



Policy Development: Utah Case Studies

Kevin Bunnell & Alan Clark

Utah Division of Wildlife Resources

Preface

Policies and significant Policy changes result from major (usually bad) events and agency experience

Case Study 1

2002 Bear Cub Incident

General Overview

Wildlife officer responded to a report of a bear in an elk camp. When the officer arrived he killed the bear (a yearling cub) in front of the group of hunters

Incident Description

- October 9, 2002
 - Elk hunting party sets-up camp on the south slope of the Unita Mtns.
- October 10
 - Bear cub wanders into camp
 - No sign of the cub's mother
 - Based on description given, DWR assumed it was a yearling cub
 - While hunters are away cub gets into garbage despite "efforts" to secure it before they left

Incident Description

- October 11
 - Morning
 - Cub found in a tree next to the camp
 - Hunters drive to town and contact the Forest Service and are told DWR will respond by noon
 - 4pm
 - After no response, hunter return to town and reach DWR officer on his cell phone
 - Officer asked hunter to move their camp, but they refuse
 - 5pm
 - DWR officer arrives at the camp and asks “where is the little bear”
 - Without explaining his intentions the officer tells the hunters to “cover your ears” and shoots the bear cub with his sidearm
 - Bear cub falls from the tree wounded but not dead
 - Hunters ask the officer to shoot the cub again to “put it out of its misery”
 - Officer refuses because there is a group gathered at the site and he is concerned about safety
 - After the cub dies the officer puts the carcass in the back of his truck with his dog and leaves the area

Incident Description

- October 14th or 15th
 - Hunters contact DWR Director
- October 16
 - DWR Director issues press release on the incident
- October 19
 - Media Storm begins and lasts through the end of November
 - Examples of Media Headlines
 - 10/19 - 'Execution' of Cub Shocks Witnesses
 - 10/21 – Humane Society Furious Over Killing of Cub
 - 10/24 – Wildlife Officer Who Shot Cub will Keep His Job
 - 10/24 – Bear's killing was proper, state says
 - 10/29 – Officer who shot cub will keep job
 - 10/31 – 'How I handled it was wrong' officer says he obeyed orders in shooting cub
 - 11/4 – Mom uses State E-Mail Address to Defend Bear Cub Killer, Share Red Herrings
 - 11/21 – Lawmakers Hear Bear Tale

Incident Description

- Editorials and Letters to the Editor also continued for over a month
 - Examples of Editorial Titles
 - 10/23 – Heinous Crime
 - 10/23 – DWR's Obligation
 - 10/27 – DWR should change staff, protocol
 - 10/28 – Bear Cub Blame
 - 10/30 – Lay Off DWR Officer
 - 11/5 – A Good Man
 - 11/25 – Wildlife agency is 'out of control'
- First incident involving DWR that went viral on the internet
 - Email campaign generated thousands of emails from around the world

Policy Implications of this Incident



Learn from the Experience

- Complete revision of the DWR Black Bear Policy
 - Added requirement for employees to explain what's going to happen and why to the public prior to doing anything
 - Added a requirement to inform interested parties how the incident was ultimately resolved
 - Decision point on how to resolve bear incidents changed from Regional Wildlife Manager to Regional Supervisor
 - Strong emphasis on rehabilitation of bear cubs
 - Emphasis on preventative action
 - Increased emphasis on training employees
 - Increased emphasis on humane treatment of bears involved in nuisance activities
- Rehabilitation of bear cubs became SOP

Case Study 2

2007 Fatal Bear Attack

General Overview

An eleven year old boy (Samuel Ives) was attacked and killed by a black bear in American Fork Canyon on June 17, 2007.

The Boy was pulled from his tent at approximately 10:30 pm and carried about 150 yards away from the camp where the bear killed him

Incident Description

- On June 17, 2007 (Father's Day), an eleven year old boy (Samuel Ives) was attacked and killed by a black bear in American Fork Canyon
- A bear incident occurred in the same dispersed campsite the evening before.
 - Although the bear ripped an occupied tent and destroyed a couple coolers, no one was injured.
- UDWR responded to the 1st incident and pursued the bear with hounds for nearly four hours and several miles with the intent to kill the bear.
 - At approx 4:00pm the hounds used in the pursuit lost the ability to follow the trail and the UDWR decided to end the pursuit for the evening and return the next morning with bait and a trap to attempt to capture the bear.
 - The pursuit effort ended more than a linear mile and ~ 1000ft lower in elevation from the campsite where the incident occurred.
 - When UDWR personnel left the area at 5:00 p.m. on Sunday, June 17th, the campsite was clean and unoccupied.

Incident Description

- On Sunday, June 17th at approximately 7:00 p.m., Samuel Ives and his parents set up camp at the same site where the bear incident occurred the evening before.
- At approximately 10:30 pm Samuel was pulled from a tent, where he and his parents were sleeping, by a black bear and carried 150 yards away from the campsite where the bear killed him.
 - The incident was initially reported as a child abduction
- At approx 1:30 am it was determined that Samuel had been attacked and killed by a bear
- At approx 3:00am DWR and WS personnel again began pursuing the bear with hounds
- By 5:00 a.m. on Monday June 18th the media had heard of the incident and was seeking information.
- At approx 11:00am the bear was located and killed by DWR and WS personnel

Policy Considerations: Have a Plan*

- *As a result of this incident UDWR added an appendix to its bear policy that outlines the procedures following a bear attack. In addition the LE section has developed a formal response plan that is connected to the policy
- You don't want to be dealing with this type of situation "on the fly"
 - Potential sections in a plan
 - Contact list – who needs to be called
 - Resource list – who has what
 - Victim information forms
 - Evidence collection forms
 - Narrative forms
 - Witness interview forms
 - Photo log
 - Policies and Procedures
 -

Policy / Plan Considerations:

Victim / Public Welfare & Safety

- If an attack results in a serious injury, but is not fatal the victims welfare is the **FIRST** and **TOP** priority
 - Administer first aid and get emergency medical personnel to the scene
- If an attack results in a fatality
 - Respect the victim and get Law Enforcement involved immediately – They are trained to deal with these situations
- If the offending animal is still in an area where there are people public safety is the next priority
 - Inform the public of the incident and have them leave the area or stay in a secure location
 - Work with land management agencies and law enforcement to coordinate area closures / evacuations

Policy / Plan Considerations: Securing the Scene / Preserving Evidence

- In order to preserve the evidence that will be needed later, the attack site must be treated as a crime scene
 - Use law enforcement - they have the expertise and training
 - Control access to the area
 - Establish a command post outside the incident area
 - Preserve tracks to aid in identification of the offending animal (i.e. track size, claw length....) so that hounds can be used to capture the offending animal
 - Preserve any biological evidence (anything that might contain DNA) from the offending animal to aid in identification
 - Interview victim & witnesses – get the facts of what happened

Policy / Plan Considerations:

Capture & remove the offending animal

- Efforts to capture and remove the offending animal should begin as soon as possible
 - If at all possible begin pursuit with hounds within 6 hours of the incident
 - After 24hrs pursuit with hounds may not be possible (can be substantially less in hot dry conditions)
- Communication between capture efforts and command post is helpful
- When euthanizing the animal do not shoot it in the head
 - Brain material is required to test for rabies
- After the animal has been killed:
 - Top priority is to preserve evidence that will link the animal to the incident
 - Wear gloves and a facemask to avoid contamination
 - Wrap the head and paws in paper then plastic bags to preserve DNA evidence from the victim
 - Do not open the carcass
 - Place the entire carcass in a body bag
 - Get the animal to a vet lab as soon as possible for disease testing and a complete necropsy – Could mean driving all night or flying samples

Policy Considerations: Roles and Responsibilities

- Who has authority for what
 - First on Scene – first aid, call 911, preserve scene
 - First Responders – medical care and welfare of the victim
 - State Wildlife Agency (biologist and LE) – capture and disposition of the animal(s) involved
 - Local Law Enforcement (with support from agency LE) – public safety, evacuations, road closures, disposition of the victim (if fatal), scene security / investigation
 - Land Management Agency – campground closures / evacuations, road closures

Policy Considerations: Dealing with the Media*

*As a result of this incident UDWR added an appendix to the bear policy that outlines how to respond to the media

- Assign a single point of contact for the media
- Information the media will want
 - What happened?
 - When?
 - Was anyone injured or killed?
 - Condition of victim(s)?
 - What is the responsible agency doing?
 - How long will it take?
 - Who is responding?
 - Is the public at risk?
 - Is there access to photo opportunities?
 - Is there written documentation of the incident?

Policy Considerations: Dealing with the Media

- Things to **REMEMBER** when being interviewed
 - Express concern and sympathy for the victim and the victim's family
 - Never speculate about why something happened
 - Never respond with hindsight
 - Never judge the response
 - Never blame anyone for what happened
 - Don't try to be funny
 - Be honest – either you know or don't know, or can or cannot answer the question

Policy Considerations: Dealing with the Media

- Things to **AVOID** when being interviewed
 - Pointing fingers and shouting
 - Interrupting others
 - Dominating the interview
 - Answering too quickly
 - Appearing to be evasive

Policy Considerations:

Dealing with the Media

- **Look for opportunities to tell the whole story.**
 - A news conference can be a good tool.
- **Have all the facts before making statements to the media.**
- **Have good communication with personnel at the scene.**

Learn from the Experience

Outcomes from this Incident

- Development of a formal response plan
- Improved public awareness concerning safety in bear country
- Improved coordination between state and federal agencies
- Better signage and brochures
- Clarification of nuisance bear policy and guidelines
- Improved protocol and procedures for working with the media

General Policy Considerations

- Make policies discretionary
 - Use “may” and “should” language in policies instead of “will” and “shall”
 - Legal vulnerability will largely be based on whether or not policies are followed
- Make sure field personnel know and follow policies

Summary of Legal Actions

- Parents of Samuel Ives sued both the Forest Service (Federal Court) and the Utah Division of Wildlife Resources (State Court)
 - Federal case against the Forest Service was resolved on May 3, 2011 the Federal District Court - barring appeal
 - Family awarded \$1.95 million
 - State court initially dismissed the case based on governmental immunity because the State did not have the authority to close the area to camping
 - State Supreme Court overturned the dismissal and referred the case back to the District Court

Summary of the State's Defense

- After the case was referred back to the District Court the State of Utah has filed a motion for dismissal based on 2 arguments:
 1. The State did not owe an actionable legal duty to the victim because:
 - The State's internal black bear policy did not create a special relationship from which a duty of care arose
 - Contrary to the plaintiffs' theory on liability, the policy did not require the State to post warning signs, request closure of the camping area, or remove attractants in this case – Policy is internal and discretionary
 2. The State is immune because the plaintiffs' damages arise out of a natural condition on publicly owned or controlled land
- District Court has not yet ruled on the motion to dismiss