

Tracking and Finding Wounded Big Game Using a Leashed Dog

Introduction:

A trained dog can greatly enhance a hunter's ability to track and recover a wounded big game animal. Dogs can detect tiny droplets of blood that a human cannot see. Experienced trackers feel that a trained dog will use a combination of blood scent and tarsal gland scent to track a wounded big game animal, even when there is not an observable blood trail. Even though a dog's brain is one tenth the size of a human's brain, the part that controls smell is 40 times larger than in humans. A human has about 5 million scent glands whereas dogs have 125 million to 300 million (depending on breed), meaning their sense of smell is 1,000 to 10,000,000 times better than humans! Interestingly, in several European countries where non-subsistence hunting has been practiced for hundreds of years it is mandatory to have a dog to recover wounded big game animals.

The Obligation to Recover Wounded Big Game Animals

No responsible hunter wants to lose a wounded game animal. Recovering a wounded game animal is not only the moral and ethically responsible thing to do, it is the law.

FWCA

36. (1) *A hunter or trapper who kills game wildlife other than a furbearing mammal shall not abandon it if its flesh may become unsuitable for human consumption.*

Hunters have an obligation to take reasonable steps to ensure that the flesh of game wildlife does not become "spoiled".

Meat spoilage can occur quickly, especially in warm weather. Ruminants are particularly vulnerable to rapid meat spoilage because of the bacterial action in the gut. It is essential that a wounded animal be recovered as quickly as possible to avoid spoilage. Big game should be field dressed as soon as possible to remove internal organs and allow the carcass to cool as quickly as possible. This is especially important if the shot, bullet or arrow, has pierced the gut or digestive system increasing the risk of meat contamination. The risk of spoilage increases at higher temperatures.

There is a very high probability that unrecovered animals will be lost to due to coyotes and ravens. In southern Ontario a wounded deer not recovered and left overnight has a very high probability of being consumed by coyotes. In central Ontario ravens can quickly find and start feeding on a dead big game animal quickly rendering unfit for human consumption.

Is Tracking a Wounded Big Game Animal Considered Hunting? An Alternative Opinion

Tracking wounded big game animals has been interpreted by The Ontario Ministry of Natural Resources and Forestry (MNR) as hunting. This interpretation is primarily based part a) of the definition of hunting in the FWCA.

FWCA

1.(1) *“hunting” includes,*
(a) lying in wait for, searching for, being on the trail of, pursuing, chasing or shooting at wildlife,

However the definition of hunting in the FWCA also states:

“except that “hunting” does not include,
(d) lying in wait for, searching for, being on the trail of or pursuing wildlife for a purpose other than attempting to kill, injure, capture or harass it, unless the wildlife is killed, injured, captured or harassed as a result,

If a tracker has no reasonable means of killing a big game animal, i.e. no firearm, and his or her purpose is very clearly to find and recover what they believe to be a dead animal, it has to raise the question – is this hunting?

Note: “This definition presumes the wildlife being searched for is alive which must be the default position unless there is reasonable evidence to the contrary” (Quote by Mark Robbins, at a workshop on May 7, 2016 in reference to the definition of hunting). Clearly, in order to “hunt” what you are hunting for must be alive.

John Jeanneney is a very experienced wounded big game tracker using leashed dogs. He lives in New York State. John has been tracking legally wounded deer and bears for more than 40 years and taken over 1100 calls to track and recover wounded deer and bear. John has written and published three books on the subject of dog training and tracking wounded big game animals. John has to be considered one of the most experienced and knowledgeable trackers in North America. John maintains detailed records of every call. According to John’s personal records (and in his words) “the ratio dead deer to still-living deer found has recently proved to be 84% dead deer and 16% deer still alive”. Based on this data, it is reasonable to conclude that there is a very high probability that if the animal being tracked is recovered, it will be dead and the person tracking is in fact searching for a dead animal. Again, considering the FWCA definition of hunting, is this hunting?

Here is a link to John Jeanneney's books.

<http://www.born-to-track.com/book/order-info.htm>

Inconsistent Application of the Law

The FWCA allows hunters to hunt big game and other wildlife up to the end of legal shooting time, which is typically one half hour after sunset time. After that time and until one half hour before sunrise a hunter in Ontario must unload and encase his or her firearm. The unloaded and encased firearm as well as presumably no firearm in one's possession indicates the hunter is not hunting. A hunter can legally pull the trigger of a firearm or release the string of a bow up to one second before legal shooting time ends. The FWCA allows this presumably with an understanding that a wounded animal must be recovered. For most hunters who are hunting big game animals and waterfowl, the last 30 to 45 minutes before legal shooting time ends is considered one of the best times to hunt. It is when these animals are most active. Every year hundreds of hunters search for wounded and dead deer, moose, bears and waterfowl after legal shooting time has ended. It would be difficult to find a hunter (including Conservation Officers who hunt) who has not searched for a wounded or dead game animal after legal shooting time has ended. I am not aware of anyone who has been charged with violating Section 20 of the FWCA when trying to recover a dead animal;

*20. (1) A person shall not, during the period from half an hour after sunset to half an hour before sunrise,
(a) hunt wildlife;*

Regardless of the interpretation of the FWCA this is the correct decision. Hunters should be able to recover wounded and dead game animals after legal shooting hours provided their firearms are unloaded and encased.

This begs the question, if the MNR allows hundreds of hunters every year to search for and recover wounded or dead game animals why do they consider this hunting and a violation of the FWCA and why would they restrict the use of a leashed dog for recovering wounded big game after legal shooting hours when a trained dog would greatly enhance their ability to actually find and recover a dead animal, and meets the intent of Section 36 of the FWCA?

New Hunters and the Hunter Education Exam

All new hunters in Ontario must take the Ontario Hunter Education Course and pass a 70 question exam in order to qualify to acquire their Outdoors Hunting Card or for those between the ages of 12 and 15, their Hunter Apprenticeship Card. The Hunter Education Course is comprehensive and thoroughly covers most aspects of hunting. All prospective new hunters learn about the laws and regulations, rules for responsible hunting, ethics and safe firearm handling, etc. Every year about 25,000 students graduate from the Ontario Hunter Education Program. The program has been very successful and Ontario's hunters have an excellent safety record.

A question that has been on the Hunter Education exam for more than 20 years is as follows:

When should a hunter give up the search for an injured animal?

- A. When it begins to rain or snow*
- B. When it gets dark*
- C. Do not pursue an injured animal, it is dangerous*
- D. Do not give up the search as long as there is a trail*

The correct answer is D. Over the past 20 years since this question has been part of the exam as many as 500,000 new hunters have been exposed to this question. Why then does the MNRF keep insisting that searching for a wounded animal after legal shooting hours is hunting? I honestly have to think MNRF would have a significant challenge getting a conviction on someone tracking a wounded big game animal with a leashed dog and not in possession of any reasonable means of killing an animal.

Enforcement Concerns about Using a Leashed Dog to Recover a Wounded Big Game Animal

It is hard to understand why the MNRF is so rigid and inflexible in its interpretation of hunting with respect to the use of a leashed dog to track and recover a wounded big game animal. There may be a lack of understanding about the use and benefit of using dogs to track and recover wounded big game. There may also be a concern that somehow hunters would use a leashed dog to actually hunt big game and not for recovery purposes. However the onus would always be on the tracker to have an identifiable hit site with evidence of wounding. Tracking dogs are always started on a blood trail. If there is no hit site and no evidence of blood, then the tracker is not tracking a wounded big game animal – period. The idea that someone would try to hunt big game illegally and outside legal shooting hours with a dog on a 10 m leash is unreasonable and unfathomable. It is difficult to walk through a wooded area even in daylight with a dog on a very short leash, not to mention trying to carry a firearm and light to shoot a big game animal with a dog on a 10 metre leash. The other thought is that the person with the leashed dog may be pushing deer to a waiting hunter. Again, this is very unlikely. In order to justify tracking there has to be an identifiable hit site. If suspected of pushing deer to another hunter there should be some evidence of another hunter. Tracking wounded big game is legal in Quebec, Nova Scotia and at least 28 states in the USA. To the best of my knowledge no enforcement agency has identified enforcement issues associated with the use of leashed tracking dogs to track and recover big game. However the MNRF Enforcement Branch is strongly encouraged to contact any and all of the jurisdictions that allow tracking wounded big game with leashed dogs to discuss their experience.

The Problems with Ontario's Current Approach to Allow Tracking and Recovering Big Game with a Leashed Dog

Because the MNRF has interpreted tracking and recovering wounded big game as hunting, they require that dogs being used to track be licensed to hunt.

25. (1) A person shall not use or be accompanied by a dog while hunting big game, except under the authority of a licence issued in respect of that dog and in accordance with the regulations. 2009, c. 33, Sched. 22, s. 2 (14); 2012, c. 8, Sched. 16, s. 4 (1).

Because it is a requirement for a dog to be licensed and the tracking considered to be hunting. It is not legal to track and recover a wounded big game animal with a leashed dog outside of legal shooting hours.

1. This results in inconsistent application and enforcement of the law. As described above hunters without dogs routinely search for and track wounded game animals after legal shooting hours and are apparently allowed to do so; i.e. discretion is applied. Also, as many as 500,000 new hunters have been taught through the Hunter Education Program to keep searching for a wounded animal as long as there is a trail to follow. However tracking a wounded big game animal with a leashed dog is considered hunting and is not allowed after legal shooting hours.
2. The current law puts trackers in an ethical and legal dilemma. Consider the scenario where a hunter starts a leashed dog on a blood trail during legal shooting hours. If the dog is making steady progress on the trail of the wounded big game animal but legal shooting time has ended, what do they do? Continue on the trail and risk prosecution or ironically take the dog back to a vehicle and try, perhaps in vain, to follow the track without the dog or simply abandon the search and come back in the morning knowing that there is an extremely high probability the meat will be spoiled or the animal consumed by coyotes? There is little consolation to the tracker concerned about being charged that officers have been advised to exercise discretion.
3. The current law is also open to interpretation and can become confusing with respect to where and when a tracker can legally track and recover a big game animal with a leashed dog. For example, does the tracker with the leashed dog assisting a hunter to track a wounded animal have to have a valid seal for the animal being tracked? If the wounded animal being tracked enters a different WMU can the tracking continue? Some of these interpretations serve no practical purpose.
4. The current law requires that a tracker have a valid license for the game animal being tracked (i.e. it is hunting). There are people with trained dogs who are not big game hunters (perhaps they are a bird hunter or not a hunter at all) who would be very willing to assist a hunter find a wounded big game animal. Under the current legislation they would not be allowed to do so, even if they are accompanied by the licensed hunter. Another possible scenario is if an elk hunter wounded an elk another hunter who is not identified as a member of that party of hunters would not be allowed to assist in finding the elk.
5. Under the current legislation if a hunter with a trained dog were to drive a considerable distance to assist another hunter track and recover a wounded big game animal they

can receive no payment for their effort and it is questionable if they would even be able to accept a donation to offset some of their costs, such as fuel. Again, this appears to be open to interpretation and is very confusing. Jamie, I think this point has been addressed. I believe they can receive some remuneration for their expenses, such as gas money.

6. This section 25.1 is a significant issue in Controlled Hunt Units whereby a hunter with a valid controlled hunt permit and a valid licence for their dog in one particular unit cannot track in any other Controlled Hunt Unit. This regulatory restriction severely limits the number of units where trackers can legally track. Given that we have only a few members spread over all of southern Ontario it is particularly problematic for hunters to find a “legally qualified” tracker.
7. This section also presents the absurd situation for trackers with an antlerless tag in one unit who cannot legally track an antlerless deer in another unit for which they do not have a valid tag. However, if they are tracking a buck then they are in legal compliance. I realize that in some of these situations a Conservation Officer has the discretion of not charging someone but one cannot count on discretion nor should the burden be put on a CO to use discretion in these situations.

Given these realistic scenarios, I do find it very difficult to rationalize the MNRF position on tracking and recovering wounded big game.

Enabling Tracking and Recovering Wounded Big Game with a Leashed Dog in Ontario – The Recommended Approach

As much as there is a strong case to be made that tracking and recovering a dead big game animal with a leashed dog is not hunting, whether it is considered hunting or not the current legislation is confusing, inconsistent, impractical and ineffective. The MNRF should take a step back and think about the purpose and objective of using leashed dogs to track and recover wounded big game. Dogs have the ability to detect scent and follow a trail that humans simply cannot duplicate. The purpose of using trained dogs to track and recover wounded big game animals is to reduce the number of animals lost and wasted because they cannot be found. No one feels good about not recovering a big game animal and it is a waste of a precious natural resource. The MNRF is encouraged to not lose sight of the fact that allowing leashed dogs to be used to track and recover wounded big game is intended to prevent the loss and waste of big game animals that otherwise cannot be recovered. Lost animals also puts additional and totally unnecessary pressure on the resource. For example if a party of hunters cannot find and recover a wounded moose, they will very likely use their game seal to harvest another moose. Game seals are very limited in some parts of the province for moose and there are very serious concerns about population sustainability. And the reality is that no other jurisdiction has had enforcement issues

There are two possible approaches for allowing leashed dogs to track and recover wounded big game:

Option 1

Accept that the definition of hunting in the FWCA does not include tracking and recovering wounded big game with a leashed dog as per the exception and part d) of the definition of hunting in the FWCA. This approach would be similar to Quebec where the definition of hunting is tied to the use of a firearm.

“the Act respecting the conservation and development of wildlife, to hunt "means to pursue, chase, worry, stalk, mutilate, call, follow after, lie in wait for or search for an animal or attempt to do so, while in possession of an arm, or to shoot, kill or capture an animal or attempt to do so” This definition is very much like part d) of the FWCA definition of hunting. Also, in Quebec the dog must be under control; i.e. leashed. The onus would always be on the hunter and the tracker with the leashed dog to have an identified hit site where the tracking would have started. A thorough examination of the hit site is essential to determine the severity and location of the wound. Dogs always start on an identifiable blood trail.

Option 2

Make an exception under Section 25 of the FWCA

Hunting with dogs

25. (1) A person shall not use or be accompanied by a dog while hunting big game, except under the authority of a licence issued in respect of that dog and in accordance with the regulations. 2009, c. 33, Sched. 22, s. 2 (14); 2012, c. 8, Sched. 16, s. 4 (1).

Prescribed areas

(2) Despite subsection (1), a person shall not use or be accompanied by a dog while hunting a species of big game in an area prescribed by the regulations. 2009, c. 33, Sched. 22, s. 2 (14).

Exception

(2.1) Despite subsections (1) and (2), a person may use or be accompanied by a dog while hunting big game without a licence issued in respect of the dog if he or she does so in the circumstances prescribed by the regulations. 2012, c. 8, Sched. 16, s. 4 (2).

The conditions for tracking are then described under Schedule 16 of the regulations

16.1 governing the presence of, or use of, a dog while hunting, including prescribing the circumstances in which a person may use or be accompanied by a dog while hunting big game without a licence for the purposes of subsection 25 (2.1);

i.e. dog is licensed and on a leash, must be accompanied by the hunter who wounded the big game animal, etc.

Clearly Section 25 (2.1) allows for an exception to allow an unlicensed dog to be used to track and recover wounded big game. The conditions for tracking would then be laid out under

Schedule 16 of the regulations. The conditions would include the requirement for the dog to be leashed. Tracking after legal shooting hours could be allowed. Also, there is no need for the person owning and handling the dog to be licensed on the condition they are accompanied by the licensed hunter that wounded the big game animal.

This is the approach used by Nova Scotia. [Recently Oklahoma changed their law to allow tracking with leashed dogs at any time. The only restriction is that the local enforcement officer is to be informed before beginning the track. This same approach is used in New York State.](#)

(7) It shall be an offence for the owner of a dog, or person in control of a dog, while training it, to fail to prevent it from chasing or pursuing a deer or moose.

(8) Despite subsection (7), a person may use a dog to track and recover a wounded deer, moose or bear if:

(a) the deer, moose or bear was wounded by a person hunting it pursuant to a valid hunting licence for that species and in accordance with the Act and regulations;

(b) the hunter who wounded the deer, moose or bear is the dog's handler or accompanies the dog's handler during the tracking and recovery of the wounded animal; and

(c) the dog is on a leash that is held by the dog's handler at all times when the dog is in a wildlife habitat.

Subsection 9(8) added: O.I.C. 2004-222, N.S. Reg. 162/2004.

This option is very workable and a very common sense practical approach for allowing the use of leashed dogs to track and recover wounded big game. Incidentally the definition of hunting in Nova Scotia's Wildlife Act is very similar to Ontario's old Game and Fish Act; i.e. there is no subsection d).

"hunting" means chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, searching for, trapping, attempting to trap, snaring or attempting to snare, shooting at, stalking or lying in wait for any wildlife whether or not the wildlife is then or subsequently captured, killed, taken or wounded, but does not include stalking, attracting, searching for or lying in wait for any wildlife by an unarmed person solely for the purpose of watching or taking pictures of it;

Experiences in other jurisdictions confirm that any fears the MNRF might have about illegal activities associated with tracking are unfounded. Facilitating tracking wounded big game with leashed dogs in a common sense manner without a number of barriers and restrictions that make effective tracking virtually unworkable is morally and ethically the right thing to do and can very easily be accommodated with the FWCA. It would also reduce waste (Section 36) and would actually enhance the tracking skills of hunters.

