that trapping “means to take or attempt to take furbearing animals with traps”. The Department changed the definition of trapping in the proposed rule by adding the word “hunt”. This not only is counter to the Legislature’s intent but also raises constitutional issues.

Article 67 of the VT Constitution protects the right to hunt, fowl and fish. Re-defining trapping as hunting creates conflict and ambiguity with respect to regulations governing hunting vs. trapping.

Under current regulation, all lands not posted are open to hunting, but permission must be expressly given for trapping on lands not owned by the trapper. If trapping is now defined as hunting, does this mean that trappers no longer need permission to trap on unposted private property? Will private property owners now need to go through the burdensome process of posting their property to prevent trapping? What signs will be needed for posting land? Currently posted signs ban both hunting and trapping. If a property owner wants to allow hunting but not trapping, how do they post their property? Will new signs be created?

When presenting the revised rule at the March FWB meeting, the Department skipped over the change in trapping definition. The Department requested that the FWB vote in changes that were not discussed as “housekeeping” despite full knowledge of the significance of changing the definition of trapping. I have direct experience communicating with the Department on this issue when I raised a question about information on the Department’s website. The Department would not provide me with the basis for their rationale that trapping is hunting saying “this issue is one that may eventually be the subject of controversy before the legislature and possibly the courts. . . .” (Attachment 1).

The Department is entitled to their opinion about the definition of trapping, but cannot be allowed to change it unilaterally without open discussion and opportunity for public comment. Additionally, using development of a new rule to knowingly make a controversial change is disingenuous at best, and is evidence of why wildlife advocates have limited trust in the

Department. Passing the rule with this change in trapping definition was not part of legislative intent, creates conflicts with existing regulations and raises constitutional issues not in the authority of the Department to make.

Act 159 - Trapping

There are no AFWA BMP standards for body-gripping traps, and the Department has failed to provide peer-reviewed data that form the basis of these BMPs. Act 159 states that BMPs should meet the minimum standards of the Association of Fish & Wildlife Agencies (AFWA). AFWA only has BMPs for leghold (restraining) traps¹. AFWA relies in Canada for research and data on body-gripping traps (referred to as kill traps in international standards). In their Responsiveness Summary², the Department cited use of Canadian research for body-gripping traps but so far has not provided me with a copy of this data nor could I find it on the internet. I was given an AFWA publication on the *use* of body-gripping traps³ and told “If you want data and information on all the studies conducted in Canada, *we don’t have those data* [emphasis mine] and you will need to contact the authors” (Attachment 2). If the Department does not have the detailed research data and findings, or will not make these available then how can body-gripping/kill traps be authorized as a best practice in this rule? Body-gripping/kill traps should be removed from the rule because the Department has not provided research data and findings to support the BMPs.

Training standards are inadequate to ensure that trappers are instructed in BMP practices. In their responsiveness report, the Department determined that existing regulation for trapper education was sufficient and no rule changes were needed. However, existing regulation permits a trapping license to be given based on completion of a trapper course or issue of a trapper license **in another state or Canada**, without knowing if these meet standards for BMPs. There is also no requirement for current license holders to be recertified so that they receive information about BMPs. By the Department’s own numbers there are only about 350 active trappers (Attachments 3 & 4), so this is not a burdensome requirement to require recertification. Allowing trapper certification based on other state’s or Canada’s program, and failure to re-certify current active trappers leaves significant gaps in how well trappers will be trained on BMPs and does not meet

¹ Best Management Practices for trapping Furbearers in the United States, H. Bryant White et al, Wildlife Monographs, 26 July 2020. <https://wildlife.onlinelibrary.wiley.com/doi/epdf/10.1002/wmon.1057>

² See page 22 of Responsiveness Summary: Public Comments, Best Management Practices for Furbearer Trapping. <https://vtfishandwildlife.com/sites/fishandwildlife/files/documents/Vermont%20Fish%20and%20Wildlife%20Board%20Meeting%20Documents/2023%20proposals/LCAR-responsiveness-summary-Act159-Trapping.pdf> (page 22)

³ 2017 Bodygrip Traps on Dryland: A Guide to Responsible Use, Association of Fish & Wildlife Agencies. https://www.fishwildlife.org/application/files/9215/2106/2322/AFWA_Bodygrip_2017_final_compressed.pdf

the intent of Act 159 for “instructions that incorporates the recommendations or requirements set forth...”

Act 165 – Hunting with Hounds

The number of permits for hunting with hounds is not controlled. Act 165 explicitly limits permits for hunting with hounds to 100. Yet the rule includes the ability of “sub-permittees” to be part of hound hunting without ANY limitation on the number of sub-permittees or whether they are residents or non-residents through a process “designated by the coyote dog permit holder”. Allowing an unlimited number of sub-permittees directly undermines the legislative intent to limit the number of permits issued, and puts permitting in the control of hunters and not the Department.

The control of dogs definition does not meet the legislative intent “to minimize the risk” that “dogs pursuing coyote enter onto land that is posted against hunting”. There is no way to guarantee that a dog in hot pursuit of prey will not cross onto posted property if it is being monitored remotely on GPS with a shock collar as the only means to stop it. Due to terrain and vegetation, the collar may be ineffective over even relatively short distances, and worse, trying to stop a dog in pursuit could result in excessive shocks being applied to get the dog to respond. Ten countries ban the use of shock collars for training because they are considered inhumane, including countries like Australia and Wales that train working dogs. By this rule, Vermont is condoning a controversial practice which cannot definitively meet the intent of Act 165. For the rule, “control” must be defined as having visual and voice command.

It is important to be clear about why BMPs came about. They did not develop out of concern for animal welfare, but for economic reasons. In 1991, Europe banned leghold traps and the US and Canada wanted to find ways to be able to still sell fur to Europe. BMPs were developed so that this economic activity could continue.

Additionally, if these are truly “best” practices, there should be no exemptions for nuisance trapping or defense of property. Page 13 of the Department’s Responsive Reports notes that only certain sections of the proposed rule will apply. Notably trapping in defense of property or nuisance trapping for compensation are exempt from sections for setbacks, dispatch and certain species. If these are truly best management practices, then there should be no exemptions.

Attachments:

1. Communications between VT Fish & Wildlife Department and B. Felitti related to definition of trapping
2. Communications between VT Fish & Wildlife Department and B. Felitti related to research data for body-gripping trap BMPs.
3. Communications between VT Fish & Wildlife Department and B. Felitti related to the number of Active Trappers
4. Spreadsheet from VT Fish & Wildlife Department related to the number of Active Trappers

Other reports cited:

Best Management Practices for trapping Furbearers in the United States, H. Bryant White et al, Wildlife Monographs, 26 July 2020. <https://wildlife.onlinelibrary.wiley.com/doi/epdf/10.1002/wmon.1057>

Pages 13 and 22 of Responsiveness Summary: Public Comments, Best Management Practices for Furbearer Trapping. <https://vtfishandwildlife.com/sites/fishandwildlife/files/documents/Vermont%20Fish%20and%20Wildlife%20Board%20Meeting%20Documents/2023%20proposals/LCAR-responsiveness-summary-Act159-Trapping.pdf> (page 22)

2017 Bodygrip Traps on Dryland: A Guide to Responsible Use, Association of Fish & Wildlife Agencies. https://www.fishwildlife.org/application/files/9215/2106/2322/AFWA_Bodygrip_2017_final_compressed.pdf

Re: Correction to FWD website

From: Gjessing, Catherine (catherine.gjessing@vermont.gov)

To: bfvermont@yahoo.com

Cc: Christopher.Herrick@vermont.gov

Date: Friday, December 23, 2022 at 03:36 PM EST

Dear Ms Felitti,

Yes, the Commissioner stated that it is the Department's position that trapping is protected by the Vermont Constitution. Regarding your other questions, the Department cannot give you legal advice. Protect Our Wildlife has advocated for and will likely continue to advocate for banning trapping, a position clearly not supported by the Department. Given that this issue is one that may eventually be the subject of controversy before the legislature and possibly the courts, we will not provide you with attorney client privileged communications or work product.

Have a wonderful holiday season.

Sincerely,

Catherine Gjessing



Catherine Gjessing, General Counsel (she/her)
Vermont Department of Fish and Wildlife
Commissioner's Office
1 National Life Drive, Davis 2 | Montpelier, VT 05620-3208
802-595-3331 cell | 802-828-1250 fax
<https://vtfishandwildlife.com/>

From: Barbara Felitti <bfvermont@yahoo.com>

Sent: Thursday, December 22, 2022 4:09 PM

To: Herrick, Christopher <Christopher.Herrick@vermont.gov>

Subject: Re: Correction to FWD website

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Commissioner Herrick,

Thank you for your reply. My understanding from your message is that the Department's position is that trapping is protected by the Vermont Constitution. Please correct me if this is not accurate.

I request clarification as to the legal basis for the Department's position that "trapping is a form of hunting protected by the Vermont Constitution". Is there any written memo, department document or other legal record that determines that trapping is protected under the Vermont constitution?

Hunting and trapping are defined as distinctly different activities under Vermont regulation as noted below:

10 App. V.S.A § 19 3.15 "Hunting" means the taking of an animal by use of a firearm, muzzleloader, bow or crossbow or other implement authorized by the General Assembly, or the Vermont Fish and Wildlife Board to pursue or take any live animal. [Note: This same definition appears under other subsections of 10 App. V.S.A that reference hunting].

10 App. V.S.A. § 44 3.6 “Trapping” means to take or attempt to take furbearing animals with traps including the dispatching of such lawfully trapped furbearing animals.

Additionally, in the Department's Vermont Hunting and Trapping Guide 2022 it notes that only hunting and fowling are guaranteed rights (p. 46). Because of this, as the guide states, "all private lands are open to hunters unless that land is posted".

For trapping the guide states that "Landowner permission is required to trap on all private property not owned by the trapper." (p. 37)

This difference in access to private lands reflects that hunting is a protected right per the VT Constitution and that trapping is not.

The above regulations and Department information do not support the assertion that trapping is a form of hunting and so a constitutionally guaranteed right.

Please also note that you misread the correct spelling of my last name.

Sincerely,
Barbara Felitti

On Thursday, December 15, 2022 at 04:59:22 PM EST, Herrick, Christopher <christopher.herrick@vermont.gov> wrote:

Dear Ms. Feletti;

Thank you for your note. Please be advised that it is the position of the Department that trapping is a form of hunting protected by the Vermont Constitution. For this reason, we will not be amending our website as you have requested.

From: Barbara Felitti <bfvermont@yahoo.com>
Sent: Monday, December 12, 2022 8:54 AM
To: Herrick, Christopher <Christopher.Herrick@vermont.gov>
Subject: Correction to FWD website

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Commissioner Herrick,

I request that the Fish & Wildlife Department (FWD) correct its website which inaccurately states that

trapping is protected by the State constitution.

The following is found on the FWD website:

"The Vermont constitution has protected the right to hunt, fish and trap on open, private land since its drafting in 1793".

<https://vtfishandwildlife.com/learn-more/landowner-resources/private-land-and-public-access/what-posting-means>

The statement is incorrect. The Vermont constitution refers only to hunting, fishing and fowling:

§ 67. [HUNTING; FOWLING AND FISHING]

The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly.

Trapping is defined as a distinctly different activity under Vermont regulation and therefore should not be identified as constitutionally protected. The website should be revised as follows:

"The Vermont constitution has protected the right to hunt, fish and fowl ~~trap~~ on open, private land since its drafting in 1793".

Please advise as to when this correction will be made. Thank you.

Sincerely,

Barbara Felitti

RE: Follow-up Re: Request for Information

From: Connolly, Abigail (abigail.connolly@vermont.gov)

To: bfvermont@yahoo.com

Date: Thursday, September 28, 2023 at 09:11 AM EDT

Good morning Barbara,

1. Please see the attached ISO Restraining Traps protocol- that is a free copy of the ISO (otherwise it would cost close to \$200 on amazon).
2. The BMP research study that was sent is not about how to set them. The publication covers the methods used and the welfare criteria that is used to evaluate traps for different species.
3. Under literature cited in the BMP research we sent, there are additional references for testing of body gripping traps: <https://www.iso.org/standard/26355.html>
4. If you want data and information on all the studies conducted in Canada, we don't have those data and you will need to contact the authors.
5. We have attached the international agreement on humane trapping standards- this can be found by googling.
6. The body gripping traps were not developed by the Canadian government. Body-gripping traps were tested in Canada. The fur institute of Canada, along with AFWA (or IAFWA at the time) spearheaded this work <https://fur.ca/research-and-information/trap-research-and-testing/>. Their work had to comply with the international humane trapping standards.

Sincerely,



Abigail Connolly (she/her) | Principal Assistant to Commissioner Herrick
Vermont Agency of Natural Resources | Department of Fish & Wildlife
1 National Life Drive, Davis 2 | Montpelier, VT 05620
802-828-1454 (o) | 802-636-7414 (c)
abigail.connolly@vermont.gov
www.vtfishandwildlife.com

Written communications to and from state employees regarding state business are considered public records and may be subject to public scrutiny.

From: Barbara Felitti <bfvermont@yahoo.com>
Sent: Wednesday, September 27, 2023 11:29 AM
To: Connolly, Abigail <Abigail.Connolly@vermont.gov>
Subject: Follow-up Re: Request for Information

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Abigail,

I reviewed the report you sent and determined that it does not answer my request.

My request was for information about BMPs for body-gripping traps developed by the Canadian government that formed the basis for the Department's development of the regulations for body-gripping traps in the new proposed fur-bearer rule. (Again, based on the Department's statement in

their responsiveness report that this is the information that was used).

The document sent is about the **use** of body-gripping traps, i.e., how to set them. It is not BMP research which would include information such as trap performance, methods of assessment, standards and measurement, etc.

I request the BMP research information for body-gripping traps.

Thank you,

Barbara

On Tuesday, September 26, 2023 at 04:14:35 PM EDT, Connolly, Abigail <abigail.connolly@vermont.gov> wrote:

Good afternoon Barbara,

Please see the attached document responsive to your request, specifically the second paragraph on page 6.

Sincerely,



Abigail Connolly (she/her) | Principal Assistant to Commissioner Herrick

Vermont Agency of Natural Resources | Department of Fish & Wildlife

1 National Life Drive, Davis 2 | Montpelier, VT 05620

802-828-1454 (o) | 802-636-7414 (c)

abigail.connolly@vermont.gov
www.vtfishandwildlife.com

Written communications to and from state employees regarding state business are considered public records and may be subject to public scrutiny.

From: Barbara Felitti <bfvermont@yahoo.com>
Sent: Friday, September 22, 2023 3:00 PM
To: Connolly, Abigail <Abigail.Connolly@vermont.gov>
Subject: Request for Information

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Abigail,

In the Department's report "*Responsiveness Summary: Public Comments, Best Management Practices for Furbearer Trapping*" reference is made on page 22 to body-gripping traps being tested by the Canadian government using international standards.

I have been unable to find a report of this through an internet search, and so I am requesting a copy of the report(s) used by the Department in their determinations about body-gripping traps for the proposed furbearer rule.

Thank you,

Barbara Felitti



AIHTS-Copy-of-Agreement.pdf

70.1kB



ISO Restraining Traps_20061025092814.pdf

892.6kB

RE: Clarification & Verification of Data Sent and Information Request

From: Connolly, Abigail (abigail.connolly@vermont.gov)

To: bfvermont@yahoo.com

Date: Tuesday, April 11, 2023 at 01:13 PM EDT

Good afternoon Ms. Felitti,

Please see our responses in green to your email from March 22, 2023.

Clarification

At last week's March 15th Fish & Wildlife Board (FWB) meeting, Kim Royar told FWB members that currently there are 500 active trappers. This information does not correlate with any of the information I have received from you (below). Even if in-season and out-of-season trapping numbers are added together, they do not approach 500. Also, just adding these two would be inaccurate as it would include some double counting of people who trap both in and out of season. **The attached spreadsheet should clarify these data for you. In recent years, the actual number of active trappers has been between 300-350 annually. In her presentation, Kim was simply generalizing about the number of trappers being around 500 which is accurate when you look back in time more than a few years. The number of active trappers can swing widely from year to year based on a number of factors including, most notably, pelt prices and weather.**

Verification

I would like to verify that the information about the number of active trappers based on trapping survey reports you have provided to me is correct, and that Ms. Royar was in error citing "500" as the number of active trappers. **The data in the attached spreadsheet is accurate and complete for the timeframe you requested. Again, Kim was presenting a more generalized representation of trapping activity in the state over a broader timeframe. Although only 300-350 trappers have been active over the past few years, it is not unreasonable to expect that some portion of the remaining 1500+ licensed trappers would become active with a change in the factors that influence trapper participation as discussed above.**

Information Request

I realize from your message that the data on licenses and reports don't align perfectly, i.e., trapping license years are calendar years and trapping survey reports are for a season which span two years. Nonetheless, there is serious under reporting by trappers, ranging from 22-36%. Most times it is closer to 36% or 1/3 as the data show: **Because of the complication associated with a split-year trapping season and a calendar year licensing system, you cannot figure the response rates as you have done. The data in the attached spreadsheet are a much more accurate reflection of per trapping season licenses and survey response rates. Although response rates are still lower than what we would like to see, our efforts to improve trapper compliance seem to be proving effective as witnessed with the marked improvement in 2021-22. We will continue our efforts to improve response rates in coming years.**

The 2020-2021 season had 1,451 reports returned.

There were 2,139 licenses in 2020 (potential under report of 688 or 32%) and 2,263 licenses in 2021 (potential under report of 812 or 36%).

The 2021-2022 season had 1,431 reports returned.

There were 2,263 licenses in 2021 (potential under report of 832 or 37%) and 1,836 licenses in 2022 (potential under report of 405 or 22%).

From the FWB meeting discussion and slide below from the meeting, it is evident that the Department does follow-up and investigates missing surveys.

I am requesting information for 2019 - 2022 related to:

- What are the final numbers of in-season and out-of-season trappers for 2019-2022 seasons based on the follow-up investigations? **See attached spreadsheet.**
- How many active trappers are failing to return trapping survey reports? **The number of licensed trappers who did not respond to the survey is provided in the spreadsheet, however, there is no way for us to tell if these were active trappers in the absence of their response. In fact, our previous experience (i.e., follow-up phone calls and warden visits) indicates that the majority of those who do not respond to the survey are folks who did not trap simply because they don't understand that they are required to respond to the survey regardless of whether or not they set traps.**
- How many permanent license holders are failing to return trapping survey reports? **See attached spreadsheet.**
- How many permanent license holders ask to be removed from the trapping survey mailing list? **See attached spreadsheet.**
- You noted that some permanent license holders "respond that they do not trap and ask to be taken off the survey mailing list". When this happens, does their license for trapping get revoked and is their trapping license no longer counted in tabulations of the annual number of trapping licenses? **Barring any illegal activity, there is no revoking of a permanent license once issued. These folks will continue to have trapping credentials on their license and, yes, they do get included in the license database query we use for generating our mailing lists. However, in recent years, we have developed a way for identifying and eliminating these folks from our mailing lists. This system is responsible for the sharp drop you'll note in the number of surveys sent to permanent license holders from 2020-21 to 2021-22 (i.e., 1213 to 917). By nature of necessity, our licensing system is very complex and nuanced.**
- What repercussions, if any, are there for an active trapper who does not return the required trapping survey report? **The failure to complete a biological collection survey is a nonpoint violation under 10 V.S.A. § 4502. It is a civil ticket and subject to \$105 fine. See attached fee schedule and relevant statutes.**

Sincerely,



Abigail Connolly (she/her) | Principal Assistant to Commissioner Herrick
Vermont Agency of Natural Resources | Department of Fish & Wildlife
1 National Life Drive, Davis 2 | Montpelier, VT 05620
802-828-1454 (o) | 802-636-7414 (c)
abigail.connolly@vermont.gov
www.vtfishandwildlife.com

Written communications to and from state employees regarding state business are considered public records and may be subject to public scrutiny.

From: Barbara Felitti <bfvermont@yahoo.com>

Sent: Wednesday, March 22, 2023 1:49 PM

To: Connolly, Abigail <Abigail.Connolly@vermont.gov>

Subject: Clarification & Verification of Data Sent and Information Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Ms. Connolly,

I am writing to get clarification and verification of the information on the number of active trappers previously sent, and a new information request related to this

data.

Clarification

At last week's March 15th Fish & Wildlife Board (FWB) meeting, Kim Royar told FWB members that currently there are 500 active trappers. This information does not correlate with any of the information I have received from you (below). Even if in-season and out-of-season trapping numbers are added together, they do not approach 500. Also, just adding these two would be inaccurate as it would include some double counting of people who trap both in and out of season.

Verification

I would like to verify that the information about the number of active trappers based on trapping survey reports you have provided to me is correct, and that Ms. Royar was in error citing "500" as the number of active trappers.

Information Request

I realize from your message that the data on licenses and reports don't align perfectly, i.e., trapping license years are calendar years and trapping survey reports are for a season which span two years. Nonetheless, there is serious under reporting by trappers, ranging from 22-36%. Most times it is closer to 36% or 1/3 as the data show:

The 2020-2021 season had 1,451 reports returned.

There were 2,139 licenses in 2020 (potential under report of 688 or 32%) and 2,263 licenses in 2021 (potential under report of 812 or 36%).

The 2021-2022 season had 1,431 reports returned.

There were 2,263 licenses in 2021 (potential under report of 832 or 37%) and 1,836 licenses in 2022 (potential under report of 405 or 22%).

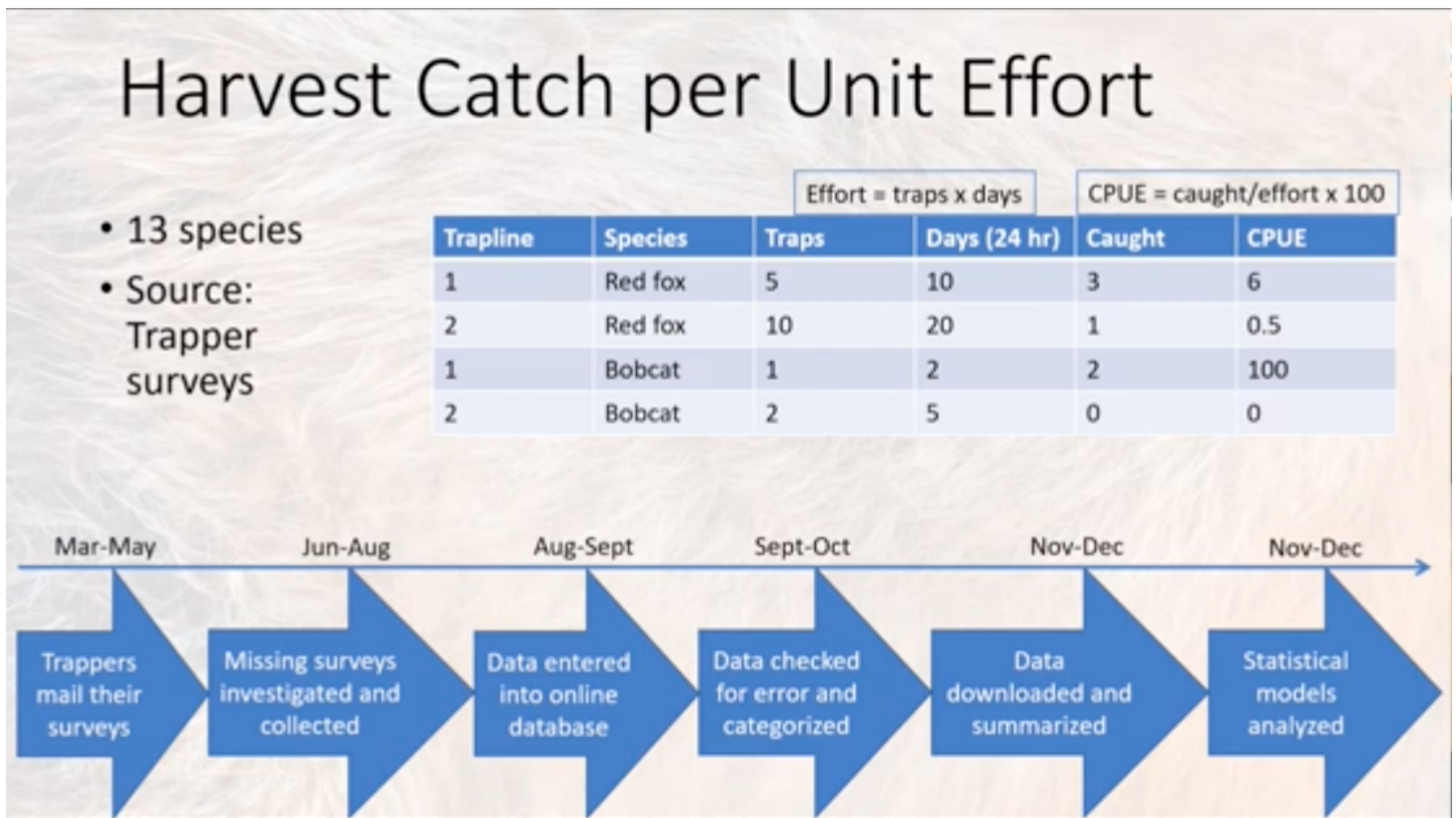
From the FWB meeting discussion and slide below from the meeting, it is evident that the Department does follow-up and investigates missing surveys.

I am requesting information for 2019 - 2022 related to:

- What are the final numbers of in-season and out-of-season trappers for 2019-2022 seasons based on the follow-up investigations?
- How many active trappers are failing to return trapping survey reports?
- How many permanent license holders are failing to return trapping survey reports?
- How many permanent license holders ask to be removed from the trapping survey mailing list?
- You noted that some permanent license holders "respond that they do not trap and ask to be taken off the survey mailing list". When this happens, does their license for trapping get revoked and is their trapping license no longer counted in tabulations of the annual number of trapping licenses?
- What repercussions, if any, are there for an active trapper who does not return the required trapping survey report?

Thank you for your assistance.

Sincerely,
Barbara Felitti



On Wednesday, January 25, 2023 at 02:46:22 PM EST, Connolly, Abigail <abigail.connolly@vermont.gov> wrote:

Good afternoon Ms. Felitti,