

NJ Endangered and Nongame Species Advisory Committee

Meeting Minutes

September 16, 2009  
Assunpink Wildlife Management Area

**ATTENDEES**

COMMITTEE: Barbara Brummer (Chair), Jim Applegate, Emile DeVito, Howard Geduldig, Rick Lathrop, David Mizrahi, Dale Schweitzer, James Shissias.

STAFF: Dave Jenkins, Amanda Dey, Dave Golden, Larry Herrightly, Tony Petrongolo, Mick Valent, Amy Wells.

GUESTS: Len Wolgast (FGC), Linda and Dmitry Cherkassky, Lee Rosenson (PPA, NJAS), Gordon Stull(Burlington County Feral Cat Initiative), Stephanie Egger (USFWS) Annette Scherer (USFWS), Brian Murray (Star Ledger), Fred Akers & Lynn Maun (GEHWA), Theresa Lettman (PPA), David Schneider & Raymond Farrell (Herpetological Associates), Heather Cammisa (HSUS), Ryan Castoral (AWFNJ), Eric Stiles (NJAS), Rick Dutko (NJDEP-DPF), Jeannette Vreeland (FGC).

The meeting was called to order at 10:10 am. Notice of the meeting date and location were filed with and posted at the Office of the Secretary of State on July 10, 2009.

Minutes

**A motion was made by J. Shissias, seconded by D. Mizrahi to approve the minutes for May 20, 2009 as presented. All in favor, none opposed, the minutes were approved. J. Applegate and R. Lathrop abstained.**

**Updates**

Administration

A. Wells confirmed both R. Lathrop and E. Miller have been reappointed to the Committee.

Status of Action Items and Monthly Reports

Members did not have any questions pertaining to the updated list of Action Items or Monthly Reports.

Wind Energy Rules / Delaware Bay Wind Energy

D. Jenkins reviewed the Department had received a permit application for meteorological towers related to a large proposed wind energy project in the Delaware Bay.

Staff have been working intensely with the Office of Coastal Planning on CZM rule amendments addressing wind energy development in the Delaware Bay. Background materials have been

distributed to the members including maps noting areas where large turbines would be prohibited. Jenkins' noted when reviewing requirements for potential wind energy projects, the projects over water are further separated by those constructed within state waters (3 miles) and offshore projects (beyond 3 miles).

D. Golden stated DEP has released a Request for Proposals, and BPU will fund, a small off-shore (3-3.5 miles) pilot wind energy project near Pt. Pleasant and Stone Harbor. Concerns were raised about the following:

- Pre-construction and post-construction assessments
- The establishment of protocols for surveys
- Determination regarding what areas and activities would engage ENSAC's assessment
- Data collection and analysis
- Current mapping is limited to terrestrial locations, i.e.: the lack of mapping over coastal waters
- Legal time constraints allocated to review each project (90 day rule)

Jenkins' noted preconstruction monitoring is a required condition of any wind energy permit.

ENSAC members have been asked to review the proposal, protocols and D. Golden's summary table.

#### Trap-Neuter-Return (TNR)

B. Brummer noted the Committee would not be voting on this topic today and asked members to review the information provided, consider public comments and present any questions in order to prepare and present a statement at the November or January meeting. The public was advised that ENSAC's role is advisory and that all decisions made by the Committee are science based and science supported.

Dr. Leonard Wolgast, NJ Fish and Game Council (FGC) referred to the FGC's Resolution on TNR and Free Ranging Domestic Cats (06/2007) noting free ranging domestic cats kill millions of native birds, small mammals, reptiles and amphibians each year; are a threat to the survival of e/t species and species of special concern; large domestic cat colonies increase the risk for the spread of diseases, including feline leukemia, toxoplasmosis and rabies; feeding feral cats outdoors attracts skunks, raccoons, and black bears; intentionally leaving food out that can be accessed by or attract bears is illegal; and releasing a feral cat where it will have a negative impact on migratory birds violates the federal Migratory Bird Treaty Act (MBTA). Current FGC discussions include defining the species as an invasive exotic species within the game code. Dr. Wolgast suggested ENSAC adopt the Fish and Game Council's resolution or write their own resolution.

Gordon Stull, V.M.D. and Director of the Bergen County Feral Cat Initiative, distributed a Progress Report for the end of year 2008 and a copy of a Caregiver Agreement and Release of Liability form. Dr. Stull noted 65 colonies within 7 townships had been operated by volunteers offering free TNR services including micro-chipping identification and ear tipping for visual identification. Annual census is completed and information compiled in his report reflects a 24% decline in 2 years and a 41% decline to date. One colony had a reported increase in population

due to the addition of new strays; five colonies have been eliminated. Dr. Stull feels the elimination of feral cats and cat colonies through TNR and attrition has proven to be effective and noted the need for public educational programs and community based mandatory spaying and neutering.

ENSAC members and ENSP staff questioned why the TNR program is not required to submit an Environmental Impact Statement (EIS); the pilot program has no external oversight, no actual count of colonies and no wildlife data. Members questioned whether there was anyway to confirm if the decline in number was actually due to attrition or if the animals had simply relocated to another colony. D. Schweitzer pointed out that the numbers in the report seemed to indicate that most of the decline in cat numbers was due to them being “adopted” by caregivers rather than natural attrition. B. Brummer requested Dr. Stull provide the data and statistics on the feral cat colonies to the Committee.

Discussions continued, including public comments.

The following individuals offered comments generally supporting or consenting to TNR or the continuation of the BCCI pilot program:

- Eric Stiles, Vice President for Conservation, NJ Audubon Society
- J. Motta, NJ Animal Rights Alliance
- Heather Cammisa, Humane Society of the United States

The following individuals provided comments generally opposing TNR or supporting the FGC resolution:

- Annette Scherer, USFWS
- Linda Cherkassky
- Dmitry Cherkassky

Other individuals commented on personal experience:

- L. Maun, Greater Egg Harbor Watershed Association

D. Jenkins provided some personal input noting that after discussions with his staff, it became apparent that there is a need to create a process to focus energies on identifying the wildlife species most at risk; use mapping of rare species to filter out which colonies should or should not be registered. ENSP does not endorse TNR; there is recognition of a need for an effective tool and the ability to provide guidance on the reduction of cat colonies.

L. Herrighty noted that while the FGC does not have authority over domestic animal control, case law has determined that the FGC does have control of animals that are determined as being detrimental to wildlife.

E. DeVito asked to have a DAG review regarding the legal culpability of cat owners or “care givers” to the take prohibition under ENSCA when cats under their care kill or injure nongame wildlife.

B. Brummer thanked everyone for their comments, advised those that had additional materials to forward them to the Committee via Amy Wells, noted there appears to be a need to create an ad hoc working group to address this issue, and members would be prepared to present a decision at the November or January meeting.

#### Northern Pine Snake Delisting Petition

D. Jenkins explained the Department has received a petition from the NJ Builders Association (NJBA) requesting the Pine Snake be delisted. The Department has determined to use a 90 day extension to gather additional information.

D. Golden provided a summary of the NJBA’s 6 main challenges and administrative timelines. While the current regulations do not prescribe a formal delisting process, under ENSCA the Department is directed to “periodically review the state list of endangered species and may by regulation amend the list making such additions or deletions as are deemed appropriate.” The last time the DFW/ENSP proposed amendments to the list was in 2003. In addition, under the Administrative Procedures Act, all rules and regulations must be reviewed and readopted every 5 years. The last review and re-adoption of the Division’s rules, including the lists, was made in 2007.

D. Schneider of Herpetological Associates provided public comment, noting there is a limited amount of long term data on this species, sightings are limited due to the natural behavior and preferred habitat locations; there is a persistent decline in suitable habitat due to development and fragmentation of suitable habitat. M. Dey noted most species population estimates are based on visible species.

ENSP staff will draft a response outlining all the issues. ENSAC will review the document and provide comments by November 4th or 2 weeks prior to finalizing the document.

H. Geduldig noted if this issue is to progress through the Appellate court, the process would not allow new testimony.

Questions were raised as to the reasons for, and timing of, NJBA’s petition. The land-use effects of Pine snake being listed as a threatened species were discussed.

#### White Nose Syndrome in Bats

Mick Valent, Principal Zoologist, provided additional comments to the WNS information distributed prior to the meeting. The sampling of bats is showing little evidence of scarring and de-pigmentation of the wing membrane. There are two possible explanations for this. First, bats that were sampled were from unaffected hibernacula and therefore didn't have any signs of scarring or de-pigmentation. The second is that bats from affected sites that had significant fungal infection (those that would have exhibited significant scarring and tissue de-pigmentation) were not surviving into the summer months. Some bats that emerge from affected sites can

survive and they appear to heal and experience normal weight-gain during the active months. The captured bats all appeared healthy based on weights and visible condition. In addition, the capture ratio of adults to juveniles suggested that the colonies sampled experienced successful reproduction this year.

The Mt Hope mine normally hosts about 10,000 bats and is known to have suffered a major impact. The NWHC has requested samples from impacted hibernacula. Two nights of collecting samples at the mine resulted in the capture of just 35 bats, including 31 Indiana bats, 3 northern long eared bats and 1 little brown bat. The population at Picatinny Arsenal has also suffered an extremely hard impact and NYDEC staff are reporting the apparent elimination of entire bat populations in caves that previously hosted thousands of bats.

Researchers have identified a compound that has proven to be effective in controlling fungal growth in the lab and is preparing to conduct a field test.

#### ORV Park

E. DeVito noted an application for an ORV park has been denied by Little Egg Harbor Township.

Discussions continued noting ENSAC's role as advisory and in relation to the topic of ORVs, ENSAC has fulfilled its role by providing a significant amount of documentation, information and multiple recommendations pertaining to ORV use and concerns regarding the placement of potential ORV parks to the DEP Commissioner(s) during the past 8 years.

#### Bald Eagle in Maine

E. DeVito reported that a banded and emaciated bald eagle found in Maine has been identified as having fledged from NJ. The bird is currently undergoing rehabilitation. This is the first time a NJ eagle has been found this far north. Prior history notes a NJ eagle hit by a vehicle in Massachusetts.

#### State Wildlife Action Plan (SWAP)

Kris Schantz presented information on the State Wildlife Action Plan, which is considered a living document and is constantly open to public comment and use. The next formal revision is expected to be released in the spring of 2010. Brochures have been designed for each of the 5 terrestrial regions of the state, a marine brochure to be developed in 2010. Each brochure highlights key regional goals and actions from the state plan. A public advisory committee has been created to help determine how to make the plan more user-friendly; current plans to address this include holding local workshops with interested parties to provide guidance to integrate SWAP implementation into their projects. Additional revisions include integrating urban issues and identifying current goals and actions that address climate change issues.

L. Herrighty explained the ability to identify species that will incur the most impact from climate change occurs through the species-habitat relationship. Predicted changes in climate can identify potential changes to habitat, and from there, help identify the species that will incur the most impact.

Approved 11/30/2009

**A motion was made by D. Schweitzer, seconded by H. Geduldig and approved by the Committee to adjourn the meeting at 2:20 p.m.**