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STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Catherine Gjessing, General Counsel, Vermont Fish and Wildlife Department

CC: Commissioner Chris Herrick, Vermont Fish and Wildlife Department
Members, Legislative Committee on Administrative Rules (LCAR)
Michael O'Grady, Deputy Chief Counsel, Office of Legislative Counsel
Anthea Dexter-Cooper, Legislative Counsel, Office of Legislative Counsel
Charlene Dindo, Committee Assistant, LCAR

FROM: Rep. Trevor Squirrell, Chair, LCAR
Sen. Mark MacDonald, Vice Chair, LCAR
Sen. Christopher Bray, Chair, Senate Committee on Natural Resources and
Energy and Member, LCAR
Rep. Amy Sheldon, Chair, House Committee on Environment and Energy
Rep. Seth Bongartz, Ranking Member, House Committee on Environment and
Energy and Member, LCAR

DATE: October 26, 2023

SUBJECT: 23-P15 – 10 V.S.A. Appendix § 44, Furbearing Species

We are individually writing, in our capacities as members of the Legislative Committee on Administrative Rules (LCAR), the Chair of the Senate Committee on Natural Resources, and the Chair and Ranking Member of the House Committee on Environment and Energy to thank you and the Vermont Fish and Wildlife Department (Department) for all the work you have done on 23-P15, 10 V.S.A. Appendix § 44, Furbearing Species (Furbearing Species Rule). We greatly appreciate what you have done to recommend to the Vermont Fish and Wildlife Board (Board) additional proposed modifications to the final proposed rule. We believe these modifications will better match the General Assembly's intent in 2022 Acts and Resolves Nos. [159](#) and [165](#). We would, however, request that the following additional modifications be suggested to and proposed by the Board.

Please provide a response, ideally with updated versions of the clean and annotated texts to reflect all additional proposed modifications that the Department will be suggesting to the Board, in a submission to Charlene Dindo, at Charlene@leg.state.vt.us, not later than 12:00 noon on Monday, October 30, 2023.

1. Definition of Trails

We are of the opinion that it is inconsistent with the intent of the General Assembly to limit the applicability of the setbacks to only those trails that are mapped. While we understand the need to have a Furbearing Species Rule that can be uniformly understood and enforced, we do not think that needs to be limited to instances where there has been an official mapping, nor do we think that requiring an official mapping is consistent with the language in 2022 Acts and Resolves No. 159, Sec. 1(a)(4) that requires setbacks from “public locations where persons may reasonably be expected to recreate[,]” without any reference to mapping.

Accordingly, we would like to see proposed modifications to the definition of public trail in Furbearing Species Rule, Sec. 3.14 that (1) preserve all elements of the definition included in your October 16, 2023, letter and (2) also include a subsection (d) that is a catchall for unmapped public trails that are “commonly used as a passageway by [individuals] or domestic animals.” See [Letter from C. Gjessing to LCAR, Oct. 16, 2023, Appendix B \(New Hampshire\)](#). We would also like to see the use of “or” and not “and” as the conjunction in the list in Furbearing Species Rule, Sec. 3.14 as we believe that this is consistent with both the intent of the General Assembly and the intent of the Department in suggesting this definition of public trail.

2. Exemption for Trapping in the Water or Under Ice

We are also of the opinion that it is inconsistent with the intent of the General Assembly and arbitrary to exempt traps that are in the water or under ice from setback requirements. There was no reference to any such exemption in Act 159, nor do we think that it makes sense to a reasonable person that individuals, potentially with their domesticated animals, would not be recreating in water or on ice that is within 50 feet of the edge of the traveled portion of a legal trail, public trail, or public highway. We would like to see this exemption eliminated from Furbearing Species Rule, Sec. 4.15.

3. Definition of Trapping

Act 159 defined trapping as “to take or attempt to take furbearing animals with traps, including the dispatching of lawfully trapped furbearing animals.” 2022 Acts and Resolves No. 159, Sec. 1(d). Act 159 did not wade into whether or not trapping is hunting and any potential legal implications stemming from defining trapping by using the word hunting.

We are of the opinion that, whether or not it is consistent with the Vermont Constitution and legislative intent throughout the Vermont Statutes Annotated, the requested amendments to the Furbearing Species Rule that incorporate “best management practices (BMPs) for trapping that propose criteria and equipment designed to modernize trapping and improve the welfare of animals subject to trapping[,]” 2022 Acts and Resolves No. 159, Sec. 1(a), can be made without amending the definition of trapping that is already in the Furbearing Species Rule and that preserving the existing definition of trapping in the Furbearing Species Rule is consistent with the specific intent of Act 159. We would like to see the Board propose to preserve the definition of trapping that is currently in Furbearing Species Rule, Sec. 3.6, which exclusively uses the word “take” and is consistent with the definition of trapping in 2022 Acts and Resolves No. 159, Sec. 1(d).

4. Control of Dogs

The intent of Act 165 is to “reduce conflicts between landowners and persons pursuing coyote with the aid of dogs by reducing the frequency that dogs or persons pursuing coyote enter onto land that is posted against hunting or land where pursuit of coyote with dogs is not authorized.” 2022 Acts and Resolves No. 165, Sec. 3(a). Per the language in Act 165, one of the ways that the General Assembly intends to effectuate this reduction in conflict is to have, in rule, a definition of control that “minimize[s] the risk that dogs pursuing coyote:

- (A) enter onto land that is posted against hunting;
- (B) enter onto land where pursuit of coyote with dogs is not authorized;
- (C) harass or harm people or domestic animals; and
- (D) cause other unintentional damages to people or property[.]”

2022 Acts and Resolves No. 165, Sec. 3(b)(4). We are of the opinion that this level of control cannot be accomplished through the use of a training/control collar as that term is proposed to be defined in Furbearing Species Rule, Sec. 3.19.

While we can see value in using a training/control collar as that term is proposed to be defined, we would like to see proposed modifications to Furbearing Species Rule, Sec. 4.20 that actually effectuate the General Assembly’s intent as expressed in Act 165, possibly through requirements around maintaining dogs that are being used to aid in the taking of coyote in visual site or under voice control, or both.

Thank you in advance for your attention to these requested modifications and we look forward to receiving your response not later than 12:00 noon on Monday, October 30, 2023.