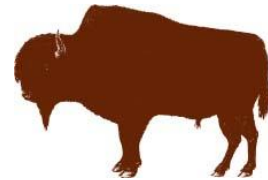


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February 29, 2012

Representative Alan Dick and members of the
House Resources committee
Sent via the Fairbanks Legislative Information Office

Re: House Joint Resolution No. 32

Dear Representative Dick and members of the House Resources Committee:

I appreciate the concerns of the members of the House Resources Committee about the potential restrictions on resource development and land use related to wood bison reintroduction in Alaska. I also appreciate that the current version of HJR 32 does not outright oppose wood bison reintroduction but gives support for congressional action to remove wood bison from the Endangered Species Act (ESA). While I do not personally object to this approach to resolving concerns about the status of wood bison under the ESA, I am concerned that there could be many political and legal challenges to overcome in order to achieve a congressional exemption of wood bison from the ESA. This approach could result in an extended delay or make the wood bison reintroduction project impossible.

I believe that completing regulations under section 10(j) of the ESA to designate wood bison in Alaska as a Nonessential Experimental Population (NEP) is a legally sound approach to resolving concerns about wood bison and maintaining opportunities for resource development and other land uses, including future hunting. I urge you to modify HJR 32 to include the option of completing the ESA 10(j) regulations.

Please keep in mind that proposed regulations would be issued first and there would be a minimum 60-day public comment period where the legislature and others could review the proposed regulations to see exactly what the provisions are. Wood bison cannot be released to the wild until the regulations are complete. Since the captive herd of wood bison at the Alaska Wildlife Conservation Center is owned and controlled by the State of Alaska the decisions on adequacy of the 10(j) regulations and moving forward with releasing the bison to the wild will be made by the State.

There are several clauses in the current version of HJR 32 that are inaccurate or outdated. The U.S. Fish and Wildlife Service (USFWS) has resolved some of the issues surrounding hunting of wolves in the Northern Rocky mountains and is ready to move forward with 10(j) regulations for wood bison in Alaska that provide for future hunting. The decision that hunting can be a valid and important tool to help promote wood bison conservation has been reviewed and approved all the way up to the national director level of the USFWS. Further, should litigation on the 10(j) rule occur, the USFWS is confident that the regulation will be upheld and it could help establish good case law that would further reaffirm hunting as a conservation tool. The state and USFWS need to work together and agree on suitable language on future hunting in the draft 10(j) rule so the USFWS can prepare a proposed rule to be published in the Federal Register. The legislature should encourage the Parnell administration to move forward quickly with this effort.

With the 10(j) and accompanying section 4(d) rules the scenario of locking up the Donlin Creek Mine included in HJR 32 would never occur. The 4(d) rules contain provisions to allow hazing of wood bison away from development activities. They also include provisions to allow "incidental take," which could include wood bison mortality, if the take occurred during an otherwise lawful activity. Further the draft ESA rules contain a provision that if the regulations are overturned in court or invalidated for any reason, the State would maintain the authority to remove wood bison from the landscape.

Unfortunately, since the draft regulations have never been published and made available for public review and comment members of the legislature and others who have and interest in wood bison restoration and resource development do not know exactly what the regulations will accomplish. This rule making process needs to move forward, perhaps concurrently with efforts to achieve congressional action, so that all viable options are being pursued to satisfy concerns about wood bison and the ESA and the State can move forward with releasing wood bison to the wild.

Background and Further Information

I am very familiar with the Alaska wood bison reintroduction project and efforts to address the status of wood bison under the Endangered Species Act (ESA) through my former position as Wildlife Planner for the Alaska Department of Fish and Game, Division of Wildlife Conservation in Fairbanks. I participated in years of discussions on wood bison and the ESA with staff from the USFWS and the Alaska Department's of Law and Natural Resources. Since my retirement last summer I have kept in contact with state staff working on the matter and recently met with key staff in the USFWS Alaska Regional Office.

The Alaska Department of Fish and Game has been working to restore wood bison in Interior Alaska for nearly twenty years. Wood bison restoration is a renewable form of resource development that will provide benefits to people for many, many years to come. Wood bison will provide a source of healthy red meat for Alaskans who depend on fish and wildlife. There will be opportunities for economic development based on bison viewing and hunting.

In 2008 ADF&G imported a small herd of wood bison from Canada. These bison and their offspring are receiving quality care at the Alaska Wildlife Conservation Center in Portage and will be used as founding stock for returning wood bison to the wild in Alaska.

While the wood bison are here there are concerns that because wood bison are an endangered species, reintroducing them could result in restrictions on oil and gas or other natural resource development. To address those concerns, ADF&G has been working with the Alaska Department of Law and the U.S. Fish and Wildlife Service to develop regulations to designate wood bison in Alaska as a "Nonessential Experimental Population" under section 10(j) of the Endangered Species Act. This type of regulation has never been applied in Alaska and would cause wood bison to be treated differently than any other endangered species in our state. The regulations will remove virtually all the regulatory requirements that normally apply under the ESA and designate the State to have primary management authority over wood bison herds. The regulations will prohibit designation of critical habitat for wood bison, a designation that is one of the primary concerns about possible restrictions on resource development where endangered species are present.

Congress added section 10(j) to the ESA specifically to address concerns about possible restrictions on land use where species are reintroduced into portions of their historic range where they are no longer present. The Department of Law concluded that wood bison restoration in Alaska fits perfectly with this provision of the ESA. Further, their research has shown that of the nearly 30 times this provision of the ESA has been used for other species in other states, none of the regulations have ever been overturned in the courts.

In the last year the ESA regulations have been delayed due to concerns about provisions regarding future wood bison harvest. Most recently the USFWS has indicated that provisions for future state-managed harvest can be included in the proposed regulations. The State and USFWS need to agree on language on future hunting to include in the proposed regulations so there is no further delay in the regulatory process.

To further respond to concerns about possible restrictions on resource development ADF&G changed the initial release site from the Yukon Flats or Minto Flats where Doyon, Ltd. is exploring for oil and gas to the lower Yukon-Innoko River area. There is little potential for conflicts with other resource development in this area and local residents have strongly supported the proposal. If wood bison roamed to the proposed Donlin Creek Mine the special ESA regulations would allow them to be hazed away or removed if necessary. If a legal challenge were to occur both state and federal attorneys have indicated they are confident the regulations would be upheld in court.

Designating wood bison as a Nonessential Experimental Population is a legally sound way to proceed with wood bison restoration while protecting other resource development activities. Publishing the ESA regulations will allow people and organizations interested in the wood bison project an opportunity to review what is being proposed and provide comments on how the final regulations can be revised and improved.

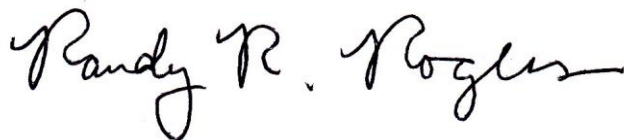
It is very expensive to care for the wood bison herd in captivity and the opportunity to restore wood bison in Alaska cannot be maintained indefinitely. Like a natural gas pipeline the project must be completed when all the factors line up correctly.

The Parnell administration and legislature need to support the efforts to establish special regulations for wood bison under the ESA. Once the regulations are completed they need to support ADF&G's efforts to implement the project as expeditiously as possible while the opportunity is present.

Conclusions

I urge members of the House Resources Committee and the Alaska Legislature as a whole to keep in mind the benefits that wood bison restoration can bring to residents and visitors to our state and support the Alaska wood bison restoration project. If Alaskans work together with a "can-do" attitude, there is no reason that wood bison restoration cannot proceed in harmony with other resource development.

Sincerely,

A handwritten signature in black ink that reads "Randy R. Rogers". The signature is written in a cursive, flowing style with a large, stylized "R" at the beginning.

Randy R. Rogers