

LCAR October 5, 2023, Act 159 – Proposed FWD and FWB trapping rules

Thank you, Chairman Squirrel, and members of the committee, for this opportunity to speak with you regarding the proposed rules resulting from A.159 and A.165. My comments will mostly be on trap setbacks from public trails.

I am Rob Mullen from West Bolton. I have a Bachelor of Science degree in biology from UVM and am a wildlife artist (www.robmullen.com) and a Signature Member of The Society of Animal Artists, the leading association of nature artists in the world. As such, I have observed and studied wildlife professionally for over thirty years including on over 30 weeks-long wilderness art expeditions from Labrador to Arctic Alaska. I've been sniffed by a weasel, kissed by a caribou, close enough to kiss a wet wolf, adopted by two young black bears, and charged by a grizzly. I am the Board Chair of the Vermont Wildlife Coalition (www.vtwildlifecoalition.org) and served on the A.159 trapping working group. I have worked productively with the FWD on several occasions starting with the State Migratory Bird Stamp in 1995,

Local And State News



Sandy Macys/Times Argus

Bufflehead Winner

Fish and Wildlife Commissioner Al Elser and artist Robert Mullen of Brandon unveil the 1995 Vermont Duck Stamp in Montpelier Wednesday night. The stamp will feature a male and female pair of bufflehead, painted by Mullen.

various habitat projects in our town forest, banding geese, and cleaning turtle nesting beaches. In recent years, I've had my issues with the Department on recreational/sport trapping, hounding, and open seasons, but I largely admire their work on habitat, endangered species, and for the most part, their management of hunting and fishing. Sadly, I found this Working Group experience disillusioning.

Act 159: While I will focus on trap setbacks, it is VWC's position that the FWD has proposed few if any significant improvements in trapping and has failed to meet the legislative intent in both A.159 and A.165. I am also the ACO in Bolton and am reasonably well versed in the laws around the control of dogs. What the FWD/Board is proposing as "control" of coyote hounds (and any other wide-ranging hounds) is nothing short of an absurdity relative to what is required of most every other dog owner in the state who must at a minimum maintain close contact and reliable recall.

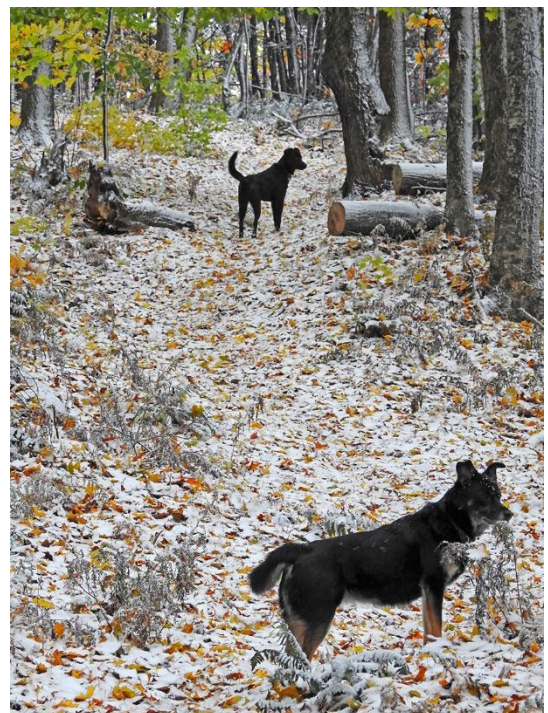
The issues I covered before Monday's new proposed rules from the FWD, were their arbitrary definition of "public trail", their arbitrary definition of a "safe distance", and their arbitrary exception to setbacks for traps set in water. The changes to the definition of "public trail" in Monday's submission are, as they note, a major improvement over their initial proposal, but the bar was easy to step over. There have been no changes to setback distance or the exception for traps **in** water.

On an acreage basis, the Department's new proposal still only applies to less than 15% of the state (up from under 5% - over 85% of Vermont is private land). It also still relies on what seems an overly restrictive standard of "mapped and designated" when neighboring NH restricts traps from being placed in, "... **in a public way, cart road, or path commonly used as a passageway by human beings or domestic animals.**" Granted, there is no setback mentioned, but then the Department was not tasked with exceeding NH's or MA's standard, but with meeting or exceeding the Vermont Legislature's which included setbacks at a "safe distance from public trails ... and other public locations where persons may reasonably be expected to recreate."

The 50-foot figure has been publicly stated by the Department to have been chosen because it exceeds the longest dog leash ([Vermont's Fish & Wildlife Department is accepting public comment on modernized trapping regulations | Vermont Public](#)). That would make sense IF leashes were required in Vermont. They are not. Unleashed dogs, if in the presence of a person and under control of that person, are perfectly legal in most rural towns. A "safe distance" predicated on widespread leash laws that do not exist, is arbitrary on its face.

Furthermore, as a practical matter, 50 feet is insufficient to reasonably expect a handler to be able to realize, react, and recall a dog who is ranging alongside a trail with them. A greyhound can cover 50 feet in less than one second (0.75). Again, as a practical matter, we aren't talking about racing hounds at full speed. However, even at heel, an average dog can cover 50 feet in 2-3 seconds of easy effort,

Shiloh 50 feet in front of me



let alone if they catch wind of a scent-baited trap when they are already 20 feet from the trail.

Leash laws, if any, are by the authority of towns in Vermont under VSA Title 20 Chapter 193, subchapter 1 <https://legislature.vermont.gov/statutes/chapter/20/193>. Bolton, like most rural towns, does not have a leash law, but requires control of your dog (i.e., nearby with excellent recall). Such an inadequate setback would do little to address the goals of Act 159, but it would avoid major inconvenience for a few including those who like to be able to check their traps without getting off or out of their vehicle (Working Group meeting comment). Granted, a visual check of a trap that is 50 feet from the trail is less convenient to do from the seat of an ATV, snowmobile, or truck than it is if traps can be just off the trail, but it is still possible for many if not most sets, at least to the extent of whether an animal is in it or not.

Setbacks per A.159 were to be “... **at a safe distance, from public trails, ... and other public locations where persons may reasonably be expected to recreate;**”

We had initially suggested 500-ft setbacks in the working group – the rule for facilities on ANR properties. The Trappers Association VP granted that his membership would **agree to not set traps ON trails**. At a subsequent meeting, he reported that his membership would agree to a 10 foot setback (this from a group whose members claim that they wouldn’t set. I wrote the group and suggested a compromise of 100-feet. I received no reply.

(4) requirements for the location of traps, including the placing of traps for purposes other than nuisance trapping at a safe distance, from public trails, class 4 roads, playgrounds, parks, and other public locations where persons may reasonably be expected to recreate;

A “public trail” does not have to be on public land in A.159, but by common sense and, “... *public locations where persons may reasonably be expected to recreate*” clearly is intended to include most publicly used trails throughout the state, whether they are on public land or not. Think of it, is the Long Trail a “public trail?” Including public trails on private land is common sense because public land, federal (7.8%), state (6.4%), and municipal (1.1%), constitute less than 15% of our land area. Setbacks limited to such a small area would be of limited value. Due to its location, the LT itself runs through mostly state and federal land, but it also crosses a lot of private land. The AT crosses even more as do the nearly 100 side trails in the GMC system.

Leaving the 50-foot issue aside, the Department’s setback rule, at first, seems in line with A.159. It is not. One also must read the latest Department definition of public trail. Far from following the letter and intent of A.159, the FWD and FWB have **arbitrarily** redefined “public trail.” A.159 clearly intended to include most if not all publicly used trails, wherever they are. The FWD/FWB declared “public trails” to only mean **trails on public land**

Public hiking trails often traverse private land in Vermont, including many of the nearly 100 GMC access trails and trailheads for the Long Trail, Appalachian Trail, and Kingdom Heritage Trail as well as the main trails themselves. Having hiked the Long Trail “End-to-End,” I can personally attest that much of the trail can be readily accessed by trappers at automobile road crossings, and by ATV or snowmobile along even more numerous abandoned roads, logging roads, and ATV/snowmobile trails.

owned by the state of Vermont, municipalities, and the U.S. government – less than 15% of the state.

Even before Monday’s iteration of the setback rule, the FWD/FWB added mapped municipal trails approved by a Select Board to the list. There are about 67,000 acres of town forests in Vermont ([Town Forests | Vermont Urban & Community Forestry Program \(vtcommunityforestry.org\)](http://vtcommunityforestry.org)). Whether trails in them would qualify under the mapped and approved by a Select Board criterion or not might be a complication, but even if all qualified (Bolton’s are not listed), in a state of 6.154 million acres, it at best adds 1.08%. With this addition, public trails in less than 15% of the state would be “protected” with an inadequate 50-foot trap setbacks. Is that what A.159 intended?

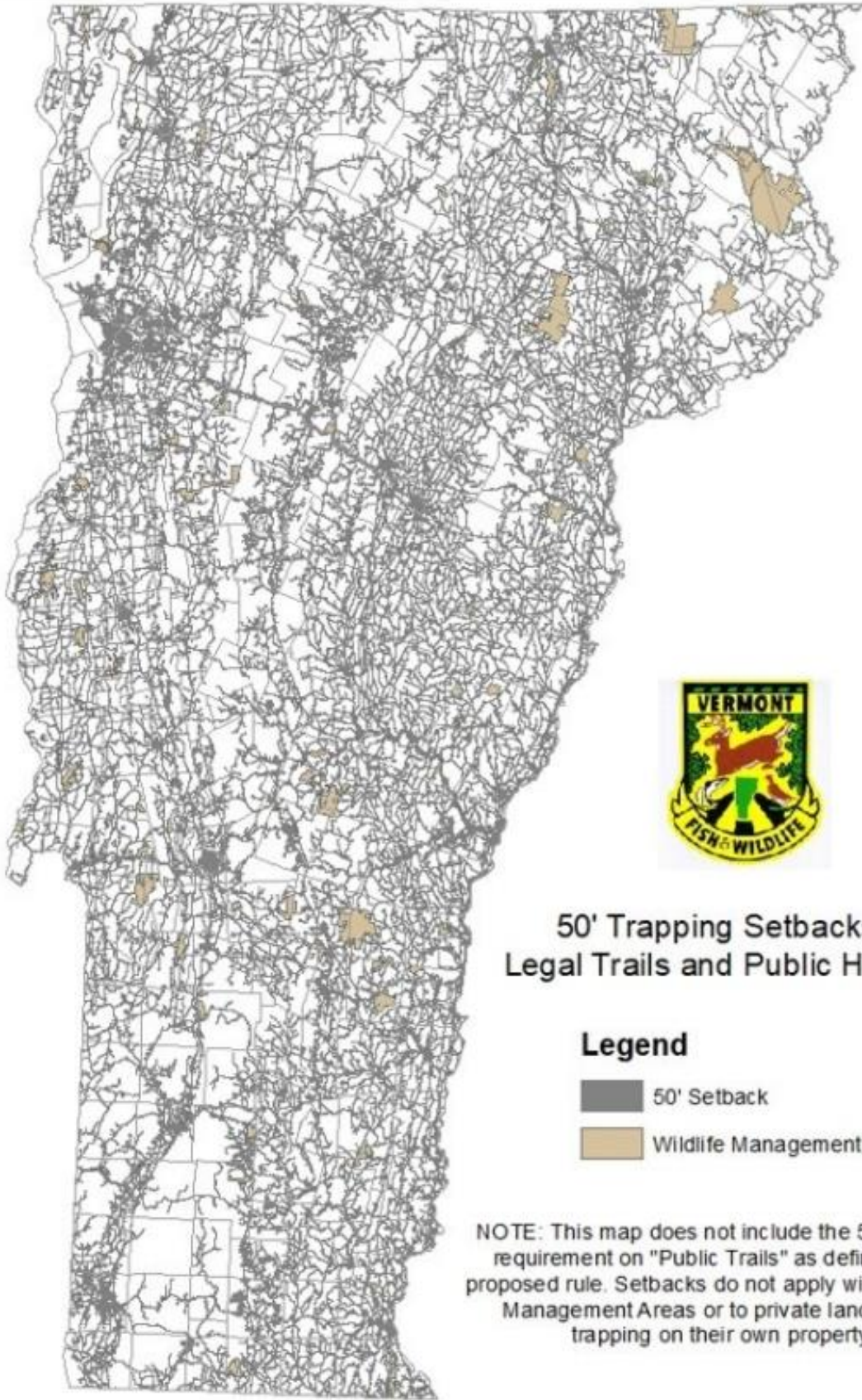
Act 159 also specified Class 4 public highways to be included in the setbacks. The FWD has added all public highways and provided a map from the Agency of Transportation with all of them and “legal trails” delineated on it. It does look like an impressive amount of real estate. Until you remember that this is basically an automobile highway map of every single road in Vermont. All 15,631 miles of them. Other than the 1,541 miles of Class 4 roads, they are not where most people recreate with their dogs, and they are also not likely where most trappers place traps. Including year-round automobile roads certainly does no harm - other than to distract from the inadequacies of the rest of the setback restrictions that the Department has proposed.

While on the issue of setbacks, it was specified in Act 159 that the rule would not apply to nuisance trapping/defense of property. I have heard some concern otherwise, but as I read the directive in Act 159, nuisance trapping (i.e. defense of property) is clearly excepted from the required rule.

(4) requirements for the location of traps, including the placing of traps for purposes other than nuisance trapping at a safe distance, from public trails, class 4 roads, playgrounds, parks, and other public locations where persons may reasonably be expected to recreate;



“Above Below N Between”
Bullfrog, Sunfish fry
(pumpkinseeds) and common
bluet. 11” x 14” acrylic - Mullen

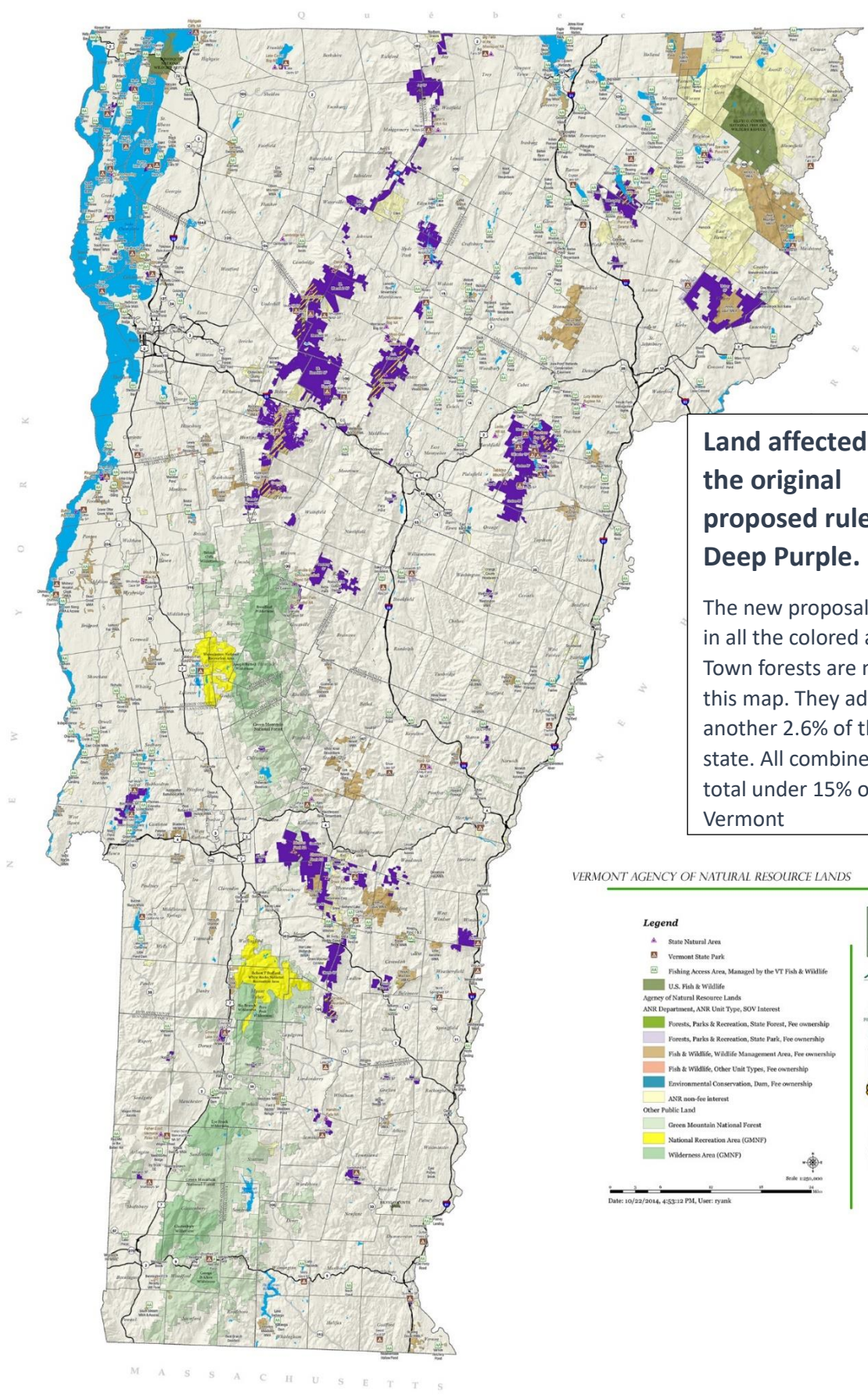


50' Trapping Setbacks on Legal Trails and Public Highways

Legend

- 50' Setback
- Wildlife Management Areas

NOTE: This map does not include the 50' setback requirement on "Public Trails" as defined in the proposed rule. Setbacks do not apply within Wildlife Management Areas or to private landowners trapping on their own property.



Land affected by the original proposed rule is in Deep Purple.

The new proposal adds in all the colored areas. Town forests are not on this map. They add another 2.6% of the state. All combined still total under 15% of Vermont

VERMONT AGENCY OF NATURAL RESOURCE LANDS

Legend

- ▲ State Natural Area
- Vermont State Park
- Fishing Access Area, Managed by the VT Fish & Wildlife
- U.S. Fish & Wildlife
- Agency of Natural Resource Lands
- ANR Department, ANR Unit Type, SOV Interest
 - Forests, Parks & Recreation, State Forest, Fee ownership
 - Forests, Parks & Recreation, State Park, Fee ownership
 - Fish & Wildlife, Wildlife Management Area, Fee ownership
 - Fish & Wildlife, Other Unit Types, Fee ownership
 - Environmental Conservation, Dam, Fee ownership
 - ANR non-fee interest
- Other Public Land
 - Green Mountain National Forest
 - National Recreation Area (GMNF)
 - Wilderness Area (GMNF)

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Exception for traps set “in” water.

The defense of this carve-out given by the Department on October 5, was that traps set underwater pose a vanishingly small risk to domestic pets with their owners. Under ice, that is certainly true, and under water of sufficient depth as well. However, what the Department’s defense failed to address was the actual language of their own rule. The exception is not for traps “under” water but “in” water. There was a comment made in the Trapping Working Group by one of the members, that culverts were a very productive place to trap and that setbacks should not exclude them. His wishes have been granted.

While the exception might seem innocuous sitting in this room, if takes only a short walk on most forest trails in Vermont to realize what a gaping loophole this is: we have a LOT of water near trails. Wildlife use human trails extensively and when seeking out wildlife, sources of food, water, and shelter are always good places to start. Draining water is a culvert’s first purpose in life, so they frequently have at least a little water in them. Streams cross trails whether with culverts or not. Ditches frequently are full of water after a rain, or a summer like this past one. Pond margins, marshes, springs, the list goes on. Water features along trails are numerous and among the most likely spots to set, a camera trap or a steel trap.

The restriction of setbacks to public land hobbles the aim of Act 159. This loophole finishes the job of maintaining the status quo as much as possible and guts its intent.

In closing, I again want to object to the FWD minimizing the deaths of family pets in traps. What they dismiss as a “rare” occurrence and not a public safety issue, they have deigned to address because of public concern. The numbers of family pets killed in traps is likely higher than the FWD has records of, but however many there are, each one is horrific. They are not blue jays caught in fisher traps. They are beloved members of Vermont families, and their loss is grieved for years. That cars are more dangerous to domestic pets is neither here nor there. Cars are more dangerous for pets, people, and wildlife, but they are also essential to modern life. The cost/benefit is overwhelming which is why even though car accidents kill tens of thousands of people every year in the U.S., oftentimes very gruesomely, we find ways to mitigate and manage, and continue driving at full speed. This is not necessarily true when comparing non-essential trapping for sport with similarly gruesome deaths of family pets. This unserious effort has been very disappointing.

Thank you,

Rob Mullen, Board Chair, Vermont Wildlife Coalition.



“Marsh Missile” Hooded Merganser drake chasing off a rival
8” x 32” acrylic - Mullen