

**Vermont Endangered Species Committee (ESC)  
2-26-2021 Meeting Minutes**

**Attendees:**

**ESC Members:** Allan Strong (Chair), Liz Thompson (Vice Chair), Bryan Pfeiffer, Paul Wieczorek, Jim Shallow, Alan Calfee, Louis Porter (Commissioner of Fish & Wildlife (FWD))

**Non-members:** Bill Kilpatrick (Mammal SAG), Jim Andrews (Reptile and Amphibian SAG), Mark LaBarr (Bird SAG), Penny Percival (ANR Executive Assistant), Steve Parren (FWD Wildlife Diversity Manager), Jon Kart (FWD Permitting), John Dillon, Samantha Morrison, Mason Overstreet (VT Law School), Jeff Parsons (Arrowwood Environmental), Chris Fastie (Salisbury, Forest Ecologist)

**Scheduled ESC Meetings for 2021:**

9:00 AM – 2 PM (online)

22 April 2021

16 September 2021

**Call to Order:**

Allan Strong opened the online Microsoft Teams meeting at 8:05 AM. Meeting was recorded. Today's meeting will focus on bats and mosquito spraying in the BLSG Spray District.

**Comments from the public not related to the agenda:**

None

**Additions, deletions, or changes to the agenda:**

None

**Continue ESC deliberation regarding bats and mosquito spraying in the BLSG District:**

Allan Strong stated that Vermont has a strong Endangered Species Act, and in some ways, it is stronger than the federal law. This is a challenging case with uncertainty and value judgements. Allan quoted Alyssa Bennett as saying at the 1-14-2021 ESC meeting that "there is a threat to bats" and there may be some cumulative effects. Allan went on to state, if the ESC recommendation to issue a takings permit is setting a precedent, it is facing a very high bar. He also stated that an incidental takings permit will not prevent spraying. Allan then requested that each ESC member state their view on the spray issue.

Alan Calfee stated that he thought an incidental takings permit should be issued. The large size of the spray area and the timing of spraying when bats are feeding are important factors. He indicated he is in support of advising the Secretary to issue a permit.

Bryan Pfeiffer agreed with what Alan Calfee stated. He mentioned that there were differing opinions/interpretations of the Vermont law offered at the past meeting. Was a risk theoretically possible or reasonably likely? He went on to say that there are enough reasons to issue a permit. The ANR/FWD are mandated to protect wildlife, less so the Agency of Agriculture, Food, and Markets.

Jim Shallow stated he agreed with those who already spoke. Advising that a permit be issued does not mean the spraying cannot go forward, but it would encourage a productive discussion about the impacts

of spraying. Bats may be the most imperiled mammals we have and need to be protected. Jim Shallow stated the ESC should advise that a permit be issued.

Liz Thompson stated that she agreed with others who already spoke. The ESC is advisory, and the question being debated is should we advise. Is there a risk of injury? It seems clear that one does exist. The law states that a taking is “an act that creates a risk of injury to wildlife, whether or not the injury occurs”. This presents an opportunity to examine this issue more. The ESC should advise that a permit be applied for.

Paul Wiczoreck also agreed, and he reiterated that Vermont’s law does state “risk of injury, whether or not an injury occurs”. The Agency of Agriculture, Food, and Markets does not have jurisdiction over endangered and threatened species. He recommended that we advise the Secretary to issue a permit and he indicated that he hopes it mitigates the risk to listed bats. The ESC is advisory.

Commissioner Porter stated that Mark Scott (FWD Wildlife Division Director) spoke to staff scientists and their perspective had not changed. This issue is more legal than biological. The FWD believes there does need to be some demonstration of injury. The FWD position has not changed regarding the issuance of a permit for mosquito spraying by the BLSG spray district.

Bill Kilpatrick pointed out to Commissioner Porter that there were two major reviews on pesticide impacts to bats published in 2021. The information discussed so far is somewhat incomplete. Bill stated that he forwarded the 2021 reviews to Alyssa Bennett (FWD Small Mammals Biologist). Commissioner Porter stated that he relies on his scientists for advice on the threat but the policy issue is this a different standard than what has been applied during permitting in the past.

Steve Parren pointed out that the 1-14-2021 ESC meeting minutes includes Alyssa Bennett’s statement about threat in context. Steve had checked with Alyssa to be sure her statement was accurately recorded. Steve encouraged ESC members to read Alyssa’s statement in the minutes. (The following is text from the 1-14-2021 ESC minutes: “Alyssa commented that we have identified pesticides as a potential threat to bats in our Wildlife Action Plan and it is possible they may be one of many factors leading to cumulative effects on bats”.)

Bryan Pfeiffer stated that similar to Alyssa Bennett, Patrick Parenteau can speak for himself. Bryan asked if Alyssa Bennett’s work indicates the risk to bats from spraying is theoretical. Commissioner Porter responded that he asks his biologist about the relative risk presented and he asks his lawyer about the legal ramifications. Bryan went on to say that Agency of Agriculture, Food, and Markets and the Forests, Parks, and Recreation Department are not present at today’s meeting. Bryan had reached out to the Forests, Parks, and Recreation Department and they indicated they would defer to FWD. Has anyone asked the District if they would be willing to apply for a T&E permit for their pesticide use? Commissioner Porter responded that the ESC role is to evaluate the situation and advise the Secretary of ANR.

Liz Thompson agreed that the ESC should stick to the science. Paul Wiczoreck also thought the ESC should stick to their advisory role to the Secretary.

Bryan Pfeiffer pointed out that having representatives from the Agency of Agriculture, Food, and Markets and the Forests, Parks, and Recreation Department present would have been helpful. He went on to say that a permit would be prudent.

**Next steps:**

**MOTION:** *By Alan Calfee, seconded by Paul Wieczoreck, that the ESC recommends to the Secretary that a Endangered and Threatened Species Takings Permit should be applied for by the BLSG Spray District.*

Vote in favor (Allan Strong, Liz Thompson, Bryan Pfeiffer, Paul Wieczoreck, Jim Shallow, Alan Calfee), none opposed, Commissioner Porter abstained.

Should the ESC forward a summary of their deliberations and recommendation to the Secretary on next steps for recommending a permit for mosquito spraying?

**Action:** Bryan Pfeiffer will share this draft document with the ESC members for review before it is revised and sent to the Secretary.

Paul Wieczoreck stated that the ESC process regarding permitting seems complicated and he would benefit from more discussion about the process. Louis suggested the staff members listed in the action below be part of this discussion with the ESC.

**Action:** ESC to discuss the endangered and threatened species permitting process with Jon Kart, Steve Parren, Mark Scott, and Catherine Gjessing at a future meeting.

Bryan Pfeiffer asked about how this spray issue differs from actions that could impact Bald Eagle nesting. Steve Parren responded that there is a body of evidence about disturbance zones around active Bald Eagle nests.

When asked, Liz Thompson did not know if a replacement for her position as a member representing Flora on the ESC had been found.

**Adjourn:**

*The meeting adjourned at 8:48 AM*

Respectfully submitted: 2/26/2021, revised 3/9/2021

Steve Parren  
Fish & Wildlife Department

Approved: 4/22/2021

Allan Strong, Chair Endangered Species Committee