

Sportsman's Alliance of Maine  
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Testimony in opposition to The Department of Inland Fisheries and Wildlife's proposed rule regulating the feeding of deer (Chap. 3. Public Interaction and Conflicts with Wildlife [3.0 Feeding of Deer]).

While we share many of the Department's concerns regarding improper deer feeding practices by the public, SAM disagrees with the Department's approach toward solving this problem. As written, this rule criminalizes nearly every individual who provides supplemental feed for deer in Maine. As such, the Department has over-reached its legislative authority as defined in Title 12, M.R.S.A. Sec. 10105.

Of particular concern is the list of activities that the Department considers detrimental to the deer population (Sec D. 3. a. to h.), which are considered a rule violation and a Class E crime .

- a. Concentrating deer at greater than natural densities. Deer concentrate at all feeding sites, due to the nature of providing concentrated food sources in limited locations. It would be impractical to distribute supplemental feed as widely as natural browse grows. Has the Department established standards for "normal" wintering density? And will the Department conduct deer density estimates at violation sites that will stand up in court?
- b. Providing food that is harmful or of low nutritive value. Supplemental foods do vary in quality for deer. But the impact that food has on deer depends on whether other natural forage is available to balance out the deer's overall forage intake. Will the Department conduct browse availability investigations before deciding a particular feeding site is in violation?
- c. Increasing direct and indirect contact among individual animals (presumed deer?). Again, all feeding sites will be in violation of this provision. Has the Department adopted standards for deer contact frequency? What are "normal" contact rates within deer wintering areas? Isn't high contact rate only relevant in the presence of a contagious disease?
- d. Increasing deer habituation to humans and detracting from wild behavior and survival responses. Providing supplemental feed near human activity centers will cause deer to appear tame. Most feeding sites manifest this to some extent. Has the Department established tameness standards? How do you decide when a local deer population is too tame for its own good?
- e. Increasing vulnerability to predation. While it is true that deer bottled up at feeding sites may have limited escape trail networks, has the Department established standards for allowable predation risk? Will the Department be able to demonstrate that a given feeding site exceeds that risk level?
- f. Increasing vulnerability to collisions with vehicles or other mortality risks. This is the only detrimental activity that the Department can and should act upon in rule making. Vehicle collisions can be objectively documented, and in most cases, mitigated. The "other mortality risks" part of this section is nebulous and should be clarified.
- g. Increasing the likelihood of disease transmission within and among individual animals (presumed deer?) and maintaining endemic disease reservoirs. This is a result of the high densities and increased contact rate activities listed earlier. Most feeding sites will be in violation of provisions a, c, and g, but only in the presence of a contagious disease. Until such a disease emerges in Maine, deer populations are not at risk at feeding sites or in natural deer wintering areas.

- h. Causing significant habitat damage in and adjacent to feeding sites. This is perhaps the most universally noteworthy aspect of sites where deer are being fed. Deer never restrict themselves solely to the food supplements people provide, even when supplemental food is provided in adequate amounts. Supplementally-fed deer eat at the feeder perhaps one hour per day. The other 23 hours are spent loafing and browsing surrounding vegetation. Many deer feeding sites show heavy browsing damage within one season, and the habitat damage accumulates over time. Has the Department established standards for acceptable browsing damage? How can a deer feeder know when deer browsing has exceeded acceptable limits and the site is now in violation?

We also see a problem with some of the definitions of a "public safety hazard" in Sect. B.1. While subsections a) and b) are fairly straightforward and lend themselves to objective documentation, subsections c) and d) are less clear. Nearly all deer feeding is practiced in the dead of winter, when deer ticks are off the deer and dormant. Moreover, deer ticks are not passed from deer to deer. Instead, they go to ground to complete their life cycle. It is difficult to understand how deer feeding would necessarily exacerbate risk of Lyme disease, thereby creating a "public safety hazard".

Subsection B.1.d) of the Definition section is even more problematic. The term: "Creating a public nuisance" is vague and entirely subjective. Unless the term can be referenced to objective standards for actions that constitute a "public nuisance", the public will not know when they are in violation. It also begs the question of whether individual Department officials will apply the nuisance definition uniformly. More likely, the vagueness of this definition will result in discretion calls that too often are reversed when contested.

Taken to an extreme, the Department's implementation of this rule would result in a de-facto ban on winter feeding of deer. This was clearly not the intent of enabling legislation. Any lesser level of enforcement adds to the subjectivity involved in pursuing some "violators", but not others. People who feed deer need to know where they stand with the Department. They deserve clear, objective, predictable rules.

This rule has the potential to consume a great deal of the Department's personnel time and financial resources. It will also foster an adversarial relationship between the agency and the public they serve. Disputes over the severity of perceived rule violations will create public relations problems for the Department. In the long run, the Department will find the task of prosecuting every perceived rule violation to be overwhelming and counter-productive.

We recommend a major revision of the deer feeding rules. The Department should focus on mitigating vehicle collisions at feeding sites by regulating locations where deer are being fed, and then only if the Department has documented highway collision risk at that site. We further recommend that the Department step up its efforts to educate people who feed deer in an effort to minimize deleterious practices. SAM stands ready to expand this education effort, whether in partnership with the Department, or solely with our other outdoor partners.