

CWD STAKEHOLDER FACILITATED NEGOTIATIONS

FINAL REPORT

Submitted to TPWD on April 19, 2016

PROCESS

The Texas Parks and Wildlife Department (TPWD) invited a group of interested and affected stakeholders to participate in a facilitated negotiation process to reach consensus on key elements that would form the basis of proposed rules relating to the implementation of Chronic Wasting Disease (CWD) strategies. TPWD engaged the Center for Public Policy Dispute Resolution to provide facilitation services. Stakeholders represented various interests, including deer breeders, landowners, hunters, veterinarians, wildlife enthusiasts, Texas Animal Health Commission (TAHC), and TPWD.¹

The stakeholder group met over 4 days: the first meeting was over 2 consecutive days: February 16 and 17; the second meeting was on February 24, and the third meeting was on March 10. On the very first day of the process, the group reached agreement on a set of Operating Procedures², including the following definition of consensus:

Consensus means that stakeholders concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. Furthermore, they also agree that, given the combination of gains and trade-offs and given the current circumstances and alternative options, the resulting agreement is the best one stakeholders are likely to make.

Initially, the group identified a number of issues that they wanted to address. The negotiating process took shape as group members shared their perspectives and offered various options for resolving an issue. The facilitator wrote these options on an easel pad for the group to view and consider. Following discussions and occasional caucus meetings, group members deliberated to see if a proposal could be developed that they could all support. When such an agreed-to proposal emerged, the facilitator wrote it on the easel pad, and the group would confirm that they had reached consensus on that proposal. There were issues on which the group decided that it could not reach consensus; when they agreed to disagree. In these instances, discussion was still informative to gain a better understanding of how differing options impacted the parties around the table.

Following every meeting, the facilitator drafted a Facilitator's Summary that would recap the issues on which consensus had been reached and issues that still needed to be addressed or resolved. The summaries were distributed to the stakeholders by email, and they were asked to provide any needed corrections. The final summary from the March 10 meeting was distributed on March 12.

¹ See Appendix A for the list of stakeholders

² See Appendix B for a copy of the Operating Procedures

A TPWD representative participated as a stakeholder, and other TPWD staff members attended the meetings as observers. One task of the TPWD staff was to draft rules to present to the Commission at its March 23 meeting. As part of its commitment and as stated in the Operating Procedures, TPWD would draft rules consistent with the proposals on which the stakeholders had reached consensus. Following the March 10 meeting, there were still two outstanding issues that the group wanted to consider after receiving further feedback from TPWD staff. To address these two outstanding issues, stakeholders participated in a phone conference on March 21. Participants in the phone conference³ reached consensus on the two outstanding issues.

ABSENCES: because of scheduling conflicts, Lee Bass and Charly Seale did not attend all meetings and did not participate in the group's decisions beyond the first meeting.

OUTCOME

Stakeholders engaged in constructive discussions and often asked clarifying questions to better understand differing viewpoints and proposals. The goal of the process was to seek consensus on key elements that would form the basis of proposed rules relating to the implementation of CWD strategies. Consensus items were recorded as consensus items on the easel pads during the meetings and in the facilitator's summaries following the meetings. Below is a list of proposals that emerged from the negotiations as Consensus Recommendations, including the two outstanding items that were resolved by phone conference.

NOTE: at the end of the March 21 phone conference and again in a letter dated March 23, 2016, the president and executive director of the Texas Deer Association, who both attended and participated in all stakeholder meetings and in the phone conference, stated that the TDA board could not accept or agree to the concepts requested for consensus.

CONSENSUS RECOMMENDATIONS

1. Level and type of tests for deer breeder herds:
 - A. Texas Plan Herds: options under this plan require no release site testing and allow buying within this category:
 - 5th year or certified in TAHC Herd Certification Program
 - 80% one-time whole herd live test + 80% of eligible mortalities every subsequent year
 - 80% of eligible mortalities tested each year for 5 years
 - ❖ TPWD/TAHC to use the science to establish minimum # of tests over 5 year period. Same strategy will apply for all eligible mortality testing standards.
 - 25% whole herd live testing annually (the group informally commented on the need to include some specificity, such as not testing the same animals every year) + 50% of eligible mortalities

³ Most stakeholders who were not able to join the phone conference had given their proxies to others who did participate. Lee Bass and Charly Seale neither participated nor gave their proxy.

- ❖ Much discussion on this proposed option before the group finally reached consensus that this option also belongs in this category with no release site testing requirement, and breeders can buy laterally across these options. TPWD had run the numbers comparing the number of tests under this option with the option above it:
 - Testing 80% of eligible mortalities each year over 5 years would yield 18 tests: the average mortality for eligible-aged animals is 4.5%, a 100 animal herd would have to submit valid test results on at least 18 deer ($100 \times .045 \times .8 \times 5$ years) to meet the minimum.
 - Testing 25% whole herd live test with 50% mortality testing, assuming a .62 factor for rectal testing sensitivity as compared to obex, would yield 17.75 “obex equivalent” tests the first year ($25 \times .62 = 15.5 + 2.25$ (50% of mortalities) = 17.75

B. Herds with Tested Release Sites Required:

- 50% of eligible mortalities + 50% of release site testing (obex + 2 lymph nodes)
 - Where 50% of release site testing means:
the lesser of:
 - 50% testing of harvested deer, if no liberated deer in harvest; OR
 - 50% of liberated deer in the harvest
 - Testing requirement will remain for a period of 3-5 years after the last release from a herd that requires release site testing (TPWD to determine # of years)
 - **NOTE:** “the lesser of” does not mean that there could be zero test, unless there is no harvest at all.
2. Testing requirements:
 - Live testing to be performed on deer 16 months and older
 - Live testing to be performed by licensed, accredited, and certified (as defined by TAHC) vet, in accordance with the Texas veterinary practice laws.
 - Mortality testing to be performed on deer 16 months and older, except for herds enrolled in TAHC Herd Certification Program
 3. CWD-Exposed herds will be under TAHC Herd Plan and follow interim rules for TC3 and Class III release sites
 4. With different status levels, facilities assume the lowest facility status of all originating facilities.
 5. Allow a facility to maintain its status by requiring a certain level of testing, if the facility accidentally missed some tests
 - Proposal: 2-1 live-test to mortality test (let science drive what the # should be)
 - **NOTE:** if someone makes a choice to introduce deer into their herd from a lower status, they must stay down-graded (for a period of time? No consensus on that question) then meet certain requirements to regain the higher status.

6. Transition plan for current Class II and III release sites to new rules:
 - Going forward: they can choose to become a facility that does not test at the release site or that tests at the release site based upon the status of deer they choose to receive (per options above)
 - Not retroactive
 - Does not apply to non-compliant release sites, exposed herds, or Tier I
 - Determination of non-compliance and remedies is up to TPWD
7. Consequences for release sites not complying with release site testing requirements:
 - Cannot accept breeder deer in future
 - Apply current standard: eligible for citations and have testing requirements roll forward.
8. **DMP**: if receive breeder deer from herd that requires release site testing, then test 50% of harvested deer.
9. **TTT** strategies for sampling at trap sites
 - 15 animals tested (post-mortem) from trap site for permit approval
 - All transplanted animals must be tagged
10. **TTT** samples from previous years are not eligible to meet testing requirements; needs to be same permit year
11. **TTP**: Require CWD testing at the same level as TTT: test 15
12. Mandatory restrictions on carcass movement from CWD-positive states and CWD-designated zones.*
13. Mandatory hunter-harvested testing in CWD-designated zones, at a minimum.*
14. Add to the TPWD draft of “Disease Detection and Response Rules – Carcass Movement Restrictions” a provision to “leave carcass in place until a “non-detected” test result is received, then carcass may be moved from CWD-designated zones.”*

* Items 12-14, along with related issues of proof of sex and mandatory check stations, will be taken up in the rulemaking that addresses CWD-designated zones.

ITEMS DISCUSSED WITH NO CONSENSUS REACHED

- Releases to high and low fences? Some felt strongly that releases should be only to high fences, as they create the necessary barrier to movement. Others noted that there is no rule or law differentiating between high and low fences; that the issue is one of private property rights and should not be part of these rules. Comments relating to private property rights prompted individuals opposing release to low fence sites to note that the neighbor of an individual releasing deer might have his/her

rights infringed upon by losing control of the genetic base of the herd on their property as well as any biosecurity measures they may possibly already have in place.

- Ear tagging (not including ear tagging requirements for Class III release sites)

FACILITATOR'S COMMENTS ON CONSENSUS

Consensus is not an easy concept; we spent time discussing it on the first day of this process as part of the Operating Procedures. It takes commitment on the part of the negotiating parties to share their perspectives and interests and seek to meet as many identified interests as possible in any proposed resolution. Through negotiations, stakeholders gain a better understanding of differing viewpoints and decide whether the give-and-take will lead to a resolution. They control the negotiations and the outcome. The proposed resolution becomes a consensus recommendation only when parties around the table accept that it is the best resolution given the current circumstances and trade-offs.

TDA was represented at the table. Its representatives engaged in vigorous negotiations and appeared to have accepted the consensus recommendations at the time that they were written on the easel pads and stated in the meeting summaries. Now, TDA states that its board is unable to accept or agree to the consensus recommendations. It declared that publicly in a letter dated March 23, 2016. In that same letter, TDA nevertheless concludes by stating that it is “ready, willing, and able to assist in the implementation of the final rules once adopted by the Commission.”

That statement affirms another provision in the Operating Procedures:

Stakeholders agree not to take any action to inhibit the adoption or implementation of the proposed rules that conform to their consensus agreement. Furthermore, stakeholders who have reached consensus agree to advocate for the proposed rules to their membership, to policy-makers, and the public. If a group member fails to keep this agreement, all other members agree to submit comments to the Department, any other relevant state officials, government bodies, or Courts, stating that:

1. *All members concurred in the basis of the proposed rules; and*
2. *All members supported approval of the final rules that conform to the consensus agreement.*

For a consensus process to be effective and efficient, participants must trust in each other's commitment to fully engage and seek consensus, if possible. No one is coerced into consensus, but once the group accepts that consensus has been reached, each of its members must be able to rely on the sustainability of the group's decision.



Susan Schultz
Center for Public Policy Dispute Resolution

April 19, 2016

APPENDIX A

Individual

Marko Barrett
Chairman Lee Bass

Dr. Fred Bryant

Dr. Scott Bugai

Tim Condict

Dr. Walt Cook

Dave Delaney

Dr. Bill Eikenhorst

Bob Price

Dr. Susan Rollo

Shawn Schafer

Charly Seale

Patrick Tarlton

Chris Timmons

Tom Vandivier

Clayton Wolf

David Yeates

Affiliation

Texas Wildlife Association (TWA)

White-tailed Deer Advisory Committee (WTDAC)/2015
Stakeholder Group

Private Lands Advisory Committee (PLAC)

CWD Task Force/BUG

Deer Breeders Corporation (DBC)/2015 Stakeholder Group

CWD Task Force/ WTDAC

PLAC

CWD Task Force/ PLAC/2015 Stakeholder Group

Texas Deer Association (TDA)

Texas Animal Health Commission

North American Deer and Elk Farmers Association
(NADEFA)/2015 Stakeholder Group

Executive Director of Exotic Wildlife Association

Texas Deer Association (TDA)

WTDAC/2015 Stakeholder Group/BUG/Deer Breeder
Corporation (DBC)

TWA/WTDAC

TPWD

TWA/PLAC/2015 Stakeholder Group

APPENDIX B

CWD MANAGEMENT RULES STAKEHOLDER OPERATING PROCEDURES

I. GOAL

To reach consensus on key elements that will form the basis of proposed rules relating to the implementation of CWD management strategies.

II. REACHING DECISIONS

- A. Use of Consensus.⁴ Negotiations will be conducted with the intent of reaching a consensus decision.
- B. Consensus. Unless stakeholders agree unanimously to another definition at the outset of the process:

Consensus means that stakeholders concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. Furthermore, they also agree that, given the combination of gains and trade-offs and given the current circumstances and alternative options, the resulting agreement is the best one stakeholders are likely to make.

Stakeholders can reach consensus without embracing each element of the agreement with the same fervor as others. Some group members may strongly endorse a particular provision while others may accept it as a workable agreement.

III. AGREEMENT

- A. Final Product. Stakeholders intend for their final agreement to be the basis of proposed rules. If stakeholders reach consensus, Department staff will present proposed rules that reflect the agreement to the Commission and seek permission to publish these rules in the Texas Register for public comment and review.
- B. Failure to Reach Consensus. If stakeholders are unable to reach consensus on all issues, then stakeholders will draft a report that specifies the issues on which consensus was reached, if any; the issues that remain unsolved; and any other information that the stakeholders believe would contribute to an informed decision.
- C. Support of Agreement. Stakeholders agree not to take any action to inhibit the adoption or implementation of the proposed rules that conform to their consensus agreement. Furthermore, stakeholders who have reached consensus agree to advocate for the

⁴ Information on use of consensus is from CDR Associates- Procedural Guidelines for Interest-Based Negotiations, Copyright 2002.

proposed rules to their membership, to policy-makers, and the public. If a group member fails to keep this agreement, all other members agree to submit comments to the Department, any other relevant state officials, government bodies, or Courts, stating that:

1. All members concurred in the basis of the proposed rules; and
2. All members supported approval of the final rules that conform to the consensus agreement.

IV. STAKEHOLDER MEETINGS

A. Meeting Attendance

1. The same stakeholders whose signatures appear below should be present at each meeting.
2. Scheduled meetings will proceed even if some members are absent.
3. Absent members are responsible for updating themselves in the proceedings of missed meetings.
4. Substitutes may stand in for absent members and express their views and provide information but may not be involved as decision-makers.
5. After the negotiations have begun, additional members may join the group only with the concurrence of all members.

B. During the Meetings

1. Participation in negotiations will be limited to the stakeholders below and additional agreed-upon members.
2. All visitors, including TPWD staff resources and invited speakers are requested to respect the process and abide in particular with the provisions regarding communications. Visitors will be asked to sign a statement to that effect.
3. The stakeholder meetings will be neither electronically recorded nor transcribed, but the facilitator may prepare summaries of discussion and action items for the convenience of the members. Such summaries shall not be approved by the stakeholders, and they are not to be construed to represent the official position of the stakeholder group or any member on what transpired at a meeting.

C. Workgroup and Caucuses

1. Workgroups may be formed to address specific issues and to make recommendations to the group as a whole. Workgroups are open to any members, and all members are to be notified of all workgroup meetings. Workgroups are not authorized to make decisions for the whole group.
2. The facilitator may at any time request a confidential caucus with specific members or groups of members to attempt resolution of a specific issue.
3. Any member may also request a caucus at any time to consult with other members, but such caucuses are to be used sparingly. The caucusing members will be asked to move into the hallway or another meeting area to conduct the caucus. The length of caucuses will be determined at the discretion of the facilitator, who may also serve as a mediator during such caucuses, when appropriate.

- D. Stakeholders as Representatives. Individual stakeholders acknowledge that they have been named to the group as the representative of their stakeholder class, and not just themselves. To this end, the members pledge to communicate with other members of their organization or stakeholder class to ensure that the deliberations reflect the viewpoints of the stakeholder class as a whole.

V. NEGOTIATING

- A. Members agree to speak openly and commit to addressing each other's concerns and needs. Members will not use other members' specific offers, positions, or statements made during the negotiations for any purpose outside the negotiation.
- B. During the negotiations, deliberations and projections are not be construed as final decisions.
- C. All members commit to share relevant information, which if excluded, would damage the credibility or outcome of the consensus. Members will make every effort to provide requested information reasonably in advance of scheduled meetings.
- D. Members as a group may decide to invite speakers to provide information on relevant issues. The facilitator will coordinate any such effort.
- E. All members will endeavor to tailor their statements during meetings to ensure the opportunity for all members to participate fully on issues in which they have an interest. Members agree to speak one at a time and allow each other a reasonable opportunity for uninterrupted comments. All members will refrain from personal attacks.
- F. Any member may withdraw from the negotiations at any time without prejudice. The remaining stakeholders will then decide whether to continue the negotiations.

VI. COMMUNICATIONS

- A. Stakeholders agree to make the negotiation process effective by communicating openly with one another.
- B. In all communications outside of the group, including those to the press, members may give information concerning issues raised but agree to refrain from attributing views or positions to a particular group or individual, even if that member withdraws from negotiations.
- C. If the group decides to issue a press statement at any time, the group will agree on the language of a collective press statement; otherwise, the group agrees not to speak to the press.
- D. To preserve the integrity of the process, visitors will sign a statement that they will abide by these Operating Procedures, especially those pertaining to communications.

STAKEHOLDERS

[signed by stakeholders on February 16 and 17, 2016]