

NAEBA Position on Interstate Commerce

By Travis Lowe, NAEBA Executive Director

Across North America, state, provincial and federal governments each impose laws for interstate movement of cervid species. Laws and regulations vary greatly as many factors influence the policy making process. Some jurisdictions allow open interstate commerce and others prohibit interstate trade entirely. The North American Elk Breeders Association, which serves as the international breed registry organization representing elk ranchers across the United States, Canada and Mexico, has developed a position statement on interstate movement policy.

The following position was unanimously adopted by the NAEBA Board of Directors: *“The North American Elk Breeders Association supports open and responsible trade between state, provincial and international borders for live elk and elk products. Similar to any business industry, the elk industry needs a regulatory environment that will allow unrestrained commerce between producers and stakeholders across North America. Border closures systematically restrict free enterprise by isolating producers from market opportunities and hamper the industry’s ability to expand for the future.”*

NAEBA believes strongly in this policy as border closure is often used as a method of impeding the industry’s development and expansion. Today, a handful of states do not allow live elk to be moved into their state. Most states and provinces have a clear movement protocol to ensure responsible movement in and out of the state. To import, every animal must be enrolled in a Chronic Wasting Disease monitoring program for at least sixty months. Though exact requirements vary with each jurisdiction, there are also interstate rules for importation that involves Tuberculosis and Brucellosis testing and a health certificate from an accredited veterinarian. Some states require parasite prevention treatment and some require testing for other diseases such as Blue Tongue and Anaplasmosis. NAEBA commends these states and provinces that allow free and open trade that is performed in a responsible manner that preserves biosecurity.

In contrast, some states and provinces prohibit interstate commerce entirely. Each state with such a policy will cite specific reasons, usually relating to unproven safeguards “to protect the state’s wildlife population.” Most examples of this relate to Chronic Wasting Disease (CWD). CWD is a prion based disease that affects a portion of species within the cervid family. It cannot be transmitted to humans, other

livestock or other wildlife species. CWD is a reportable disease in the United States and Canada. As of November 2015, 23 American states and two Canadian provinces have found CWD in either the wild cervid population or on a cervid farm. States that have not found the disease contend they



do not have CWD and even promote their state or province as “CWD Free”.¹ This label is unproven as many states and provinces do very little to test for it. Wild deer surveillance for CWD is administered by the state’s wildlife/natural resources/conservation agency. State wildlife agencies test very little for the disease overall. Some agencies do not test for it at all.

New York and Florida, for example, recently closed their border to the importation of CWD susceptible species despite the outcry from the cervid industry. The Florida Fish and Wildlife Conservation Commission stated “the rule was passed in an effort to reduce the chances of CWD being introduced into the state.”² Special interest groups also campaign the ban is to protect the respective state’s native deer population. These agencies and special interest groups attempt to connect cervid farming with states that

find CWD. These are political games intended to sway uniformed lawmakers and members of the public. CWD has been found in eight states in wild deer populations and not in cervid farms. Almost half of those states do not even have cervid farms. Clearly, there are other vectors at work. But these agencies and groups are not publicizing this revelation.

Texas, for example, allows importation of elk, red deer and other deer species, but not whitetail or mule deer. In 2015,

Texas found CWD in a whitetail deer farm. Despite already having found CWD in wild mule deer in West Texas

years prior, headlines read “Speak up to Protect Texas’ Wild Deer Herd” that calls for increased regulations on farmed deer herds.³

States must test more to actually monitor and see if they have the disease. States wildlife agencies test far less than 1% of their deer population. Following the Texas example, the Texas Department of Parks & Wildlife tests 2,800 wild deer a year for CWD.⁴ There are 4.3 million estimated wild deer in Texas. This means 0.00065% of the Texas deer population is tested for CWD. How does a state know if they have it or not and then point fingers at any segment of the industry?

Wildlife agencies and allied special interest groups can use disease prevention as a weapon against their perceived competition. Almost all state wildlife agencies are fee funded and thereby sustained from user fees via hunting permits, campground site fees and so forth. Because the elk and deer industry does include trophy hunting as one of its many market outlets, competition arises. If Robert Lee, for example, wants to travel to a state to hunt a wild whitetail deer he may do so and purchase the appropriate fees from the state. The state agency receives that money. If Robert, however, chooses instead to spend two or three days hunting a buck on a two thousand acre trophy ranch, he would purchase the hunt from the ranch owner and not the state. This is

a classic case of private sector business versus government business.

Private trophy ranches are a very small portion of the total hunting in a state, but nevertheless, it is competition in the minds of some state wildlife officials. It would be easier for the state if the borders were closed and trophy ranch owners could not purchase the needed amount of bucks and elk bulls. This conclusion was reinforced when the Missouri Department of Conservation imposed

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new rules to close the state’s border for the importation of whitetail and mule deer to protect the state from CWD.⁵ Local deer ranchers filed an injunction to block the border closure. In August 2015, the Judicial Circuit Court of Missouri granted the plaintiffs’ Motion for a Preliminary Injunction against the state agency. The ruling prohibits the MDC from closing the border, along with other new controversial regulations. The Court found not only that the Plaintiffs (deer breeders) had shown that the MDC likely was without the authority to issue the new regulations, but that the potential harm to the Plaintiffs outweighed any threat posed by Chronic Wasting Disease, the stated reason for the regulations.⁶ “Without question, Plaintiffs will suffer irreparable harm... up to and including the loss of their businesses should the regulations remain in effect throughout the upcoming hunting season,” the Court’s order stated. “By contrast, Defendants cannot show an imminent threat to Missouri’s cervid population or other public interests that would justify the regulations remaining in effect while their Constitutionality is finally resolved.”⁷ In an ironic twist, the MDC wanted to close the border for all cervid species under its control yet in the same year imported wild elk from Kentucky and released them into the wild. There is no live CWD test approved by the United States Department of Agriculture.

Other diseases are used as a weapon for commerce restrictions as well. A parasite known as meningeal worm is used to trigger importation restrictions, particularly in the western half of the continent. The worm is endemic in the eastern half of the continent with the suitable climate boundary line consistent with the 100th meridian line. The 100th meridian runs along the eastern side of the Texas panhandle up into to the Arctic Circle. This line essentially cuts the continent in half

with the worm only being present on the eastern side. Western states and provinces such as Utah, Alberta and Saskatchewan are jurisdictions that do

not allow importation of elk or other permitted cervids from east of the 100th meridian. Until 2015, Idaho was among the states that did not allow this. However, Idaho passed legislation and rules to allow importation from east of the line. A long drawn out legislative battle ensued in Boise comparing science with political talking points. Again, wildlife agencies and special interest groups contended the policy change would make the state’s wildlife population vulnerable by transmission of the meningeal worm because of the worm’s effect on elk, mule deer and moose.

Colorado and Montana are also states west of the meridian line that allow importation of elk from the east. North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas are all split by the line without any movement restrictions. Colorado and Montana simply add additional requirements for parasite treatment for elk that come from the east. No problems have been voiced from Colorado and Montana.

The Idaho Fish & Game director publicly opposed the change citing the potential devastation to the Idaho elk population and other livestock.⁸ In an interesting revelation, sheep are also carriers of the worm and there are no restrictions for sheep movement. It appears the Idaho department is picking winners and losers for their policy. After the final vote of approval,

a local newspaper reported, “House Ag Chairman Ken Andrus, R-Soda Springs, noted afterwards there was conflicting testimony on the issue during several public hearings. Since sheep might be carriers of the parasite, he felt opposition to the rule change had less to do with science and more to do with “an aversion to domestic elk.”⁹

Farmed elk and deer are the healthiest cervids that live within a state’s borders. They are cared for by owners, monitored for disease, vaccinated, wormed and well fed with quality feed and clean water. These animals must be considered healthier than the wild deer running frantically across interstate highways with no care

or monitoring. The North American Elk Breeders Association strongly believes that open trade can be executed in a responsible manner.

¹ “Chronic Wasting Disease Not Present in Georgia.” Press Release | Georgia DNR - Wildlife Resources Division. October 13, 2010. Accessed November 29, 2015. <http://www.georgiawildlife.com/node/2372>.

² “FWC Passes Rule Prohibiting Importation of Deer.” FWC News Releases. September 6, 2013. Accessed November 28, 2015. <http://myfwc.com/news/news-releases/2013/september/06/cwd/>.

³ Sanders, Jenny. “Speak up to Protect Texas’ Wild Deer Herd.” The Daily Tribune, October 30, 2015, Opinion sec.

⁴ Chronic Wasting Disease Detected in Medina County Captive Deer.” TPWD: News Release: July 1, 2015. July 1, 2015. Accessed September 2, 2015. <https://tpwd.texas.gov/newsmedia/releases/?req=20150701a>.

⁵ GENERAL RECOMMENDATION FOR COMMISSION CONSIDERATION. (n.d.). Retrieved from <http://mdc.mo.gov/sites/default/files/resources/2014/10/2014-10-regulations-committee-rec.pdf>

⁶ Bradshaw, Jean Paul. “MISSOURI DEER OWNERS WIN PRELIMINARY LEGAL CHALLENGE AGAINST RESTRICTIVE NEW STATE RULES.” Missouri Deer Association- Legal Briefs. August 13, 2015. Accessed November 28, 2015. <http://missourideerassociation.com/legal-briefs.html>.

⁷ Bradshaw, Jean Paul. “MISSOURI DEER OWNERS WIN PRELIMINARY LEGAL CHALLENGE AGAINST RESTRICTIVE NEW STATE RULES.” Missouri Deer Association- Legal Briefs. August 13, 2015. Accessed November 28, 2015. <http://missourideerassociation.com/legal-briefs.html>.

⁸ Spence, Bill. “Committee Lifts Import Restrictions on Domestic Elk.” The Lewiston Tribune. March 30, 2015. Accessed November 29, 2015. http://lmtribune.com/blogs/political_theater/committee-lifts-import-restrictions-on-domestic-elk/article_1f4db97a-d729-11e4-ae8e-b7775ae27ebd.html.

⁹ Spence, Bill. “Committee Lifts Import Restrictions on Domestic Elk.” The Lewiston Tribune. March 30, 2015. Accessed November 29, 2015. http://lmtribune.com/blogs/political_theater/committee-lifts-import-restrictions-on-domestic-elk/article_1f4db97a-d729-11e4-ae8e-b7775ae27ebd.html.