

VERMONT ENDANGERED SPECIES COMMITTEE

MEETING MINUTES

January 12, 2023

Hybrid Meeting – in person in the Catamount Room at National Life / Teams

We are now recording meetings and taking abbreviated minutes, and will provide both on the ESC webpage.

Attendees

ESC Members: Allan Strong (Chair), Bryan Pfeiffer (fauna representative), Mark Scott (VFWD Commissioner's designee), Becca Washburn (FPR Commissioner's designee), Matt Peters (flora representative), Carla Fenner (flora representative), Stephanie Smith (Agency of Agriculture Food and Markets representative), Paul Wieczorek (agriculture representative).

Non-members: Jim Andrews (Reptile and Amphibian SAG), Bill Kilpatrick (Mammal SAG), Jon Kart (VFWD Permit Administrator and SWAP Coordinator), Roz Renfrew (VFWD Wildlife Diversity Manager), Rich Langdon (Fish SAG), Steve Dwinell (Director, Public Health and Agriculture Resource Management Division, Agency of Agriculture), Kent McFarland (VCE), Mark Labarr (Audubon Vermont), Bob Popp (VFWD botanist). Attended discussion on prunus permit only: Gail Henderson-King (White & Burke Real Estate Advisors), Sara Greer and Dave Keelty (UVM Health Network), Art Gilman (Flora SAG, Gilman & Briggs consulting), and Errol Briggs (Gilman & Briggs consulting).

Scheduled 2023 ESC Meetings

Tuesday, April 25

Tuesday, September 12th

All meetings 9am – 2pm. Hybrid meetings: Teams or in person at National Life Davis Building in Montpelier, Catamount Conference Room.

Call to Order

Allan Strong opened the hybrid in-person/online Microsoft Teams meeting at 9:06 AM. Roz Renfrew started recording at 9:06.

Introduction of Steve Dwinell. Lots of experience with mosquito control in FL. Introductions around the room.

Comments from the public not related to the agenda

None.

Additions, deletions, or changes to the agenda

ANR update may be able to happen between 1 and 2 pm. Move up permits items to accommodate schedules. Add recommendation for member nomination to Bird SAG.

Approval of [minutes from the 22 September 2022 meeting](#)

MOTION: By Bryan Pfeiffer, seconded by Paul Wieczoreck, to approve the 22 September 2022 minutes, with minor edit: in new SAGs section “plants are included as fungi” – needs to be the other way around. Motion approved with this word change. Motion passes.

Updates from VT Fish and Wildlife Department – Mark Scott

Commissioner working at legislature this year to introduce legislation on 10 topics. Main topics related to ESC work:

- Making some minor fish and wildlife violations civil instead of criminal which makes it easier for wardens to enforce and process.
- More teeth in regulations on turtles through a Commissioner’s rule. Asking legislature approval to do this via the Commissioner’s Rule, not the F&W board. Still need to go through the usual administrative procedures with input from legislative committees and the public. Put turtles into similar management regime as we do game species. Includes seasons and bag limits on specific species.
- A 48-hour time limit to report a T&E taking.
- Looking to obtain confirmation from legislature to do mitigation banking for conversion of necessary or critical habitat in legal regulatory processes that is no longer functioning as good habitat. Use fees to invest in habitat for long-term conservation for affected species such as plants, birds in other areas where the species has a better chance for long-term survival. The Department has done this in the past for deer yards.

Waterfowl project leader position just started and Furbearer one will at the end of January. Bird biologist position recruitment just opened, botanist position soon to open for recruitment. Regarding position locations the F&W Department will make efforts to be as flexible as possible. Locations of bird and botanist positions may be flexible depending on needs of individuals.

Jim Andrews offers herp SAG can help with review of draft legislation for turtles.

Mitigation: Jim Andrews says other states have such programs. He will send examples to Mark Scott. Mark would appreciate, we always look at what other states have done when it comes to legislative changes.

Stephanie Smith says the Agency of Agriculture has statute with this type of process in VT law for prime agricultural soils. Calculate impact, gets a check, goes towards VHCB. Could serve as an example that already exists in VT law. Asked if there a rule number; unknown as of yet.

Paul Wieczoreck asks would the money be used for acquisition, management, other? There are existing conserved lands without capacity to manage, would state be interested? Is state in the position to acquire more? Could it take on lands currently under easement with other organizations? Mark Scott mentions that all options could be on the table, and would follow priorities in existing land acquisition plan. F&W largest increase in staff has been in our Lands & Habitat Program. Can’t always accept land donated to us. Acquisition versus easements can

depend on current leadership philosophies. Have to ensure we have capacity to manage successfully. Focus on what is necessary/critical habitat. Make mitigation more effective. Have done this before, e.g. Twin State Gravel for deer wintering habitat. Avoid fragmenting habitat, use Vermont Conservation Design to guide us. Becca Washburn explains FPR also has to be careful in their acquisition decisions, be mindful of being able to take care of land. They have interdisciplinary teams that help review acquisition opportunities to decide what to pursue. Usually working with a conservation partner, sometimes buy and hold, sometimes offer technical expertise, can move more quickly but state has access to money to leverage. Federal Forest Legacy Program has \$18 mil in active projects, they require public access with no limitations on hunting/trapping. Keep forests as forest with working forest approach where important areas conserved/protected. \$7 mil from Inflation Reduction Act to expend by 2027. Exploring various options, including smaller family forests and lands with a tribal focus (however tribes cannot own).

Mark Scott explains Forest Service is a big consideration too. If a property is within their proclamation boundary, we work with them. We get leads on new lands from partners. We just closed on Lazy Lady Island, had been lots of public interest in seeing us do things there that we didn't have jurisdiction over; drove our interest in purchasing. Searching for the right parcel for bear habitat mitigation from wind project, and it's taken time to find something that works.

Bob Popp was on acquisitions committee in the past: in the past for FPR the priorities were land that was near existing state land, and this left out important areas such as high elevation lands. Significant natural communities at lower elevations were left out. Becca Washburn says this is no longer the general practice. Have to navigate various interests/tension point with management capacity which can result in pressure to not acquire more property. How to pay for short-term and long-term expenses is a factor. It's a consideration although not a primary one. Neglecting to factor this in can result in lost support for acquisition.

Bird position: is limited service, had been permanent previously. Yes but it is solidly funded, in effect it is permanent. Switched permanent status to new research position (Katy Gieder) because the latter could be more vulnerable to reductions in funding.

New ESC member representing Ag/Silviculture: Mark reached out to 3 people, sequentially, don't want to reach out to all at once. Also consulted with FPR. Struck out on all 3, too busy. Allan asks Mark to keep us posted, if he runs out of names ESC may be able to make other recommendations.

Red-eared slider: many VFWD staff working on this, importation team sent letter to Commissioner, he's aware and his first concern is what are ramifications and what prep needs to be done. How will we address all the sliders currently in the state (e.g., issue individual permits for each, a general permit or some other way of allowing legacy sliders) while at the same time preventing 'new' turtles from coming into the state (e.g., do we have to tag every turtle, take genetic samples?). Jon Kart is thinking through communications planning. Most popular turtle pet for decades. Need grandfathering otherwise would be compelled to issue a permit to everyone who has one. How to prevent release, what to do with abandoned turtles. Could use help consulting with colleagues in other states: what worked, what didn't work when they

restricted slider possession/sales? Also intend to list as aquatic nuisance. This is a DEC regulation that requires a statutory change so they would need to lead that. How to manage abandoned turtles and find funding to cover the costs.

Jim Andrews: is there a way of dealing with just importation and sale rather than deal with those currently possessed? Mark Scott: law enforcement has difficulty enforcing this because they can't distinguish between animals already in possession versus new. Separating importation from possession is not very effective.

Would help to find out how many turtles are flowing through the pet stores. However we cannot control online sales. Need information materials to have strong public support and make this whole effort successful.

Jim Andrews offer the herp SAG can do some homework investigating what other states did. This help would be welcomed by VFWD staff.

Jon will send restricted list for members to look over to see if there are any other species we should consider now while we're going through this.

Stephanie: Ag agency registers feed products and has had success reaching out to online retailers, asking them to put on their website that manufacturers don't sell to state of VT pet foods not allowed in the state.

Vote on two new SAGs – [Fungi \(all docs\)](#) and [Bryophytes \(all docs\)](#)*

Mark Scott talked with Commissioner but due to concerns over VFWD capacity he cannot support. Allan notes that in the first 2-3 years there shouldn't be implications for staff given the SAGs will be reviewing status etc., ultimately for potential listing. Mark Scott points out though that staff currently have the ability to propose listings. Jim Andrews notes that this adds person power for gathering needed information. Carla Fenner agrees, take advantage of people wanting to contribute. Paul Wieczorak agrees, SAG/ESC can act as a filter while realizing the limitations that exist in the VFWD to deal with recovery plans etc.

MOTION: By Bryan Pfeiffer, seconded by Paul Wieczoreck, to establish a bryophyte SAG and a fungi SAG. Mark Scott representing the Commissioner and Stephanie Smith representing the Agency of Agriculture oppose, all others in favor, no abstentions. Motion passes.

Call for nominations for the Sally Laughlin Award – Allan Strong

Get word out through SAGs and others to expand the potential list of candidates. Additional press at award event to gain more exposure, good PR opportunity. Keeping it secret can make it challenging to draw interest. Jim offers making the decision a month in advance and then push it out. Bryan cautions about sending it out to other groups, the people in this room could easily come up with a bunch of names that could keep us busy for years. Stephanie says opening up the process to the public (press release calling for nominations) can increase interest, but just more work. Members brainstormed a couple of ideas. Allan will send this out to the SAGs. First step in process is to solicit nomination, ESC will then vote on letters of nomination.

Permit applications

Rhodiola rosea (rose root) – state threatened

Bob Popp: Native Plant Trust (NPT) germinating seeds just to determine if they will germinate out. Individual needs permit because they want to plant out at a site and allow growth for 4-5 years for research purposes, then destroy, so this is a potential introduction. He could however keep growing if we allowed. Species is sought out for medicinal purposes. Different strains. Discussed two issues he wanted feedback on regarding issuing a permit. Jon Kart explained that statute gives us 6 reasons to issue permits and none of them seem to cover this situation 1) scientific purposes; (2) to enhance the propagation or survival of a T&E species; (3) zoological exhibition; (4) educational purposes; (5) noncommercial cultural or ceremonial purposes; or (6) special purposes consistent with the purposes of the federal Endangered Species Act. Bryan asks how data will be used. He could collect seeds in Maine because there's no requirement there, and then grow those in VT. People plant endangered plants all the time, so introduction requires no permit, but does natural setting differ from a garden? VFWD gets permits to do this.

This is a new situation testing some of existing authority and practices. There is a potential for enhancing the population, helps goals of NPT seed bank. At some level have to trust that this person will not abuse the situation. Analogous to previous case around ginseng. Hard to justify conservation reason for issuing permit because we don't have examples to point to about attempts to harvest.

Need permit to take seed from wild and put them in bank, then need another permit to take seeds out of the bank and plant them.

Regardless of decision we want to be careful about unintended consequences, and encourage people to do the right thing, and not encourage illicit behavior.

Questions: do we have the authority to issue a permit?

If we issue a permit, then we have to monitor.

Non-commercial purpose but permitting structure that exists would prevent that from happening.

Flora SAG has suggested that he partner with a research institution such as UVM but he hasn't responded to that so far.

Herbalists are planting seeds they didn't harvest from VT. They're not going to stop doing it, so we might as well allow it and issue guidelines because they're going to do it anyway.

[break]

Reptile and Amphibian SAG annual report – Jim Andrews

Met with Bob Zaino (VFWD) to determine species that have needs that Vermont Conservation Design doesn't address. Threat matrix for herps to help guide listing recommendations and create/update special concern list. Discussion about use of terms special concern. Rare species taken into account in Section 248 process. State rank is really what is followed in 248/250.

Allan Strong will send out a reminder of desired format for annual reports.

Carla Fenner now ESC representative on the herp SAG.

Pond (or red-eared) slider – have learned a lot about how the authority for different aspects lie with different entities.

Protection of non-T/E herps – VFWD establishing bag limits/seasons on some species, versus having a list of species that would be protected.

Mudpuppies - Mark Ferguson moved 114 mudpuppies upstream of lampricide treatment area and is tracking.

Not many exotics reported this past year.

Mammal SAG annual report – Bill Kilpatrick

No new state listings. Looking at bat takings permit for GMP. Occupancy study found marten range has remained stable in VT, best predictor of where it occurs is % closed canopy. Primarily restricted to wilderness areas. Declines of weasels range wide based on harvest records. Changes in weasel nomenclature. Concern about reverse zoonosis via deer in mammals.

Invertebrate SAG annual report – Kent McFarland

Potential listing coming to ESC this year: 1) elk toe mussel (S1), one location. May be declining there. May need to consider listing in the future 2) Taconic cave amphipod. One VT location, one in NH, one in NY. Could be connectivity among them. Survived last glaciation. Considering possible Critical Habitat (CH) designation. Spelunkers are a threat but biggest threat is contamination from lands above.

Working on S ranking species. Updating internal white paper on freshwater mussel research. Will help with permitting issues.

Yellow-banded bumblebee shows some rebound in the north, doing better in colder climates. DEC surveys are helping provide valuable information that can inform CH nominations.

Stoneflies: getting some good data to determine rarity.

VT's second Butterfly Atlas starting next year. First state to have second one (and we were first state to have first one).

Flora SAG annual report – Matt Peters

Several permits e.g. St. Johns Wort along rail trail. 5 issued, plus plum and rose root discussed today. Summer field trip in Fair Haven on TNC property to update records; 7 new rare species, updates to several rare species records.

Small whirled pogonia and purple crowberry rediscoveries were big news. Ranking updates: 2022 updated state rare plant list. Aaron Marcus (VFWD) using data to determine apparent

trends when possible. Group determining likely threats. Invasives. Ongoing need for native plant nursery.

Mark Scott mentions native plant nursery as a potential project should RAWA ever pass. Paul Wiczoreck knows someone looking to start one; land limitation given correct soil needed. Has some financial backing. Stephanie Smith recommends contacting VLT. Definition of “local” when it comes to trees is a challenge, need a marketing term. Word needs to have meaning in order to use it. Bob Popp: we are working on figuring out best way to define.

Paul Wiczoreck asks about proactive measures to prevent spread of invasives via biocontrols? Stephanie: Ag agency can allow introduction for some, do not do research. Can find out more info and do short presentation at upcoming meeting. They do advocate at federal level to request funding for specific things, but she’s not sure about for biocontrols specifically. But yes for surveys of pests e.g. emerald ash, Asian longhorn beetle.

Fish SAG annual report – Rich Langdon

Considering more restrictive buffer requirements and changes in ag practices to reduce stormwater runoff. Lampricide a stress to brook trout and 2 darter species. Mark Henderson (UVM) did eDNA for aquatic organisms. Also means to assess habitat as a proxy for fish pops using sonar. Going to try to resample species with records >20 years old. UVM and DEC have labs for eDNA. Exploring with UVM tests for brown gobi. Added species to SC list. VFWD conducted 2017-2019 study on darter/stonecat study. Lampricide application occurred in 2020 so cannot evaluate before-after impacts.

MOTION: By Stephanie Smith, seconded by Allan Strong, to approve the addition of Mark Henderson as a member to Fish SAG. Motion approved.

MOTION: By Matt Peters, seconded by Paul Wiczoreck, to approve the addition of William Eldridge (VFWD Fish Division) as a member to Fish SAG. Motion approved.

Bird SAG annual report – Mark LaBarr

Eastern meadowlark listed, updates from Dave Sausville on avian influenza, whip-poor-will and eastern meadowlark recovery plans to be discussed at April meeting, bald eagle post-delisting plan. Tern recovery plan updated. Terns did better this year compared to terrible year in 2021. VFWD wardens will help with getting better handle on black tern.

MOTION: By Mark Scott, seconded by Matt Peters, to approve the addition of Jim Armbruster (VINS rehabilitator) as a member to Fish SAG. Motion approved.

Permit applications - cont’d

Prunus americana – American plum – state threatened, S1G5

Takings permit, UVM outpatient services center parking area in an old field setting surrounded by residential/industrial. No viable alternative options. Clonal species, 70 stems/plants there that represent a single individual. Potential that they aren’t natural but no indication that it was planted. Flora SAG largely supported issuing the permit that requires a practical number of stems

are moved. Seeds collected for NPT in case transplanting doesn't work. Much discussion about how to go about moving the plants and various considerations.

MOTION: by Paul Wieczoreck seconded by Allan Strong to approve of the Flora SAG moving forward with permit with conditions by Flora SAG. Motion approved.

Permitting annual report – Jon Kart

Summary spreadsheet in ESC Sharepoint site.

Most agreed to as a class (e.g. renewal of existing permits, low impacts, following previous protocols). Relatively light year for E/T permits. Reviewed numbers.

Meeting Adjourned at 14:47

Actions before next meeting

Jim Andrews will send Mark Scott examples of mitigation banking from other states.

Jim Andrews and herp SAG will investigate what other states did around banning sales of red-eared slider.

Allan Strong will send out a reminder to SAG chairs the desired format for annual reports.

Minutes notetaking: Rosalind Renfrew, VFWD