



PRESERVING THE FAIR CHASE ETHIC

BY GREG ZUNINO, ESQ.

To the untrained eye, much of Nevada is a barren moonscape. The dedicated sportsman, by contrast, sees Nevada's mountainous terrain and vast watersheds as habitat for elk, mule deer, antelope, bighorn sheep, upland game, and migratory birds and waterfowl. Because roughly 84 percent of Nevada is public land, hunting in Nevada is an egalitarian pursuit. Not surprisingly, then, Nevada is home to a large number of sportsmen.

The Nevada Department of Wildlife, the agency responsible for wildlife management and conservation, works every day to ensure that hunting and fishing has a sustainable future. The department is funded by federal grants and user license and application fees—to the extent that the agency's operating expenses are borne, directly or indirectly, by sportsmen.¹ The federal grants are derived from excise taxes on firearms, ammunition and fishing supplies, while user fees are paid predominantly by sportsmen.²

Despite a growing demand for hunting opportunities, the department has managed and maintained healthy wildlife populations for many decades. The agency's success can be attributed to its environmental research, habitat conservation and restoration, and law enforcement efforts. A staff of wildlife biologists oversee its research, conservation and restoration projects, and a staff of 40 commissioned peace officers, known as "game wardens," head its law enforcement function.

Of the 40 game wardens employed by the department, 31 are assigned to patrol duties. According to Chief Game Warden Tyler Turnipseed, each of the department's wardens patrols an average of 5,000 square miles. Since Nevada has fewer game wardens per square mile than any other state, the department's wardens face significant enforcement challenges.

One of the greatest of these challenges is the use of military weaponry and technology by unethical and/or inexperienced hunters. Increasingly accessible to the general public, military-grade weaponry and technology pose a threat to the "fair chase" ethic upon which the North American hunting tradition was founded. "Gone are the days when a young hunter put an apple in the pocket of his red-flannel shirt, picked up grandpa's rifle with a 4-power scope or open sights, and headed out on foot into the forest," said Turnipseed.



rewarding because of the challenge if the entire experience can come down to pressing a button on a highly sophisticated device ... Even where legal, hunters must consider the ethics of using technologies that allow them to shoot at substantially increased distances far beyond an animal's ability to sense danger; game scouting cameras that transmit live, real time images to the hunter; on call hunting (using cell phones to call in a hunter when game has been located by others), and using two-way radios to guide a hunter to game in the field ... When the challenges of hunting are eliminated, we risk losing the special nature of the hunting experience itself.⁴

In recent years, the Department of Wildlife has developed regulations to restrict the use of military technology for hunting. Under the Nevada Administrative Procedures Act, permanent hunting regulations must be adopted by the Board of Wildlife Commissioners and then approved by the Legislative Commission.⁵ In 2016, the department proposed a number of regulations designed to curtail the use of specific types of ammunition and scouting devices.

One proposed regulation, which failed to gain the approval of the Legislative Commission, sought to prohibit hunters from using certain large-caliber ammunition and high-velocity rounds of the type commonly used by military snipers.⁶ From the perspective of the ethical hunter, large-caliber rounds are objectionable because they obliterate a large portion of the meat that a hunter will presumably eat after he bags a big game animal. The high-velocity rounds are objectionable because they enable a hunter to hit an animal at distances of 1,800 yards

or more. One round in particular, the .50 BMG, meets both of these descriptions.

Another high-tech hunting method garnering significant objections incorporates microchip and laser technology to link sighting and firing mechanisms, so that a rifle fires automatically when the sight aligns with a predesignated target. The department's proposed regulation also sought to prohibit the use of this kind of technology. Despite the set-back before the Legislative Commission, Turnipseed is confident that the department will revisit the topic of military weaponry's role in hunting in the near future—with a higher probability of enacting appropriate restrictions next time.

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“High-velocity and large-caliber rounds, automated electronic sighting and firing mechanisms, drones and trail cameras are some of the technologies that concern us.”

The department's law enforcement function covers three areas:

1. Hunting and fishing seasons;
2. Bag limits; and
3. Permissible methods of take.³

Restrictions on the use of military weaponry and technology fall into the third category and are quickly evolving in response to methods of take that potentially undermine the fair chase ethic. The Boone and Crockett Club, a prominent organization of sportsmen, discussed the issue of technology in a September 2016 essay on the topic of fair chase:

[W]hen technology becomes a substitute for basic skills in the field (i.e., buying skill), this is where technology not only undermines the hunting experience, but also has the potential to erode public support for hunting. It is very difficult to maintain any credible claim that hunting is

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The department has also proposed restrictions on the use of trail cameras that stream imagery in real time, allowing hunters to spot animals from a remote location, often as they approach watering holes. In addition to creating an unfair advantage for the hunters, trail cameras and similar technology can lead to conflicts among hunters if used simultaneously by a number of people hunting in close proximity to one another—when, for example, multiple hunters converge on a single animal at a watering hole. Proposed restrictions on the use of trail cameras have not been enacted yet.⁷ Popular consumer items, trail cameras are already widely marketed to the general public by numerous big-box stores and internet retailers. Restrictions on their use for hunting will likely face stiff opposition.

Similar to the fair chase concerns about trail cameras are the fair chase concerns regarding aerial surveillance and scouting technology. In 2016, the department successfully amended an existing regulation that generally prohibited the use of aircraft and satellite technology for aerial surveillance and scouting. The regulation was amended to specifically encompass the use of drones and satellite devices with the capacity to stream imagery in real time.⁸ Although the 2016 amendment was enacted as law, the department's game wardens still face significant enforcement challenges, because the use of a drone or satellite device is more easily concealed than the flight of a traditional aircraft. Additionally, since technology is evolving so quickly, regulations must be updated fairly regularly so the descriptions of prohibited technology are not rendered outdated or obsolete.

Fortunately, most sportsmen respect the fair chase ethic. For these sportsmen, hunting in Nevada offers more than just the opportunity to bag a trophy animal. It encourages suburban residents to connect with Nevada's history and the storied individuals inhabiting Nevada's rural mining and ranching communities. It also provides an opportunity to bond with family and friends, develop basic outdoor survival skills, and study and perfect traditional methods of hunting and tracking.

The Department of Wildlife routinely reinforces the fair chase ethic and associated values through its hunter education program and community outreach projects. Experienced hunters have a similar obligation to educate younger hunters about fair chase and responsible hunting methods. As most sportsmen understand, a safe and responsible hunting trip can be an emotionally rewarding experience, regardless of the outcome. **NL**

1. See Mission Statement of the Nevada Department of Wildlife, available at www.ndow.org/our_agency/.
2. See NRS 502.010 to 502.500, inclusive (establishing license and fee structure), and 16 U.S.C. §§ 669-669i, 771-777k (providing for the imposition of excise taxes and the distribution of federal grant funds).
3. See NRS 501.181(4)(a).
4. Adopted by the Boone and Crockett Club Board of Directors (February 24, 2016), available in pdf format at www.boone-crockett.org/.
5. See NRS 501.105 and 501.181 (pertaining to the Board of Wildlife Commissioners), and NRS 233B.067 and 233B.0675 (pertaining to the Legislative Commission).
6. See Second Revised Proposed Regulation of the Board of Wildlife Commissioners, LCB File No. R144-15 (July 18, 2016), available on the Nevada Register at www.leg.state.nv.us/register/.
7. See Revised Proposed Regulation of the Board of Wildlife Commissioners, LCB File No. R012-16 (June 3, 2016), available on the Nevada Register at www.leg.state.nv.us/register/.
8. NAC 503.148, as amended by the Adopted Regulation of the Board of Wildlife Commissioners, LCB File No. R145-15 (September 9, 2016), available on the Nevada Register at www.leg.state.nv.us/register/.



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