December 10, 2023

Dear Chairman Squirrell and members of the Committee,

On November 30, the FWD offered a defense of the FWB's refusal to amend their proposed furbearer rule per the Committee's objections to the rule. Despite the addition of Supreme Court citations of dubious material relevance, the Department has not provided any more persuasive arguments than have been made previously. We strongly urge you to please maintain all of the objections.

Coyote Hounding/Control of Dogs. The Department contends that Act 165 only requires that the rules "**reduce"**, rather than eliminate, conflicts with and risks to landowners. That is true enough. However, the proposed definition of "control of Hounds" does nothing that can reasonably be expected to reduce (let alone eliminate) such conflicts. It simply encodes current practices (GPS and shock collars) which have proven inadequate for many years. The most pressing problem with control – knowing what your hound is doing and having the ability to exercise effective and timely recall – is not addressed. Many incidentals are such as transporting, loading, and unloading, but the most important element, recall, is ignored. The apparent aim of the Department and Board on this issue seems to be to maintain the status quo instead of reducing the incidence of conflicts that they hardly seem to be able to admit exist and continually minimize.

The Department further claims that defining "control" to mean keeping hounds in sight or hearing (LCAR second memo of 10/26) would be a de facto ban on coyote hounding which was not the intent of Act 165. While the latter part of that claim is true, the complaint of a de facto ban exposes a lack of imagination or interest in abiding by what was the Legislative intent of Act 165. In fact, in making this argument, the Department and Board ignore tradition and assume that coyote hounders can't get out of their vehicles with their hounds and follow on foot (*hounding predates GPS and used to require considerable physical stamina*). A person on foot can go anywhere a dog can. Granted, hounds can travel faster than most people on foot, but voice and collar commands could prevent the pack from getting beyond the control of the handler(s). Alternatively, dogs can be well trained to whistle commands (echo locatable for the hounds) which enables reliable recall from well beyond sight distance. The Department and Board are contending that unlike almost every other dog owner in the state, coyote hounders must be allowed to monitor their dogs remotely, with no visual contact via GPS and hoping that line-of-sight radio signals will be reliably received across hill and dale and understood by highly excited, prey-driven hounds. It verges on magical thinking to believe that mandating these current, widely used, and ineffective measures will somehow significantly "**reduce**" conflicts with landowners and damage to property. To believe the Department's and Board's arguments is to conclude that hounders cannot control their hounds in any reasonable sense.

Definition of Public Trail. The Department argues that the simple definition of "public trail" used in NH and MA, namely, trails that are commonly used by people, would be confusing to trappers. It is hard to imagine that most trappers can't tell the difference between a game trail and

a human one, especially on ground they know. And if in doubt, setback. That is simple and clearly fulfills the Legislative Intent of Act 159. Wardens, trappers, hikers, and dogwalkers in NH seem to be able to manage. In contrast, the Department and Board would install a bureaucratic welter of trails that have setbacks (except where trappers prefer to set them; in water) and others that don't, all of them wending through 15% of the state. The vast majority of Vermont would have no setbacks at all. Is it properly mapped by the appropriate agency? Is it maintained or simply well used? Is it marked or, again, simply well used? Is it on public or private land (*it isn't always clear in the field and many trails and old roads pass through numerous jurisdictions*)? Any reasonable person might just not set traps near trails used by other people, regardless of where they were. A trapper testifying to our Select Board claimed that "*no self-respecting trapper" would set traps near trails* – but we now know that isn't true or why would there be such a fight to keep the option? There is little new here other than, again, a reference to the VT Supreme Court regarding vagueness in statutes. As with the plain language citations made elsewhere by the Department, the citation misses the mark. "To avoid a vagueness challenge, a statute need not specifically detail each and every prohibited act.... As long as the defendant reasonably knew of the proscribed conduct in the statute, the regulation will be upheld." (State v. Mobbs, 169 Vt. 645, 647 (Sept. 9, 1999)). If other states define "public trails" to apply to any path used by people, whether on public or private lands, then that language should suffice to make the regulation reasonably known and thereby avoid vagueness.

Traps Under Water/Ice. Throughout the Department's defense of the Board and its attack on LCAR's objections, repeated references are made to the priority given to the plain language in a stature in determining the legislature's intent. They are correct. However, the Department does not mention the plain language of the statute regarding traps set in water or under ice, and possibly for good reason. There is nothing in the section of Act 159 establishing safety setbacks from trails that allows for an exemption for traps in the water/under the ice. In other words, the F&W Board is creating an exemption without any statutory authority whatsoever. Act 159 calls for traps to be located a certain distance from trails, no more no less, regardless of whether the setback area is water/ice. If the F&W Board thinks there should be an exemption for traps in the water/under ice they should seek legislation to that effect. Until then the plain meaning of Act 159 does not provide for such an exemption.

As a practical matter, dogs, like wildlife, will check out open water anytime. Open water is a critical resource for wildlife, more for drinking than swimming, so water of any depth is an attractant (*and is why trappers want to have* ***in-****water sets, particularly culverts where animals are funneled, exempted from setbacks*) and similarly for dogs, along with all the scents around a water source. In my earlier written response November 14, I presented a short video of one of our dogs happily exploring a stretch of open water seep near a spring in the deep snow of February. Animals go to water. Water sources are one of the best places to trap, so this "exemption" is a gutting of the setback requirement.

The Department's continued (and fanciful) contention that setbacks without an in-water exemption would increase nuisance trapping was dealt with in my last reply on November 14. The Department's argument infers the primacy of trapping along trails, ignores the fact that few trails are that close to beaver pond edges for any significant distance (beaver pond margins are

not typically good ground for trails), and that even when they are, between few and no ponds are encircled by trails within 50 feet of the shores barring trappers from accessing them.

Trapping as hunting

Finally, in again insisting on preempting the other branches of government and citizens of the state by trying to sneak trapping into the Constitution through the back door dressed as a janitor doing "administrative housekeeping." The Department simply states, contrary to all available evidence, that the plain language of the Constitution supports the equation of trapping and hunting. I am no lawyer, but when someone writing a constitution takes the pains to distinguish fowling from hunting, it is clear to me that the word "hunting" is being used in its common, relatively narrow sense. If the framers had intended hunting in a broad enough sense to include trapping, then it would certainly have also included bird hunting and even fishing. Nonetheless, the Department and the Board would have us believe that the framers of the Constitution meant this one word, used once in one sentence, to simultaneously be interpreted in two different ways. It doesn't take Justice Scalia to understand that is not how the law works. This gets to the point of redundancy that Devin Brennan made to the Committee on October 19 (*i.e., if "hunting" is meant in a very broad sense, then "fowling" and "fishing" are redundant*) which the VT Supreme Court has ruled is not proper interpretation.

Please uphold your objections; the Department and Board have done nothing to answer and of them.

Thank you,

Rob Mullen, Board Chair – Vermont Wildlife Coalition

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