

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

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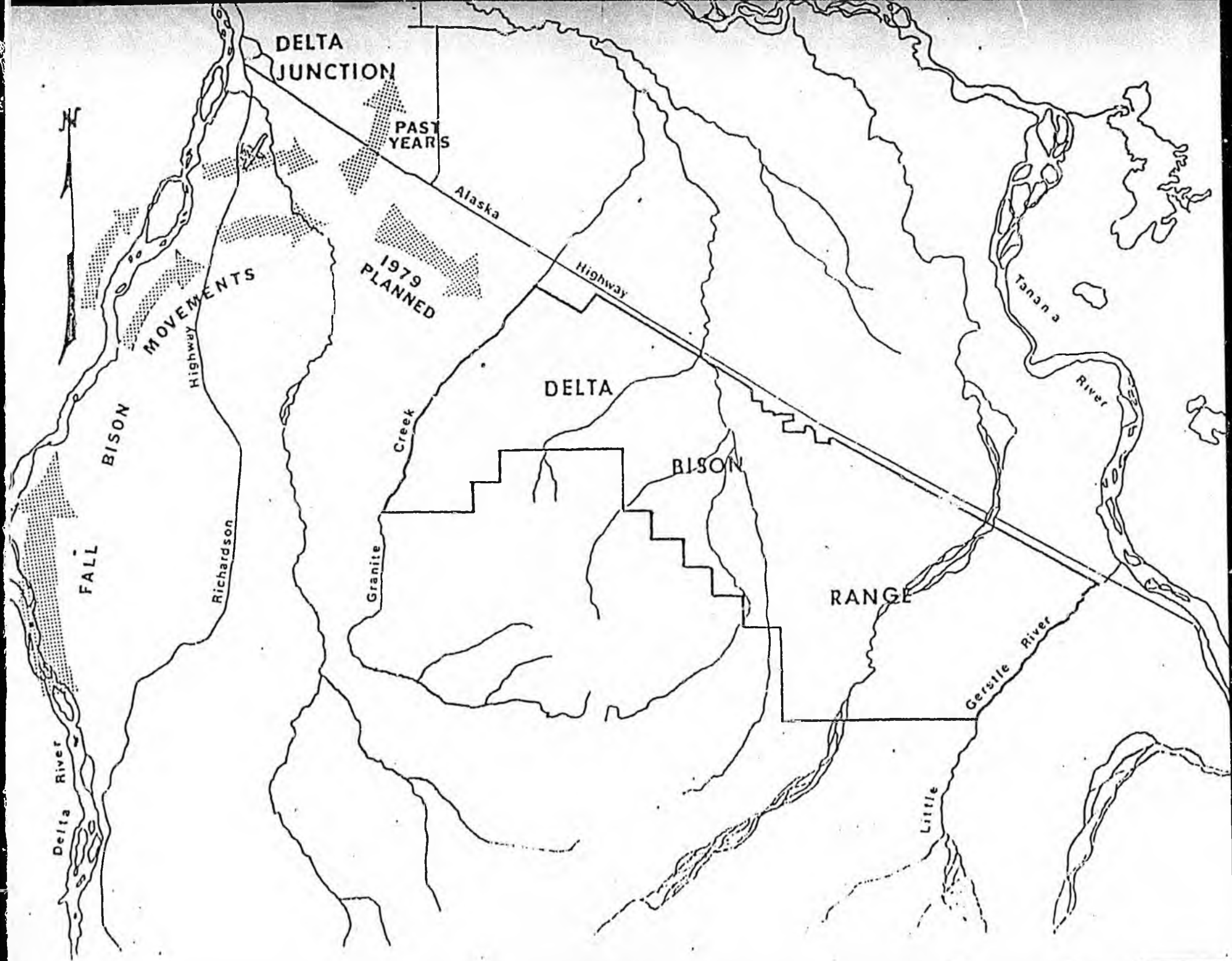
HRES

HB 78

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HB 79

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79



TO: All Members  
Alaska Agricultural Action Council

DATE: December 15, 1980

FILE NO:

TELEPHONE NO:

FROM: Robert C. Pollock *R.C.P.*  
Executive Director  
Alaska Agricultural Action Council

SUBJECT: Buffalo

At the last Ag. Council meeting (12-8-80), Richard Karr (tract I Delta Ag. Project) summarized the damage to his barley crop inflicted by the State's buffalo herd this past season. His estimate of financial loss was \$60,000, over 1,200 acres of grain. Based on the negative economies of this situation, Mr. Karr stated he would not plant in 1981 and would urge his neighbors to consider the guaranteed loss that bison cause.

Following Mr. Karr's presentation, six possible solutions were discussed:

1. transfer to private ownership
2. transport to other areas in State
3. investigate legal rights and help farmers sue State
4. fence the entire buffalo reserve or financially help farmers to fence
5. State reimburse farmers for damage
6. eliminate bison.

I would like to suggest another potential solution to this problem. It is not one solution but a combination of several alternatives that should be implemented simultaneously.

1. At the traditional calving grounds supply salt, and possibly hay or grain, only when bison appear ready to migrate east of the river and not earlier in season.
2. Under the supervision of Department of Fish and Game and the Alaska Agricultural Action Council, encourage the military to complete the 500 plus acre clearing immediately. Following the clearing, under the supervision of the Agricultural Experiment Station, Department of Fish and Game, and the Alaska Agricultural Action Council, the clearing will be planted to various crops in rotation.

3. A minimum of 1,000 acres (the military clearing plus cover) should be fenced. During the first weeks of the bison migration as many animals as possible (hopefully 40 to 60 percent) would be retained within this fenced area. In addition to feed, sufficient water must be present. At some preannounced date (October 15th - November 1st) all bison will be released. The maximum time of entrapment would be 90 to 120 days.
4. The Department of Fish and Game will be encouraged to continue their work with the bison, both within and outside the fenced areas (propane sound guns, etc.)
5. A higher hunting permit fee should be charged. After the \$5.00 application fee, \$500 to \$1,000 should be charged for the 50 actual permits. The value of the animal, in terms of meat only, exceeds this amount.
6. With the income from hunting permits, an insurance policy should be purchased for the farmers either thru the State (self insured) or private industry if possible. This insurance would make direct reimbursement to the farmers for their losses. These losses would be determined by professional adjustors similar to hail losses. Reimbursement for losses only occurs after a minimum amount of damage such as 2 or 3 percent of the damaged area.

The estimated cost to implement these solutions is as follows:

1. Salt delivered to calving grounds	\$ 5,000
2. Military clearing	-0-
3. Fence 1,000 acres and water	75,000
4. Plant 500 acres	40,000
5. Hunting Permits	-0-
6. Insurance Payments	-0-
	<hr/>
Total	120,000

*increase ~~penalty~~ penalty to 5000<sup>00</sup>  
for poaching of ~~bison~~ bison*

Council Members  
December 15, 1980  
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Only a combination of all solutions implemented at one time will solve this problem. If agriculture in Alaska is to continue developing, we must be able to assure farmers that they will not be subject to financial losses from buffalo damage.

Dave Hardy, Game Biologist  
Dept. of Fish and Game

August 17, 1979

J-66-383-79

465-3680

Ann E. Prezyna <sup>ER</sup>  
Assistant Attorney General

Depredation reparations

You have asked whether the state may be found liable for damages to crops by Delta bison, whether the state has any legal responsibility to help citizens exclude the bison or mitigate their damages, and whether the state may incur liability for the actions of a transplanted bear. The short answers, respectively, are maybe, yes, and maybe.

First, the state may be held liable for damages to crops by Delta bison. Although the state has not been sued for damages for animal depredations in the past, and although case law in other jurisdictions supports the finding of nonliability at common law for damage inflicted upon property by wild animals protected by the state's game laws, the trend in recent years is to hold the state liable whenever there is any basis for doing so. In the eventuality of a suit for crop damage by bison, a peek at the ensuing exchange between attorneys might reveal something along the following lines of argument. Let us call the state's attorney Buffalo Bill, the plaintiff's attorney Sootha Bustards, and the judge Spitting Bull. The case is Ole Suing Smith v. The People of the State of Alaska.

Bill: ". . . Your Honor, there is no case law in Alaska which speaks directly to the issue of the state's liability for crop damages caused by wild bison. However, there is case law in other jurisdictions which amply supports the finding of nonliability for damage inflicted upon property by wild animals protected by the state's game laws, absent a specific statutory provision imposing liability. Annot., 93 A.L.R.2d 252 (1958). Alaska has no statutory provision that provides that a farmer may look to the state for a recovery of damages inflicted upon his crops by wild bison.

"Specifically, AS 16.20.300, ch. 39, SLA 1979 creates the Delta Junction Bison Range Area. It is the purpose of this act to perpetuate free-ranging bison on the land described in the act and to alter seasonal movements of bison herds on the land in order to diminish the damage caused by the herds to agriculturally developed land. However, it is the state's position that the establishment of a game refuge, by itself, is insufficient to establish state liability for incidental damages done by the protected animals.

"This conclusion results even though the act specifically recognizes that the herds do damage agriculturally developed lands. That is, the legislature has chosen to attempt to alter the seasonal movements of the bison herds rather than compensate farmers for damages.

"This result is supported by the case law in other jurisdictions. As I have mentioned, those cases impose or deny liability on behalf of the state for damages inflicted by wild animals based upon the presence or absence of statutory authority rendering the state liable.

"For example, an early New York case held that the protection of game was a proper function of the government and was in the public interest, and that the state was therefore not liable for incidental damages done by the protected animals. Barrett v. State, 116 N.E. 99 (N.Y. 1917). This holding was followed in a later case denying a recovery from the state for damages to fruit trees inflicted by cotton tail rabbits. Corron v. State, 10 N.Y.S.2d 960 (1939). More directly on point is the seminal case of Commonwealth v. Masden, 175 S.W.2d 1004 (Ky. 1943), which found the state not liable for damages to crops by wild deer although the state had stocked a neighboring game sanctuary with them, since in so doing the state was discharging a governmental function.

"Thus it appears that there is neither common law nor statutory liability on behalf of the state for damages to crops inflicted by wild bison."

Sootha: ". . . The argument of opposing counsel relies primarily on the case law of other jurisdictions for the proposition that the state is not liable at common law for damage inflicted upon property by wild animals protected by the state's game laws. However, for the following reasons, it is my position that the state should be found liable for the damages inflicted by its bison to my client's crops.

"First, even if the proposition that the state may not be held liable under common law principles for damages to property by wild animals is generally true, I would argue that the Delta bison are in a special class because they have been "planted" in the area by the state. Cases along the line of Commonwealth v. Masden are not available to refute this argument because there the holding was based on a sovereign immunity type theory. That is, the state was discharging a "governmental function" in stocking the game sanctuary and, therefore, was not liable for the ensuing damages.

"The doctrine of sovereign immunity, which is the common law doctrine shielding the state from liability when the state is engaged in a governmental function, has been largely abrogated by statute, as is true in this state. AS 09.50.250 et seq. In particular, the proprietary--governmental distinction has been abandoned by the supreme court with respect to suits involving the state or its agencies. University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (1975). Therefore, it is my position that the State of Alaska cannot use the doctrine of sovereign immunity to shield it from liability for damages caused by bison which have been planted by the state. This proposition is true although in stocking the game refuge with bison the state was traditionally performing a governmental function and therefore was immune from suit.

"Second, current case law in this state supports a finding of liability under the terms of recently enacted legislation. Specifically, Adams v. State, 555 P.2d 235 (1976), held that the state, by its affirmative conduct in undertaking to inspect a hotel for fire hazards, assumed a common-law duty to proceed further with regard to hazards that were discovered. Similarly, under the terms of AS 16.20.300, ch. 39, SLA 1979, it is arguable that the state has assumed the duty of altering the seasonal movements of bison herds in order to diminish the damages caused by the herds to agriculturally developed land. Since my client is among those persons to whom the duty assumed by the state is owed, the state may be liable to him for negligent failure to alleviate the damages caused by the bison . . ."

Judge: "Gentlemen, it is clear from the facts of this case that Farmer Smith suffered crop damage due to the actions of wild bison from the adjacent state-managed game refuge. The basic policy of the law should be that when there is negligence, the rule is liability; immunity is the exception. State v. Abbott, 498 P.2d 712 (1972). Arguably, the state may be found to have a common law duty to keep the bison from Farmer Smith's field, especially since it has undertaken to maintain a herd of wild bison in the vicinity of the Delta barley project. Alternatively, it may be argued that the state has assumed the duty to exclude the bison by virtue of the passage of an act obligating the state to undertake the responsibility of altering the seasonal movements of the herds to mitigate the damages to agriculturally developed land.

"In sum, when the state has a duty to take some affirmative action, when it has negligently failed to act as required, and when damages result, it may be held liable. Consequently, I rule that . . . [flips coin behind the bench]."

To recapitulate, the answer to your first question is that the state may be found liable for damage by Delta bison if a court were to find that it has negligently performed or failed to perform a duty to keep the critters away from farmers' crops. That is, a farmer might recover in a tort action against the state if he were to show that (1) the state has a duty (either at common law or by statute) to keep bison away from his crops, (2) the state negligently failed to perform this duty, and (3) he suffered damage as a result of the state's action (misfeasance) or lack of action (nonfeasance). For example, the state may be liable for crop damages if it were shown that the state did not make reasonable efforts to follow through on its self-imposed responsibility of attempting to mitigate crop damages by undertaking to alter the seasonal movements of the bison herds. This is the "good samaritan" liability theory of Adams v. State, discussed above. The strongest argument against application of the Adams rationale, it seems to me, is the lack of detrimental reliance by Farmer Smith; that is, Farmer Smith probably has not relied, to his detriment, on the state's representations (that the state would keep bison away from Farmer Smith's fields) in making his decision to plant barley. Thus we end up with the "toss of the coin" decision alluded to above.

This brings us to your second question--whether the state has any legal responsibility to help citizens exclude the bison or otherwise mitigate their damages. As discussed above, a court could find that a common law duty exists by virtue of the fact that these are not strictly wild but rather state managed animals. More likely, however, the court may find that the state has assumed a limited duty to do so by virtue of the passage of the Buffalo Bill, ch. 39, SLA 1979. I think it is reasonably certain that the state must now make reasonable efforts to follow through on its legislative commitment to alter the seasonal movements of bison to mitigate crop damages to persons like Farmer Smith.

The answer to your third question, whether the state may incur liability for the actions of a transplanted

Dave Hardy, Game Biologist  
August 17, 1979  
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bear, follows a line of analysis similar to that used in response to your first question. That is, once the state has undertaken the responsibility of conducting bear-transplanting operations, it must do so in a non-negligent manner. This means that the state must use reasonable care when transplanting bears, "reasonable care" being whatever standard of conduct is reasonable under the circumstances, whatever that means. So don't do anything outrageous, like transplanting a bear that is a known troublemaker with a history of transgressions and probably little fear of man to the vicinity of a known recreational site.

By the way, if you'd like something more specific with regard to governmental liability for bear incidents, there are some federal cases on the subject which were brought under the Federal Tort Claims Act, substantially similar to our own AS 09.50.250. See, for example, Claypool v. United States, 98 F. Supp. 702 (S.D. Cal. 1951) (liability) or Ashley v. United States, 215 F. Supp. 39 (D. Neb. 1963), aff'd, 326 F.2d 499 (8th Cir. 1964) (no liability).

AEP:chw

cc: Bob Larson, Game  
Rod Mills, Protection

# Alaska State Legislature



REPRESENTATIVE  
H. PAPPY MOSS

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DELTA JUNCTION, ALASKA 99737  
(907) 895-4384

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## House of Representatives

February 20, 1981

The Honorable Terry Gardiner  
The Honorable Fred Zharoff  
Co-Chairmen of House Resources

Dear Sirs:

A serious conflict is developing between agricultural development and control of the free ranging bison herd. In order for orderly progress to proceed, it is necessary for the issue of the bison range and bison crop damage to be addressed. I personally feel that it is unfair to ask farmers to invest substantial amounts of their own money into crop production if the state does not plan for control of wild bison that can do literally hundreds of thousands of dollars in damage. It should be noted that these animals are technically owned by the State of Alaska.

Therefore, I would like to request a hearing as soon as possible on the following bills which I have introduced which address this situation:

House Bill 79: "An Act authorizing the Alaska Agricultural Action Council to compensate certain farmers for the loss of income attributable to bison."

House Bill 80: "An Act making a special appropriation to the Alaska Agricultural Action Council for the compensation of farmers suffering loss of income due to bison; and providing for an effective date."

House Bill 82: "An Act making a special appropriation to the Department of Fish and Game for clearing and planting on the Delta Junction Bison Range; and providing for an effective date."

House Bill 83: "An Act making a special appropriation to the Department of Fish and Game for the purpose of reducing bison crop damage; and providing for an effective date."

Thank you very much for your consideration on this matter.

Sincerely,

Handwritten signature of H. Pappy Moss in cursive script.  
H. Pappy Moss

REGIONAL ASSOCIATION ISSUES

The following issues were jointly identified by all five Associations. They are in two categories: A and B. Category A should be addressed immediately during this session. Category B requires more attention than time now permits, and will require thorough evaluation prior to actions. We recommend that a study group similar to last year's policy study group be created to examine category B issues.

<u>ISSUE</u>	<u>PROPOSED ACTIONS</u>	<u>COMMITTEE ACTIONS NEEDED</u>
<u>CATEGORY A:</u>		
1) Salmon enhancement loan fund program	a) Maintain program b) Appropriate fund c) Increase loan limit	a) Resolution b) Letter to Finance c) Bill
2) State-wide mark/tag evaluation program	a) Create program b) Appropriate fund	a) Resolution b) Letter to Finance
3) Private for profit hatcheries	a) Prohibit option	a) Bill
4) Tax revenue pass through to Associations	a) Specify timely and simplified procedures for 100% receipt pass through	a) Bill or Resolution
5) Regional planning team	a) Clarify role b) Appropriate fund	a) Bill or resolution b) Letter to Finance
6) Alaska Salmon Resource Development Program	a) Renew financial commitment to fund expanded public and private program	a) Resolution
7) Policy study group for category B issues	a) Create group b) Appropriate fund	a) Resolution b) Letter to Finance

CATEGORY B:

1) Relative role of public and private aquaculture	a) Clarify for maximum cooperation and minimum duplication and competition
2) FRED facility operation	a) Contract out to Regional Associations
3) Adult returns to FRED facilities	a) Sale of fish to offset operational costs
4) PNP Loan forgiveness period	a) Extend based on species life history
5) Matching reserve fund for region with depressed and declining stocks	a) Create fund and matching formula

March 8, 1980

I would like to register a complaint with the teleconference. I went to the teleconference here in Delta Jct. on March 4th with the purpose of giving testimony on the subjects of the Bison problem and Delta II.

We listened to people who were physically in Juneau taking up air time- 1 1/2 hours. I would like to see the following changes made in the teleconference procedures:

1. Have the people who are in Juneau stay off the air. They can discuss the scheduled topic at the end of the conference.
2. When a committee wishes to address a specific subject such as Delta II or the Bison, let the Delta office hear all who wish to testify before moving on to the other stations. A time limit of 3 to 5 minutes per speaker may be necessary.

#### TESTIMONY I HAD PREPARED FOR THE TELECONFERENCE MARCH 4th

My name is Henry Muth and I want to direct this to anyone who can do some good.

Born in Alaska and raised on a dairy farm in the Sand Lake area of Anchorage, our homestead at Anchor Point, in Homer, and finally ending up in the Matanuska Valley. I was directly involved in agriculture up until Sept. 1979, when my brother and I had a falling out. For the sake of peace in the family, I left the farm. I ended up in the Delta Jct. area working for an implement dealer.

I know from my own experience that you can make a go of farming in Alaska, with good management and state support. Hope to be directly involved in agriculture again in the near future.

First subject of concern: The Bison- I'm sure you've heard this before and will again, but here it goes anyway.

1. The farmers need immediate relief for the damages done to last years crop. Immediate meaning within the next 6 weeks, before spring planting time.
2. A crop insurance program should be set up to cover future losses until a program is devised and implemented to control the buffalo.
3. Set aside a chain linked fenced area to keep the buffalo in year round. See Delta Regional Development Committee Resolution 81-101.

Second Subject: Slaughter Facility- It should be built in the Delta Jct. area for the following reasons:

- 1. there already is the nucleus of a beef industry and swine industry here already. We are 3 years ahead of any other new areas in the state.
- 2. Contrary to what Mr Tomlin says the Interior is ideally suited for beef production.
- 3. It makes far more sense to keep the hauling of the raw materials as low as possible- especially with livestock, and then hauling the concentrated finish product.

As Mr. Wilson put in his report, this slaughter facility would break up the chicken or the egg syndrome, so prevalent in the meat industry in Alaska.

With planning, the completion date of the facility could coincide with the first market weight animals.

With Delta II coming up, it would be a good time to analyze this topic. See Delta Economic Development Committee Resolutin #81-102

DELTA II- I am emphatically in favor of Delta II, the only changes that I would support would be making the tract sizes smaller. Advantages of smaller tracts under 1000 acres:

- 1. Get more people involved. You would have a broader cross section of talent.
- 2. From a machinery and labor aspect, it seems when you get over 1000 acres, your needs get really expensive.
- 3. Why release to the people so late in the year? Why not move it from Sept. to June or July at the latest to give successful applicants a chance to get a few summertime projects done. Also there are a few farmers who purchased clearing machinery banking on Delta II being on schedule and are finished with it and stuck with the payments and interest until conceivably next year.

FINANCING- With all the money I've seen spent over the years studying different ag. enterprises, it seems that unless the State of Alaska is willing to back the farmers to the maximum, all the money spent on studies was for nothing.

A financing package I feel would be equitable for most everyone would be:

- 1. Down payment; Allow credits for agriculture experience  
I see no difference between someone like myself, with no money, but my whole life to put into a project, or someone who is a little better financially putting their life savings into a project.
- 2. Amortization on interest and principal during the start up phase with repayment based on time period or level of income or combination of both, with a clause stating that irregardless of income at the end of a specified time period full payments will be made.

I also feel that someone should look into the inequities of our current system. If an individual is solvent enough to be allowed to get a tract of land in a project such as Delta 1 why, when it comes to getting his operation financed he is totally unsuccessful. This has happened more than once in the Delta 1 project. Did the individuals financial picture change? I don't think so. Did the State of Alaska change its policy? I don't think so. I have a bad feeling that local personalities and politics comes into play. I don't know both sides of the story but standing on the edge and looking in something sure smells bad.

The current system puts one or at best six, who are influenced by one, in a position to control the destiny's of 40 to 50 farmers. The farmers never go before the board to present their plan, it is subject to the interputions of an examiner, who sometimes displays very little knowledge about the he was hired to perform. Enough on that, if you want more I can get it for you.

Agricultures need for capital is insatiable and also very immediate. I think that is common knowledge, what doesn't seem to be to well known is that the money will be returned many times over. I hope that by now the different departments involved in approving money for agriculture have a good handle on the financing level necessary for the success of the industry. \$100,000,000.00 would be enough to sufficiently finance the programs already begun and the ones in the future. The State of Alaska should be prepared to reimburse this sum if necessary. I can only hope the bugs are worked out of the system. For I am giving strong consideration to applying for Delta 1, and would like to get all the support I need in all the various areas of successful farm operation.

Thank you

[Faint signature]



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

March 3, 1981

MEMORANDUM

TO: Representative Pappy Moss  
FROM: Alexander Hoke *Alexander Hoke*  
RE: Bison Depredation of Crop Land in the  
Delta Barley Project  
Research Request No. 81-47

As a follow-up to our February 27 memorandum on this subject, we have contacted Del Primmer, Manager of the Spokane Regional Office of the Federal Crop Insurance Program, to obtain additional information. Mr. Primmer explained that the Federal Crop Insurance Program provides insurance to producers of many types of grain crops including barley with complete coverage against any risk due to natural causes. Mr. Primmer gave a few examples of the level of crop insurance and the corresponding insurance premiums for Whitman and Lincoln counties in the State of Washington which are the largest barley-producing counties in the nation.

Based on the average per-acre yield in these counties (1 to 1.25 tons of barley per acre) and an average value of \$1.60 per bushel, Mr. Primmer estimated that the program would permit indemnity coverage of up to \$80 per acre with insurance premiums ranging between \$3.20 per acre and \$8.00 per acre depending on the level of risk in the district. Similarly, insurance coverage for wheat-growing districts would be approximately \$200 per acre with a \$5 to \$8 insurance premium based on per-acre yields of 55 to 60 bushels and an average value of \$3.50 per bushel of wheat. Mr. Primmer noted that the federal government presently assumes 30% of the insurance premium cost to farmers insured under the Federal Crop Insurance Program.

Although Alaska is currently not eligible under the Barley Crop Insurance Program, an act passed by Congress in October 1980 provides for the expansion of the Federal Crop Insurance Program to all states. Mr. Primmer suggested that we contact the Federal Crop Insurance Program manager, Roland Wetzel, in Washington, D.C. for details on the planned expansion of the Federal Crop Insurance Program to all states. The addresses for both Mr. Primmer and Mr. Wetzel are listed below should you decide to contact them personally.

Mr. Del Primmer, Regional Manager  
Federal Crop Insurance Regional Underwriters  
U.S. Department of Agriculture  
920 Riverside Avenue, Room #369  
Spokane, Washington 99201  
(509) 456-3763

Representative Pappy Moss  
March 3, 1981  
Page 2

Mr. Roland Wetzel, Acting Manager  
Federal Crop Insurance Program  
U.S. Department of Agriculture  
Washington, D.C. 20250  
(202) 447-4603 or  
FTS 8-447-6797

We have requested from Mr. Primmer a copy of the actuarial tables showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding barley insurance for a county under the Spokane Regional Office jurisdiction. We will relay this information to you as soon as it becomes available. If there is additional information that we can provide you, please let us know.

AH/bf



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

February 27, 1981

MEMORANDUM

TO: Representative Pappy Moss

FROM: Alexander Hoke *Alexander Hoke*

RE: Buffalo Depredation of Crop Land in the  
Delta Barley Project  
Research Request No. 81-47

With regard to your questions relating to House Bill 79 (dealing with compensation by the State to producers of certain agricultural products for income losses attributable to bison depredation), we have included a number of information items on this subject (see attachments).

Among the attachments are two Assistant Attorney General opinions regarding the State's liability for wildlife depredation of crop land, including an August 17, 1979 opinion by Ann Prezyna which specifically addresses the question of crop damage by Delta bison. According to Ms. Prezyna's opinion, "a farmer might recover in a tort action against the State if he were to show that: (1) the State has a duty (either at common law or by statute) to keep bison away from his crops; (2) the State negligently failed to perform this duty; and, (3) he suffered damage as a result of the State's action (misfeasance) or lack of action (nonfeasance)." Ms. Prezyna's further suggests that the argument for the State's liability, with respect to bison depredation of barley crop land, may be strengthened by Chapter 39 of SLA 1979, which expresses the purpose of the State "to alter seasonal movements of bison herds on the land in order to diminish the damage caused by the herds to agriculturally developed land." Ms. Prezyna notes, however, that substantial arguments against the State's liability in this case can be made, and that only a court action can settle the matter. It is unclear whether House Bill 79 would set a precedent for the State's liability for damage caused by wildlife other than the Delta bison. The reason for this uncertainty is that the bison represent a very special case in which the State has assumed responsibility for the management and controlled movement of bison to mitigate damage to crops; no such responsibility has been declared for other wildlife.

An example of another state's attempt to protect landowners' property from damage due to wild animals is the Wyoming Weed and Pest Control program. In the Wyoming program, county commissioners assess a tax not to exceed 1 mill for each dollar of assessed valuation of property in the county which is used to reimburse property owners for damage caused by weeds or pests.

Representative Pappy Moss  
February 27, 1981  
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On the federal level, the Barley Crop Insurance Act is designed to insure barley growers against losses caused by "adverse weather conditions, insects, plant disease, wildlife, earthquake or fire." Barley crop insurance is available to eligible growers in the counties listed at the end of the attachment on this subject. Although Alaska is not included in this list, it seems that Alaska barley producers could be made eligible for this insurance program through a petition by our Congressional delegation to the Federal Crop Insurance Corporation. In this program, insurance premiums are determined by the Federal Crop Insurance Corporation on a county by county basis, and the rates are determined according to the level of risk to damage from the above causes. As an alternative to HB 79, it is conceivable that a similar insurance program could be adopted by the State of Alaska. Other federal crop insurance programs exist for producers of cotton, peanuts, flax, wheat, potatoes, and many other crops.

If we can be of further assistance in exploring any of the issues listed above, please give us a call.

AH/bf

**PENNSYLVANIA—Continued**

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Platte

[Amdt. 1, 44 FR 72091, Dec. 13, 1979]

**PART 419—BARLEY CROP INSURANCE**

**Subpart—Regulations for the 1980 and Succeeding Crop Years**

Sec.

- 419.1 Availability of barley insurance.
- 419.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 419.3 Public notice of indemnities paid.
- 419.4 Creditors.
- 419.5 Good faith reliance on misrepresentation.
- 419.6 The contract.
- 419.7 The application and policy.

Appendix A—[Reserved]

Appendix B—Counties Designated for Barley Crop Insurance

**AUTHORITY:** Secs. 506, 516, 52 Stat. 73, 77, as amended (7 U.S.G. 1506, 1510).

**SOURCE:** 44 FR 35196, June 19, 1979, unless otherwise noted.

**Subpart—Regulations for the 1980 and Succeeding Crop Years**

§ 419.1 Availability of barley insurance.

Insurance shall be offered under the provisions of this subpart on barley in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which barley insurance will be offered.

[44 FR 35196, June 19, 1979, as amended by Amdt. 1, 44 FR 72093, Dec. 13, 1979]

§ 419.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for

barley which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

#### § 419.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

#### § 419.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

#### § 419.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the barley insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity

would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

#### § 419.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the barley crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

#### § 419.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the barley crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting of applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract con-

tained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract, in the form provided for under this subpart, will come into effect as a continuation of a barley contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Barley Insurance Policy for the 1980 and Succeeding Crop Years, and the Appendix to the Barley Insurance Policy are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE  
FEDERAL CROP INSURANCE CORPORATION  
APPLICATION FOR 19— AND SUCCEEDING  
CROP YEARS  
BARLEY CROP INSURANCE CONTRACT

(Contract number)

(Identification number)

(Name and address) (Zip Code)

(County) (State)

Type of entity \_\_\_\_\_  
Applicant is over 18 Yes \_\_\_\_\_ No \_\_\_\_\_

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the barley seeded or insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.

Level election \_\_\_\_\_  
Price election \_\_\_\_\_  
Example: For the 19— crop year only (100% share)

Location/ farm No.	Guarantee per acre <sup>1</sup>	Premium per acre	Practice
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<sup>1</sup>Your guarantee will be on a unit basis (acres X per acre guarantee X share).

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the first crop year specified above, unless the time for submitting applications has passed at the time this application is filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED as provided in the contract. This accepted application, the following barley insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to signature)

(Signature of applicant) (Date)

Address of office for county:

Phone \_\_\_\_\_

Location of farm headquarters:

Phone \_\_\_\_\_

Barley Crop Insurance Policy

Terms and conditions  
Subject to the provisions in the attached appendix:

1. Causes of loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or

(4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. *Crop and acreage insured.* (a) The crop insured shall be barley which is seeded for harvest as grain and which is grown on insured acreage for which the actuarial table shows a guarantee and premium rate per acre and, where so provided on the actuarial table, a mixture of barley with oats or wheat or both seeded for harvest as grain. The production from such mixture shall be counted as barley on a weight basis.

(b) The acreage insured for each crop year shall be that acreage seeded to barley on insurable acreage, as shown on the actuarial table and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage (1) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (2) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (3) which is destroyed and after such destruction it was practical to reseed to barley and such acreage was not reseeded, (4) initially seeded after the date on file in the office for the county which has been established by the Corporation as being too late to initially seed and expect a normal crop to be produced, (5) of volume per barley, (6) seeded to a type or variety of barley not established as adapted to the area or shown as noninsurable on the actuarial table, or (7) seeded with

another crop, except as otherwise provided herein.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is seeded for the development or production of hybrid seed or for experimental purposes.

3. *Responsibility of insured to report acreage and share.* The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of barley seeded in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of seeding. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. *Production guarantees, coverage levels and prices for computing indemnities.* (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by the lesser of 4 bushels or 20 percent for any unharvested acreage.

5. *Annual premium.* (a) The annual premium is earned and payable at the time of seeding and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of seeding, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

## Percent Adjustments for Favorable Continuous Insurance Experience

Loss ratio <sup>1</sup> through previous crop year	Number of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20.....	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40.....	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60.....	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80.....	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09.....	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

## Percent Adjustments for Unfavorable Insurance Experience

Loss ratio <sup>1</sup> through previous crop year	Number of loss years through previous year <sup>2</sup>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19.....	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39.....	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69.....	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99.....	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49.....	100	100	100	116	126	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24.....	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99.....	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99.....	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99.....	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up.....	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

<sup>1</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

<sup>2</sup> Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; however, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. *Insurance period.* Insurance on insured acreage shall attach at the time the barley is seeded and shall cease upon the earliest of (a) final adjustment of a loss, (b) combining, threshing, or removal of the barley from the field, (c) October 31 of the calendar year in which barley is normally harvested, or (d) total destruction of the insured barley crop.

7. *Notice of damage or loss.* (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the barley on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to reseed to barley. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in paragraph (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not

later than 30 DAYS after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire barley crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. *Claim for indemnity.* (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of barley on the unit and that any less of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of barley on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of barley to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature production which grades No. 4 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent, and if, due to insurable causes, any barley does not grade No. 4 or better, or is graded smutty, garlicky, or ergoty, in accordance with the Official U.S. Grain Standards, the production shall be adjusted by (1) dividing the value per bushel of the damaged barley (as determined by the Corporation) by the price per bushel of U.S. No. 2 barley and (2) multiplying the result by the number of bushels of such barley. The applicable price for No. 2 barley shall be the local market price on the earlier of: the day the loss is adjusted or the day the damaged barley was sold.

(2) Any harvested production from volunteer crops growing with the seeded barley crop or small grains seeded in the growing barley crop on acreage which the Corporation has not given consent to be put to another use shall be counted as barley on a weight basis.

(3) Appraised production to be counted for a unit shall include: (i) the greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is seeded before barley harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of the lesser of 4 bushels or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. However, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of barley becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud

relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. *Transfer of insured share.* If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. *Records and access to farm.* The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all barley produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year; *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture, shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State/county	Cancellation date	Termination date for indebtedness
Arizona, Delaware, Maryland, North Carolina, and Pennsylvania	June 30	October 10.
California:		
Modoc and Siskiyou Counties	December 31	March 31.
All other California counties	June 30	October 10.
Idaho:		
Idaho County and all counties lying north thereof	June 30	November 30.
All other Idaho counties	December 31	March 15.
Oregon:		
Klamath and Malheur Counties	December 31	March 31.
All other Oregon counties	June 30	November 30.
Washington:	June 30	November 30.
All other states	December 31	March 31.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section and section 419.8 of the Appendix, the contract shall continue in force for each succeeding crop year.

#### Appendix—Additional Terms and Conditions

##### 1. Meaning of Terms

For the purposes of barley crop insurance: (a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding barley insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the barley crop is normally grown and shall be designated by the calendar year in which the barley crop is normally harvested.

(d) "Harvest" means the severance of mature barley from the land for combining or threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured barley crop at the time of seeding as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the barley crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of barley in the county on the date of seeding for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the barley crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county, or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

##### 2. Acreage Insured

(a) The Corporation reserves the right to limit the insured acreage of barley to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the seeding of barley.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

##### 3. Irrigated Acreage

(a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of seeding.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause, occurring after the beginning of seeding, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

##### 4. Annual Premium

(a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy

shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; however, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

#### 5. Claim for and Payment of Indemnity

(a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured barley acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the barley is seeded for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

#### 6. Subrogation

The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

#### 7. Termination of the Contract

(a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies, or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

#### 8. Coverage Level and Price Election

(a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and/or price election for any crop year on or before the closing date for submitting applications for that crop year.

#### 9. Assignment of Indemnity

Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

#### 10. Contract Changes

The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

#### APPENDIX A—[RESERVED]

#### APPENDIX B—COUNTIES DESIGNATED FOR BARLEY CROP INSURANCE

In accordance with the provisions of 7 CFR 419.1, the following counties are designated for barley crop insurance:

#### ARIZONA

Maricopa                      Yuma  
Pinal



## WASHINGTON—Continued

Columbia	Lincoln
Franklin	Spokane
Garfield	Walla Walla
Grant	Whitman
Klickitat	

## WYOMING

Big Horn	Park
Coshen	Washakie

[Amdt. 1, 44 FR 72093, Dec. 13, 1979]

**PART 420—GRAIN SORGHUM CROP INSURANCE****Subpart—Regulations for the 1980 and Succeeding Crop Years**

## Sec.

- § 420.1 Availability of Grain Sorghum Insurance.
- § 420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- § 420.3 Public notice of indemnities paid.
- § 420.4 Creditors.
- § 420.5 Good faith reliance on misrepresentation.
- § 420.6 The contract.
- § 420.7 The application and policy.

## Appendix A—(Reserved)

## Appendix B—Counties Designated for Grain Sorghum Crop Insurance

**AUTHORITY:** Secs. 506, 516, 52 Stat. 78, as amended, 77, as amended (7 U.S.C. 1506, 1516).

**SOURCE:** 44 FR 54454, Sept. 20, 1979, unless otherwise noted.

**Subpart—Regulations for the 1980 and Succeeding Crop Years****§ 420.1 Availability of grain sorghum insurance.**

Insurance shall be offered under the provisions of this subpart on grain sorghum in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which grain sorghum insurance will be offered.

§ 420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for grain sorghum which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price election at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

**§ 420.3 Public notice of indemnities paid.**

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

**§ 420.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

**§ 420.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the grain sorghum insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or em-

ARTICLE 2. DISTRICTS AND DISTRICT BOARDS

§ 11-6-201. Creation and designation of districts.

The territory within the boundaries of each county in Wyoming is created and designated as a predatory animal district. The district is a body corporate to be known by the name "Predatory Animal District of . . . County, Wyoming," and in that name it may hold property and be a party to suits and contracts. (Laws 1943, ch. 36, § 2; C.S. 1945, § 56-2502; W.S. 1957, § 11-99; Laws 1977, ch. 125, § 1; 1978, ch. 32, § 1.)

The 1977 amendment inserted a period following "district" so as to form 2 sentences, in the first sentence substituted "county in" for "of the organized counties of" and deleted "hereby" preceding "created," and in the second sentence substituted "the district is" for "and shall be," inserted "to be known" and deleted "and style of" following "the name." Effective date. — Section 3, ch. 125, Laws

1977, makes the act effective on May 27, 1977. Law review. — See "Administration of the General Property Tax in Wyoming," 4 Wyo. L.J. 227. Am. Jur. 2d, ALR and C.J.S. references. — 3 Am. Jur. 2d Agriculture §§ 17, 18, 34 to 46, 56; 4 Am. Jur. 2d Animals §§ 61, 62; 56 Am. Jur. 2d Municipal Corporations §§ 10, 12 to 15. 3A C.J.S. Animals §§ 137 to 237.

§ 11-6-202. Administration of districts by district boards; number and qualifications of members; term; filling of vacancies.

(a) The affairs of each district shall be administered by a board of directors, each of whom shall be a bona fide resident of Wyoming. The composition of the board shall be as follows:

(i) Three (3) directors shall be sheep owners, each of whom shall have paid taxes on sheep in the district in the year preceding his election. At the first meeting of the board, one (1) director shall be elected for a one (1) year term, one (1) director for a two (2) year term and one (1) director for a three (3) year term. At each subsequent annual district meeting one (1) director shall be elected for a three (3) year term. All sheep owners, whether an individual, corporation or partnership, who have paid taxes on sheep in the district whether or not the sheep are domiciled therein, are entitled to one (1) vote at the meeting;

(ii) Three (3) directors shall be cattle owners, each of whom shall have paid taxes on cattle in the district in the year preceding his election. At the first meeting of the district, one (1) director shall be elected for a one (1) year term, one (1) director for a two (2) year term and one (1) director for a three (3) year term. At each subsequent annual district meeting one (1) director shall be elected for a three (3) year term. All cattle owners, whether an individual, corporation or partnership, who have paid taxes on cattle in the district whether or not the cattle are domiciled therein, are entitled to one (1) vote at the meeting.

(iii) If the board of county commissioners determines that additional funds are necessary for an adequate predator control program, and county

funds may a there: in rais period (b) No of the prov for unexpi unexpired All memb qualified. Laws 1977

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(a) The 1 December,

(i) assess equaliz or catt calend:

(ii) stating (6) dire once in (10) da

(iii) similar owners district

(b) Whe sheep and c judges of e § 11-101; L:

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10/15/78  
March 12, 1981

Mr. ✓ Members of the House Resource Committee  
✓ Rep. Moss  
✓ Sen. Seckett

The State of Alaska has invested considerable time, money and effort in developing the present agricultural program, however, the State should also consider the non-agriculture people who are greatly concerned with the future of the bison herd.

During the last election, many present legislators used the agriculture issue as a stepping block for re-election, even though they were opposed to it during the 11th legislative session. If a legislator can climb the fence on a statewide issue for re-election, then perhaps they should use some foresight concerning the bison, for we consider it equally as important.

Agriculture has not received the greatest public relations, and to forfeit the bison in the name of progress will not improve the public attitude towards the agriculture project. Putting all threats and blame aside, and working with each other to solve this problem can only result in more favorable relations between factions. The bison can not fight for their own survival, they need assistance from the same source which presently threatens them.

Many of you legislators, when bison are mentioned, laugh and walk away feeling it is no concern of yours, and you really or don't care less about the problem. We the public that you represent, like to believe you are operating in good faith, and that our issues of concern are yours.

You can appropriate money to eradicate the hazardous predators that plague the moose and caribou, (which are wild and free roaming), why then do you feel the appropriations to save the bison a waste of time and money?

Of the \$33718,814.900 requested for special or new appropriations, the amount of \$425,000 seems more than reasonable to save a wild free roaming bison herd, that depends on us for survival.

There has been farming in this area for many years, (only now with the States new found wealth, have the "new" farmers begun to expect the State to refund them for bison damage. Their answer, is to look the opposite direction when poaching is evident, or to take it upon themselves to eliminate the animals, as has happened in the past.

We are requesting that the legislature be aware of our concerns, and willing to work with us to solve this problem of bison verses agriculture. We urge your support for HR 74 (on a one time only basis), HB 80, 82, and 83.

Sincerely,

*James C. Harris*  
James C. Harris

Box 574

Delta Junction, Alaska 99737

DEPARTMENT OF FISH AND GAME  
OFFICE OF THE COMMISSIONERSUBPORT BUILDING  
JUNEAU, ALASKA 99801ISSUE PAPER NO. 79-06DATE: November 27, 1979I. ISSUE:

Management of bison and bison habitat in the Delta Junction area of Alaska. Agricultural development in the Delta area has intruded on traditional fall and winter bison habitat resulting in crop depredation and expressions of irritation on the part of affected farmers. Bison are highly valued as a big game animal and for non-consumptive uses. Local sentiment in Delta Junction and Fairbanks is strongly in favor of maintaining a free-roaming herd.

II. BACKGROUND:

Bison are not endemic to Alaska but were introduced to the State in 1928 when a group of animals was transplanted to the Delta area from Montana. The transplant was conducted by the old Bureau of Biological Survey (now the U.S. Fish and Wildlife Service) and financed by an appropriation from the Territorial Legislature for the purpose of establishing another game animal species in this area. The animals thrived, growing to a herd of more than 500 by the 1950's. Subsequently, changes in habitat and severe winters resulted in lower populations. For a number of years carefully controlled sport hunting has been used successfully to stabilize the Delta herd at a level compatible with the range and to reduce bison damage to farms. The herd presently numbers about 275 animals.

The annual number of hunting permits for the Delta bison varies between 25 and 50, depending on current herd status. Between 3,000 and 4,000 applications are usually received for each annual quota of hunting permits, reflecting the high interest of the Alaska public in hunting this species.

Because bison have been commercially raised in several areas in other states, there has been interest among some Alaskans in obtaining bison for this purpose. Bison is one of two species of big game animals (the other being muskoxen) for which specific legislative authorization exists for the Board to grant private ownership of animals (A.S. 16.40.010-030). Bison were given to a number of land owners in Interior Alaska in 1962; however, no viable commercial enterprises resulted. Interest has increased lately, with requests being reviewed in 1978-79 from about 10 individuals for varying numbers of bison for private ownership. In addition, members of the House Special Committee on Agriculture have publicly suggested that some bison from Delta be given to private ownership, both to alleviate the agricultural damage problem around Delta and to encourage a new form of Alaskan agriculture.

Bison are available commercially, and may be imported into the State under a permit issued by the Commissioner. Two such permits are presently in force for groups of animals near Seward and on Kodiak Island.

The Delta Bison herd also served as the source of animals for transplanting to other areas of Alaska. Transplants from Delta resulted in populations in Farewell, Copper River and Chitina.

Bison are grazing animals requiring primarily grasses, sedges, and forbs, but they also use some browse. Favored vegetation in the Delta Junction area is spotty in distribution and is found on riverbars, streamside bluffs, shallow ponds, glacial moraines, and on some recently burned areas. Wet sedge meadows are grazed after freeze-up.

Availability of winter forage is an important factor affecting the Delta Bison herd. After spending the summer on traditional range along the Delta River, the herd migrates downstream to burn areas and farms near Delta Junction where it spends the fall and early winter. During late winter the bison move to the sedge-covered ponds within a fifty mile radius of Delta Junction. As spring approaches, the herd begins to move back leisurely to summer range along the river.

Prior to the recent development of agriculture in the Delta area, the lack of winter range was a severe problem. The reduction of bison numbers after the mid-1950's resulted in part from severe winters, which reduced further the available range, even though forest fires in the 1940's and 1950's had created some new winter forage in some areas. Brush and forest gradually has replaced the forage grasses and the capability of the area to support bison has declined. Since 1960, agriculture has increased and has provided additional food for bison in the Delta area; its positive effect on the bison has been dramatic. Calf production and survival through the yearling age have been consistently high and the physical condition of the wintering bison has been good.

Department staff has recognized for some time that the long term outlook for bison was bleak unless alternate management strategies were developed to divert bison away from agricultural areas. Sporadic problems have occurred with bison in unharvested crop areas, particularly barley fields, and various short term actions have been taken to alleviate the problem. Hunting pressure has been used in the farming areas to move bison out of these areas; seasons have been adjusted and hunting effort directed at problem areas. With varying degrees of success, herding bison on horseback has been attempted and in 1979 a number of "sound guns" or "exploders" were used to frighten bison out of fields until crops could be harvested. Salt blocks have been placed so as to delay fall migrations. A few of the farmers have fenced property with generally good success. After crops are harvested, bison roam widely throughout the farming area, generally causing few problems. The strong possibility exists, however, that with changes in agricultural practices in the future, bison will not be as welcome in the fields during the winter period as they are now.

The Delta Land Management Planning Study was initiated in November 1974 to plan for state land management in a 2,338,000 acre area centered in the Delta Junction area. This study was coordinated by the Alaska Division of Lands and involved 20 additional public and private agencies responsible for managing resources important to the Delta region. Each of these agencies was represented on the Delta Planning Team, which was aided by the Delta Citizen's Council, an advisory committee of 45 people. One major compromise developed and supported by the planning team and the Citizen's Council during the Delta Land Management Study was that agricultural development would occur only north of the Alaska Highway. The south side of the Alaska Highway would be reserved for wildlife habitat to replace that lost by development. One major component of that compromise was the recommendation to develop a Delta Bison Range. This concept was and is heavily supported by the Citizen's Council.

In response to the strong public interest in the Delta Bison Herd, the Alaska State Legislature created the 70,000 acre Delta Bison Range in 1979. The Range as established conformed to the recommendations of both the Delta Land Use Planning Study and the Alaska Department of Fish and Game Wildlife Management Plans. The Legislature also adopted a three year "sunset clause" for the bison range, making it imperative that the Department show visible results within a three year time frame.

In spring 1979, prior to the effective date of the Delta Bison Range, the Department acquired a special land use permit from the Alaska Division of Lands to proceed with bison range development on 1,500 acres of State land. The permitted land was within the boundary of the proposed Bison Range. Five 14 acre fields were cleared and planted with Weal barley by ADF&G and connected by trails. The fields begin on the western end of the Bison Range and continue east. Management plans drawn up for the bison range envision a series of areas cleared, planted to bison forage, and connected by bulldozed and seeded trails. An essential ingredient of this plan was the cooperation of the military in developing access trails from military property where bison commonly congregate to the newly developed habitat on the bison range. Without the interconnecting trail routes it is unlikely that bison could be diverted from their present movement patterns which take them into the agricultural area in early fall.

### III. CURRENT SITUATION:

Available winter range for bison is limited in extent. Further reduction may result from increased fencing and incompatible agricultural practices. Bison currently spend 4 to 5 months on unfenced agricultural lands seeking late fall and winter forage. Early fall use of these lands results in crop depredations. Increased state sponsored agricultural development will increase the conflicts between free-ranging bison and agriculture unless new alternatives are developed for bison management.

The area south of the Alaska Highway included in the Delta Bison Range does include lands that are suitable for farming. Arable soils are a necessity if range development for bison is to occur. Obviously, the presence of such soils also makes the area desirable for farming, thereby presenting a potential conflict between user groups.

Although the primary program emphasis for the Delta Bison Range is bison habitat development, the Delta Land Management Planning study emphasized the importance of the Range as mitigation for the loss of game habitat and public recreation resulting from agricultural development. Bison Range development will benefit moose, small game such as sharp-tail grouse and hares, and furbearers.

The cooperation of the military in the program of developing alternative range for the bison and deflecting their annual movements away from the Delta barley project lands is absolutely essential. Some soils on the eastern portion of Fort Greeley appear to be satisfactory for clearing and planting of crops for bison. The Governor's special assistant in charge of the Delta barley project has secured the Army's interest in bison habitat development on Fort Greeley using military manpower and equipment and state funding from the Delta barley project.

#### IV. ACTIONS TAKEN:

1. The Alaska Department of Fish and Game has been an active participant in the Delta Land Use Planning Study in cooperation with the Alaska Division of Lands, other agencies, and the public.
2. Draft wildlife management plans have been prepared and reviewed and commented upon by the public. These plans emphasize bison habitat development.
3. A preliminary bison operation plan which addresses the problems, options, and recommended actions was prepared in April 1979 and presented to the Board of Game.
4. The local public has been advised of the bison management problems. The Delta Fish and Game Advisory Committee has actively supported the bison management policies embodied in the Delta Land Use Plan.
5. Carefully controlled sport hunting has been used successfully to stabilize the Delta Bison herd and reduce agricultural depredation. Salt blocks have been used on the Delta River to delay the annual fall bison movements into the Clearwater farming area. The Department has also experimented with the fertilization of gravel bars along the Delta River to attempt to hold bison in the area longer by providing high quality foods.
6. Carbide and propane cannons were used in 1979 to reduce bison depredations on unharvested crops. Various herding and harassing techniques have been used to accomplish the same end in previous years.

7. Habitat development was begun on the Delta Bison Range in spring 1979 when 70 acres were cleared and planted to Weal barley in 14 acre fields.

8. Negotiations have been conducted with the military to develop a trail system and bison food plots on military land.

9. Public hearings were conducted in October 1979 at Delta Junction and Fairbanks on bison management. An additional hearing was held in November 1979 in Anchorage. The overwhelming opinion expressed at all three hearings was for the retention of a wild bison herd in the Delta Junction area.

V. RECOMMENDATIONS FOR FUTURE ACTION:

1. Maintain the Delta Bison herd as a wild, free-roaming herd of bison.

2. Actively pursue development of the Delta Bison Range. A detailed land management plan will be drafted, submitted to the public and other agencies for review, and adopted. The long term plan includes clearing and planting about 500 acres of bison habitat annually, so that an area of 5,000 acres will be converted within ten years to provide bison forage. Initial emphasis will be on development of additional cleared areas south of the 1979 plantings to complement the areas to be developed on Fort Greeley.

The most important work will be clearing and planting a series of 15-30 acre fields along the east-west axis of the range to support the herd and attract them from the farm area. These fields will be spaced 1/4 to 1/2 mile apart and connected by trails. Plantings of barley and oats will be used initially, but the emphasis will be on finding a suitable perennial that will reduce annual farming costs. The long-term plan for the east-west pattern of field development is designed to lure bison away from their current movement pattern across the Alaska Highway to the Clearwater area. These fields must lie near the northern edge of the Bison Range where they are available to bison forced off the agricultural areas.


Controlled burning will be conducted on portions of the Delta Bison Range in the future to enhance grasslands and shrub habitats.

3. Continue management of the Delta Bison herd by removing annually the numbers, ages, and sexes of animals necessary to keep the herd productive and at about the present populations level (about 275 animals) until more animals can be accommodated without crop depredation.

4. Continue harassment and other techniques of preventing crop damage by bison until bison movement patterns or timing have been altered sufficiently to alleviate the problem.

5. Investigate the possibility of using drift fences to deflect bison from critical travel routes.
6. Continue negotiations and cooperative management work with the military to develop bison habitat on Fort Greeley and to facilitate bison movement toward the Bison Range. The Department will fully support environmentally sound development of additional bison habitat on Fort Greeley.
7. We will pursue through appropriate channels the extension of the 3 year "sunset" provision of legislation establishing the Delta Bison Range. Given the fact that changes in both habitat and animal behavior require years to accomplish, such a restriction is unrealistic.
8. In certain high conflict areas such as tract A, we will recommend that land owners fence the area against bison encroachment using thirty inch hog wire plus 2 strands of barbed wire. This specification is recommended by the National Bison Association, an organization dedicated to commercially raising bison.
9. We will recommend to the Board that wild bison from Delta not be declared surplus for the purpose of granting them to private ownership. We will continue to approve applications for permits to import bison for private ownership providing health and custody standards are met.

VI. DECISION:

  
Ronald O. Skoog  
Commissioner

By: \_\_\_\_\_  
\_\_\_\_\_

FINAL ACTION

Date: \_\_\_\_\_

P. O. Box 1187  
Delta Junction, AK 99737  
February 22, 1981

Rep. H. Pappy Moss  
Pouch V  
Juneau, AK 99811

Dear Pappy:

I believe I erred in my original correspondance with you relative to an appropriation for the bison range. I suggested, in essence, that the money be used only for clearing and planting on the bison range.

Since that time, I have come to believe that to resolve our bison problems, a three-part approach may be best:

1. Rehabilitation of the summer range, including fertilization and prescribed burns to hold the animals longer;
2. Clearing and planting on the bison range (the major expenditure); and
3. Burning on the bison range (which would also benefit moose).

The summer range part is still hypothetical, but Bob Larson did demonstrate a tremendous increase in forage with small test fertilization plots on the Delta River. I am hypothesizing that more forage there will hold them longer in the Fall. I intend a pilot test this summer.

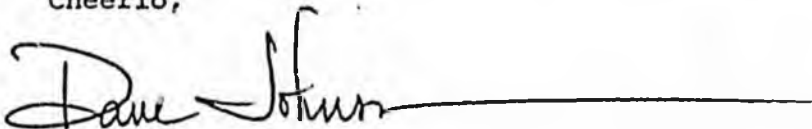
In case you think a sponsor substitute might be worthwhile in light of the above, I am attaching draft language.

Two other things: if it would help in "selling" an appropriation bill, we can send to you our bison management plan and a range development plan built around HB 82. You would have to make a formal request to the Game Division headquarters for this; I cannot send it officially. We have the bison management plan in hand and I am working on the long range development plans now.

The other thing is that the Game Division wrote at least two reports on the urea disaster, and should be available, also on formal request.

While on the subject of urea, I should mention that I have known Ken Fanning for a long time, and have worked closely with him on occasion. However, I did not supply him with information on this matter. He got that from my supervisors. (I would have told him what he wanted to know, just like anyone else, had he asked, of course.) My point is that I have taken the approach publicly and privately that it was an unfortunate accident, and have not tried to make hay on it.

Cheerio,



STATE OF ALASKA  
THE LEGISLATURE

FOUCH Y. STATE CAPITOL  
JUNEAU, ALASKA 99801  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1981

SUBJECT: Attached memorandum  
(Work Order Number 12-0325)

TO: Representative H. Pappy Moss

FROM: Joseph A. Guthrie  
Legislative Counsel 

This memorandum has been prepared by Bernie M. Tuggle, a legal extern serving with the Division of Legal Services. I have reviewed the memorandum and agree with the conclusions and advice given in it.

JAG:ljb

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1981

SUBJECT: State liability for damage to private property  
done by wild animals (Work Order No. 12-0825)

TO: Representative H. Pappy Moss

FROM: Bernie M. Tuggle 07  
Legislative Legal Extern

You have asked me if the state is liable for damage to private property done by either indigenous wild animals or non-indigenous wild animals such as buffalo and musk ox which have been brought into the state.

It is generally the rule, except where the doctrine of governmental immunity has been abrogated by judicial decision, that in the absence of constitutional or statutory provision therefor, a state exercising governmental functions cannot be made to respond in damages for tort. State v. Morris, 555 P.2d 1216 (Alaska 1976); Vater v. Glenn County, 323 P.2d (Ca. 1958); Faber v. State, 353 P.2d 609 (Colo. 1960).

Since protection of the wildlife of a state is peculiarly within the police powers of the state, Lacoste v. Department of Conservation, 263 U.S. 545, 552 (1924), compensation for injuries to property caused by wild animals may be recovered from a state, where provided by statute. Van Horn v. Wyoming Game and Fish Comm'n, 92 P.2d 560 (Wyo. 1939) (damage by deer to lettuce fields); People ex rel Kimball v. Crystall River Corp., 280 P.2d 429 (Colo. 1955) (damage to sheep by bears). However immunity from liability in tort may not be waived or abrogated except by an express statutory enactment or by necessary inference from a statute. Orser v. State, 582 P.2d 1227 (Mont. 1978); Jarrett v. Wills, 383 P.2d 995 (Ore. 1963). Since no Alaska statute exists to waive her immunity in regards to damage to property caused by wildlife and since the doctrine of governmental immunity has not been abrogated by the Alaska Supreme Court, Alaska

probably would not be held liable for damages to private property done by wild animals. See, AS 09.50.250; Carlson v. State, 598 P.2d 969 (Alaska 1979).

Leger v. Louisiana Dept. of Wildlife and Fisheries, 306 So.2d 391 (La. 1975) is illustrative of the above argument. In Leger, an action was brought against the Wildlife Commission to recover damages for the loss of a sweet potato crop ruined by wild deer. The Louisiana Court found that the wild animals found in the state were owned by the State of Louisiana in its sovereign capacity, as distinguished from its proprietary capacity, and that it owned them solely as trustee for the use and common benefit of the people of the state. Id., at 394. However the Court could find nothing in Louisiana law to indicate

That the state has a duty to harbor wild birds or wild quadrupeds, to control their movements or to prevent them from damaging privately owned property. If such a duty should be imposed on the state, then it would mean in many instances that the state would have to impound or confine some birds and animals, and they thus would cease to be wild creatures, but instead would be birds or animals which had been taken, possessed or harbored. . . . [If the plaintiff's argument were correct], it would follow logically that the state has the impossible duty of preventing damage to private property by all wild birds and wild animals, including such things as crows, sparrows, squirrels, rats and fox. We do not think these laws were intended to have such an effect.

Id., at 394 - 395.

The Louisiana Court concluded that the state was not liable to the farmer for damage to his sweet potato crop. Id. The Alaska Supreme Court probably would rule likewise in a similar factual situation.

The result would be the same for damage by non-indigenous animals which have been brought into the state. Barrett v. State, 116 N.E. 99 (N.Y. 1917), a frequently cited case, United States v. Long Cole Seafood Co., 582 F.2d 165 (2d Cir. 1978); State v. State Fish and Game Comm'n, 438 P.2d 667 (Mont. 1968), is on point. In Barrett, the legislature appropriated funds for the purchase of wild beavers to re-

February 26, 1981

stock the Adirondacks. Barrett owned a valuable track of woodland whose attractiveness depended upon the trees on it, which were destroyed by the introduced beavers. The New York Court held that Barrett could not recover from the state, since the introduction of beavers was within the police powers of the state in its attempt to protect beavers.

Whenever protection is accorded, harm may be done to the individual. Deer or moose may browse on his crops; mink or skunks kill his chickens; robins eat his cherries. In certain cases the Legislature may be mistaken in its belief that more good than harm is occasioned. But this is clearly a matter which is confided to its discretion. It exercises a governmental function for the benefit of the public at large, and no one can complain of the incidental injuries that may result.

Id., at 100.

BME:ijb

DELTA BISON MANAGEMENT PLAN

December 1, 1980

Alaska Department of Fish and Game

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## I. STRATEGIC PLAN

### A. LOCATION

In Game Management Unit 20, that area bounded by Delta Creek on the west, the Gerstle River and the Healy River on the east, the Goodpaster River on the north, and the Game Management Unit 13 boundary on the south.

### B. OBJECTIVES

To protect, maintain, and enhance the bison population in concert with other components of the ecosystem and thereby assure its capability of providing the greatest sustained opportunities to participate in hunting bison and, secondarily, to view and photograph bison.

To protect human property in human-bison interactions.

### C. MANAGEMENT GUIDELINES

Consider the ecological relationships of bison and the human benefits derived from bison and other wildlife in the formulation and implementation of management programs for bison.

This area supports many interacting plant and animal species which are dependent upon each other and on nonliving components

of their environment for their life requirements. These interrelationships are complex and incompletely understood at present.

All human use of the area has some effect upon its biotic components. However, to a considerable degree the biotic components of ecosystems are dynamic and adaptable to change. This inherent resiliency allows for the temporary alterations of ecosystems that most human use of wildlife represents, without causing permanent changes. Nevertheless, management of bison should be designed to minimize disruptive effects on the ecosystem while providing for optimum human benefits from all resources.

Because many species of wildlife in the area provide benefits to man, and because management of bison may affect other species, management programs for bison must consider probable effects on other species and their use by man and should be designed to yield the optimum mix of uses which constitutes the greatest public benefit.

Conduct habitat improvement programs to compensate for loss of bison habitat and to reduce agricultural damage.

Availability of winter forage is the most critical natural factor affecting the Delta bison herd. After spending the summer on traditional range along the Delta River, the

animals migrate north along the river, and when opposite Fort Greely, begin moving east toward the present agricultural area. Currently, bison spend four or more months on unfenced agricultural lands for fall and winter forage. When the bison arrive in the agricultural area before harvest, crop depredations occur. More and more farms are being fenced to avoid crop damage, resulting in a loss of winter habitat.

In 1979 the Alaska Legislature designated a 70,000-acre tract south of the Alaska Highway as the Delta Junction Bison Range Area. The Range, as established, conformed to the recommendations of the Delta Land Use Planning Study, which recommended setting aside land south of the Alaska Highway to compensate for wildlife habitat lost to agricultural development north of the highway. A major purpose of the Range is to provide winter range for bison. The Bison Range was also established to reduce crop damage by providing an alternative source of forage during the grain harvest period.

Habitat improvement programs on the Bison Range will involve clearing and planting grain or perennial grasses to provide fall and early winter forage. Additional areas will be burned to produce and maintain grasslands and shrublands beneficial to bison during late winter. This open habitat is particularly important because it should reduce late winter mortality in years of deep, crusted snow.

Efforts will be made to delay fall movements of bison from their summer range near the Delta River. This may involve habitat improvement and the use of salt. Trails linking summer habitat and the Bison Range will be developed to encourage bison use of the fall and winter habitat provided on the Range.

Habitat improvements discussed above will reduce, but not eliminate, bison-agriculture conflicts. Hunting, noisemakers, and, in some situations, fencing may be used to discourage use of croplands by bison.

Maintain a pre-calving population of 250-300 bison, depending on availability of suitable habitat.

Delta bison originated from a 1928 transplant from Montana. The animals thrived, growing to a herd of more than 500 during the 1940's. Subsequent population fluctuations due to the severity of winter and availability of forage have resulted in a present herd size of nearly 300 animals. Presently the herd is productive (70 calves per 100 cows and 80% yearling survival). Predation does not appear to be a major mortality factor. Mortality exclusive of the legal harvest results in an 8 to 10 percent loss per year. Losses include drowning, accidents, predation, illegal kills, vehicle-bison collisions, and starvation during winters of deep, crusted snow. Currently the population appears balanced

with available habitat. Herd size has been stabilized through the removal of annual increases by hunting. Hunting will continue to be the primary management method for maintaining desirable herd size. Should development of the Delta Bison Range increase the capacity of the habitat to support additional bison without increasing conflicts with agricultural operations, the herd size may be increased.

Control the number and distribution of hunters to distribute hunting pressure through the area and to maintain the harvest at desired levels and composition.

Hunting of Delta bison usually begins in September and continues through November. Hunting is controlled by permit. In recent years, nearly 4,000 persons have annually applied for 35-50 bison hunting permits. Participation by permittees has been high, and hunter success has been virtually 100 percent. Bison are relatively accessible to hunters using highway vehicles. Most hunters come from the Fairbanks and Anchorage areas. Local residents usually receive 8 to 10 percent of the bison permits. Very few nonresidents have taken bison from the Delta herd and virtually no professional guiding activities have been involved in the Delta bison hunts.

Hunters are required to attend an orientation course on land ownership, hunting techniques, and identification of bison

sex and age classes. The permit system allows the degree of control necessary to harvest selected sex and age components of the herd while directing hunter effort to areas which minimize conflicts between hunters, between hunters and private landowners, and between bison and farmers.

Encourage public viewing and photography of bison and enhance viewing facilities.

Delta bison provide for considerable viewing and photographing opportunities for residents and visitors alike. During the fall and winter, roadside observation of bison is possible on highways near Delta. Summer observations require use of binoculars and spotting scopes because bison are on summer range across the Delta River from vantage points on the Richardson Highway.

Interpretative signs will be placed and maintained on the Richardson Highway overlook and at a pullout near the Delta Bison Range. As the Bison Range is developed, other interpretative materials should be produced to aid bison viewers in locating bison and understanding their biology.

Maintain an active cooperative management program with State, Federal, and private landowners.

During their seasonal movements, the bison cross State, Federal, and private lands. Successful management of these animals as a wild, free-ranging herd will require close cooperation between the Department of Fish and Game and various landowners. For example, use of private lands for hunting is important in maintaining the desired herd size and as a means of discouraging bison use of farmlands before crops are harvested, and habitat improvement and trail development on Fort Greely would be valuable adjuncts to habitat enhancement efforts on the Delta Bison Range.

Maintain informed public involvement in Delta bison management issues.

Although the Delta bison herd has traditionally been managed as a free-ranging herd, alternative management strategies have been and will be promoted which would change the nature of public benefits derived from the herd. Public sentiment has been strong for maintaining a free-ranging herd, as demonstrated in the Delta Land Management Planning Study recommendations and in more recent public meetings on bison issues. Statewide interest in hunting Delta bison is evidenced in the large number of applications received annually for hunting permits. At the same time, there are legitimate interests in using all arable lands in the Delta area for State-supported agricultural development and competing demands for use of bison for domestic purposes.

Management decisions that provide optimum public benefits require the informed participation of all interested segments of the public. The Department has advocated public involvement in bison management decisions through the public review of management plans, in the Department's participation in the Delta Land Management Planning Study, through the annual regulatory process, and by conducting numerous public meetings regarding Delta bison. It is important that such efforts be continued in order that divergent public interests are represented in management decisions.

Maintain inventory and assessment programs which provide the information necessary to manage the bison population, its habitat, and the various public uses of the herd.

Post-hunting winter sex and age composition counts have been conducted each year to determine the status of the herd and, when combined with data on known winter mortality, have provided the basis for the subsequent year's harvest quota recommendations. Additional assessments of population status may become necessary.

Periodic aerial reconnaissance has been used, particularly in late summer, fall, and winter, to determine bison distribution. This information has been useful in directing hunting activity or harassment efforts to farm areas where crop damage may occur.

Information is limited on soil potentials, vegetative response to habitat manipulation efforts, and forage utilization by bison. Additional information along these lines is necessary if management programs are to provide maximum benefits.

Assessments of human use are important in evaluating the impacts of use on the bison population, in determining the nature and adequacy of current use opportunities, and in recommending improvements to existing use patterns.

## II. 5-YEAR OPERATIONAL PLAN

### A. Objectives, Actions and FY Workplans

#### 1. Population Assessment Program

##### a. Objectives

- (1) *To annually determine the population composition and dynamics of the Delta bison population, including sex and age structure, productivity and mortality.*
- (2) *To seasonally determine the distribution and movements of the Delta bison herd.*

##### b. Actions

- (1) The Department will continue to conduct annual posthunting winter sex and age composition counts of the Delta herd.
- (2) The Department will continue to monitor the seasonal distribution and movements of the Delta herd.
- (3) Determination of bison mortality will continue. Data on the sex and age of dead bison will be used

to supplement composition count data in evaluations of the herd's population dynamics.

- (4) Studies to identify and assess disease and other welfare factors that may influence the herd's health will be continued.

c. FY Workplans

2. Population Management Program

a. Objectives

- (1) *To maintain the Delta bison population at a level which can be supported by available habitat.*
- (2) *To maintain the herd in a healthy, productive condition.*
- (3) *To influence herd movements to minimize conflicts with agricultural interests.*

b. Actions

- (1) Considering the habitat now available for bison and the planned improvements of habitat on the Bison Range, a precalving population of approximately 275 bison with a sex and age composition of

approximately 45 bulls, 115 cows and 115 yearlings and 2-year-olds will be maintained by public hunting.

- (2) If public hunting is not successful in controlling the herd, transplants, slaughter, or other means of disposal of excess animals will be recommended to the Board of Game.
- (3) Efforts to alter bison movements to minimize crop damage will be continued. The methods used include the use of public hunting, noisemakers and other harassment techniques to discourage bison use of unharvested crops, and the use of salt blocks on summer ranges to delay fall movements into farming areas.
- (4) The Department will, upon request, provide specifications for fencing to exclude bison from farming areas. Recommended fence specifications will follow those of the National Bison Association.
- (5) Methods to reduce highway vehicle collisions with bison will be investigated to determine the most feasible means of minimizing bison mortalities and improving public safety.

c. FY Workplans

### 3. Habitat Assessment Program

#### a. Objectives

- (1) *To determine specific habitat requirements and patterns of habitat use by Delta bison.*
- (2) *To determine the suitability for and feasibility of habitat improvement or cultivation of Delta bison habitat.*
- (3) *To assess the extent and intensity of utilization of areas cultivated or improved by habitat management programs.*

#### b. Actions

- (1) Soils within the Delta Junction Bison Range will be evaluated as to suitability for cultivation.
- (2) Test plantings of perennial grasses will be initiated to determine suitable alternatives to annual crop cultivation.
- (3) Habitat improvement techniques will be tested to develop prescriptions for use of fire, herbicides, fertilizers and mechanical methods to improve bison habitat in the Delta area.

(4) Permanent transects, exclosures and other suitable range analysis methods will be used to determine long-term changes in bison habitat.

(5) Measurements of range utilization of natural and improved bison habitat will be initiated.

c. FY Workplans

4. Habitat Management Program

a. Objectives

(1) *To maintain suitable habitat capable of supporting a minimum precalving population of 275 bison in the free-ranging Delta herd.*

(2) *To develop and maintain sufficient bison winter range to minimize bison dependency on agricultural crops.*

b. Actions

(1) About 500 acres will be cleared and planted annually to provide winter range for bison on the Delta Bison Range. Approximately 2,500 acres should be under cultivation within 5 years. Initial planting

will be done in a series of 15- to 30-acre fields spaced from one-fourth to one-half mile apart and connected by trails along the east-west axis of the Range. This configuration should provide both winter forage and a distraction from farming areas. Plantings of barley have been used but perennial grasses may be used in succeeding years. Planting on the Bison Range may be through cooperative agreements between the Department and individual farmers.

(2) Prescribed burning to enhance grasslands and shrub habitats on the Bison Range will be initiated as soon as possible. These habitat types should benefit bison soon after clearing and the later shrub stages should benefit moose, sharp-tailed grouse, and other wildlife important to local people.

(3) Improvements to summer range will be initiated when management agreements among participating agencies are concluded. Habitat improvement techniques such as fire, mechanical brush removal, herbicide application and fertilization will be used.

(4) The Department will continue to work with the military to develop bison habitat on Fort Greely and to facilitate bison movement toward the Bison Range. The trail south of the Alaska Highway to the Bison Range boundary will be extended to the westernmost developed fields on the Range. This and other trails leading to the Range will be seeded and salted to attract bison to food plots on the Range.

c. FY Workplans

5. Use Assessment Program

a. Objectives

(1) *To annually determine the amount, types, timing, and distribution of human use of the Delta bison herd.*

b. Actions

(1) The Department will continue to annually obtain information on the location, chronology and composition of the harvest, hunter effort, success rates and residency of users. Conditions of hunting permits provide a convenient and effective means

of obtaining information on consumptive use, and this method will be continued.

- (2) Assessments of nonconsumptive use of bison in the Delta area will be initiated. The need for development of facilities or aids to nonconsumptive uses will also be investigated.

c. FY Workplans

6. Use Management Program

a. Objectives

(1) *To provide the greatest sustained opportunity to participate in hunting bison.*

(2) *To provide opportunity to view and photograph bison.*

b. Actions

- (1) The Department will recommend regulations to the Alaska Board of Game that will continue hunting of Delta bison under a lottery permit system with permit conditions similar to those established in 1979 and 1980. The recommended number of permits

to be issued will continue to be based on annual evaluations of herd status.

- (2) The Department will seek military cooperation and participation in the development of a public bison observation site on the east side of the Delta River.
- (3) The Department will work closely with the Division of Fish and Wildlife Protection to enforce regulations pertaining to bison.
- (4) The Department will continue to recommend to the Alaska Board of Game that wild bison from Delta not be declared surplus for the purpose of granting them to private ownership.

c. FY Workplans

7. Public Information Program

a. Objectives

- (1) *To inform the public about the history and requirements of the Delta bison herd, the issues involved in its management and the opportunities available for beneficial public use of the resource.*

(2) *To provide interested members of the public opportunity to participate in decisions affecting management of the Delta bison population.*

b. Actions

(1) A public relations program aimed at informing all segments of the interested public about issues affecting management of the Delta bison herd will be continued.

(2) The Department will continue to provide information on bison to the local Fish and Game Advisory Committee and any other interested organizations or individuals upon request. Public hearings or other appropriate forms of public input will be conducted when conflicts arise over management options.

c. FY Workplans

B. Schedule

Actions	Responsibility	Participating Agencies	Begin**	Complete**	FY81	FY82	FY83	FY84	FY85	Comments
Composition Counts	Area Office	ADF&G	0	0	1.0	1.0	1.0	1.0	1.0	
Distribution Surveys	Area Office	ADF&G	0	0	3.5	7.5	7.5	3.5	3.5	FY 82/83 includes expense to radio-collar female bison
Mortality Surveys	Area Office	ADF&G, ADPS	0	0	0	0	0	0	0	
Welfare Factors Assessment	Area Office, Region	ADF&G	0	0	0.5	0.5	0.5	0.5	0.5	Assistance from D&P Section
SUBTOTAL					5.0	9.0	9.0	5.0	5.0	
Permit Hunt	Area Office, Region Statewide	ADF&G	0	0	1.3	1.3	1.3	1.3	1.3	\$5.0 required annually for permit hunt, depredation abatement and harvest monitoring. Cost difficult to separate among components and all are here assigned equally (1.3).
Depredation Abatement	Area Office	ADF&G	0	0	1.3	1.3	1.3	1.3	1.3	
Reduce Highway Mortalities	Area Office	ADF&G	0	0	0	0	0	0	0	
SUBTOTAL					2.6	2.6	2.6	2.6	2.6	
Soil Surveys	Area Office	ADF&G, SCS	1980	1983	3.0	3.0	3.0	0	0	

Actions	Responsibility	Participating Agencies	Begin**	Complete**	FY81	FY82	FY83	FY84	FY85	Comments
Test Plantings	Area Office	ADF&G, UofA	1981	1982	1.0	4.0	0	0	0	
Habitat Technique Development	Area Office	ADF&G, UofA	1982	0	0	2.0	2.0	1.0	0.5	
Range Analyses	Area Office	ADF&G, UofA	1982	0	0	1.0	0.5	0.5	0.5	Obtain assistance from Coop. Wildlife Research Unit to set up program
Range Utilization Measurements	Area Office	ADF&G, UofA	1982	0	0	1.0	0.5	0.5	0.5	
SUBTOTAL					4.0	11.0	6.0	2.0	1.5	
Winter Range Planting	Area Office	ADF&G, Coop. Ext., US Army, Private	0	1990	40.0	75.0	75.0	75.0	75.0	Possible participation of farmers on share crop basis.
Prescribed Burning	Area Office	ADF&G, ADNR USBLM, US Army	1982	0	0	2.5	2.5	2.5	2.5	
Summer Range Rehabilitation	Area Office	ADF&G, US Army USBLM	1982	0	0	2.5	2.5	2.5	2.5	
Military Habitat Improvement	Area Office	ADF&G, USBLM US Army	0	0	0	0	0	0	0	
SUBTOTAL					40.0	80.0	80.0	80.0	80.0	

Actions	Responsibility	Participating Agencies	Begin**	Complete**	FY81	FY82	FY83	FY84	FY85	Comments
Monitor Harvest	Area Office	ADF&G	0	0	1.3	1.3	1.3	1.3	1.3	See comments above for permit hunt
Nonconsumptive Use Needs Surveys	Area Office, Statewide	ADF&G	1982	1983	0	1.5	1.5	0	0	Assistance from nongame staff
SUBTOTAL					1.3	2.8	2.8	1.3	1.3	
Bison Observation Site Development	Area Office, Statewide	ADF&G, US Army, ADOTPF	1982	1982		2.0	0	0	0	
Enforcement	Area Office	ADF&G, ADPS	0	0	0	0	0	0	0	
SUBTOTAL					0	2.0	0	0	0	
Public Information Dissemination	Area Office, Region Statewide	ADF&G	0	0	1.5	1.5	1.5	1.5	1.5	Assistance from PC Section
Public Meetings	Area Office, Region Statewide	ADF&G	0	0	0	0	0	0	0	
SUBTOTAL					1.5	1.5	1.5	1.5	1.5	
TOTAL					54.4	108.9	101.9	92.4	91.9	

\* Cost projections in 1980 dollars do not include salaries.  
 \*\* "0" indicates ongoing project.



## APPENDIX B. BACKGROUND INFORMATION

### General

The bison at Delta originated from a 1928 transplant of 23 animals from Montana to the Big Delta area. The animals thrived, growing to a herd of more than 500 during the 1950's. Subsequently, severe winters and decreased forage supply resulted in a lower bison population and lower range carrying capacity. Agricultural development in the area increased winter forage for bison and significantly improved the general condition of the herd and the over-winter survival of young animals. Since the early 1970's the herd has been maintained below 400 animals through closely regulated public hunting. The herd numbered about 280 animals in the winter of 1979 (Table 1).

During the period 1 April to 31 July the herd congregates on summer range along river terraces and gravel bars in the Delta River Basin where preferred forage such as grasses, legumes and other forbs are used. During August and September the herd migrates downstream to burns and farms near Delta Junction. Currently the herd spends 4 or 5 months on unfenced agricultural lands and is dependent on these areas for winter forage, primarily barley. During the late winter the bison move again, this time to sedge-covered ponds, generally within a 50 mile radius of Delta. As spring approaches, the herd begins a leisurely movement back to the summer range.

Before the advent of agriculture in the Delta area, lack of winter range was a severe problem. Heavy mortality commonly resulted when severe winters reduced available forage. Although forest fires in the 1940's and 1950's created sufficient new winter range to allow the herd to increase for several years, brush and forest gradually replaced grasses, and the capability of the area to support bison declined. Since 1960, agricultural development in the Delta area has provided bison with high-quality winter forage. Grazing on stubble fields after the harvest has caused few conflicts. However, crop damage has occurred when bison have arrived on farms before crops have been harvested. The potential of fencing by farmers to prevent crop depredation or to protect livestock operations makes use of agricultural areas uncertain.

Management of the Delta bison herd is a controversial topic which has attracted considerable public attention in recent years and which has been the subject of several legislative bills in recent sessions of the Alaska legislature. The strong public interest in the herd is generated by several concerns:

- (1) Public interest in hunting bison at Delta has traditionally been strong. More than 3,000 Alaskans apply annually for approximately 50 hunting permits. Many hunters want to continue having the opportunity to hunt bison at Delta.

(2) Expansion of agricultural development near Delta has the potential for increasing conflicts with free-ranging bison. Agricultural interests have and will compete with bison for use of arable soils in the Delta area.

(3) Recently, interest has grown in domesticating and commercially raising bison. These uses would compete with traditional uses of the herd and would require management on a basis other than that of maintaining a free-ranging herd.

### Management Programs

#### Depredation Relief

Various short-term actions have been taken to alleviate crop depredation by bison. Hunting pressure has been used in the farming areas to move bison out of these areas; seasons have been adjusted and hunting effort directed at problem areas. With varying degrees of success, herding bison on horseback has been attempted, and in 1979 carbide and propane cannon noisemakers were used to frighten bison out of fields until crops could be harvested. Salt in the form of 50 lb trace element blocks has been used along the Delta River to encourage bison to remain on summer range longer to delay the annual fall bison movements into the Clearwater farming area. Up to 1500 lbs of salt have been used annually. In addition, limited fertilization experiments were conducted

along the Delta River in 1974 and 1975 to improve forage quality and quantity as a means of delaying fall bison movements. Results of those studies were encouraging but the expense of large-scale application of fertilizer has precluded implementation of the technique.

A few of the farmers have fenced their property. Because fences would eliminate the herd's access to winter food, the Department has encouraged large farms to not fence their lands or else to open gates after crops are harvested, until such time as alternative winter habitat can be developed.

#### Habitat Improvement

Growing public recognition and concern for the fact that increased agricultural development would increase the conflicts between free-ranging bison and agricultural enterprises as well as adversely affect other species of wildlife important to local residents led to establishment of the 70,000 acre Delta Bison Range by the Alaska Legislature in 1979. The Range as established conformed to the recommendations of the Delta Land Management Planning Study (DLMPS), a study initiated in 1974 to plan for state land management in a 2,338,000 acre area in the Delta Junction area. This study was coordinated by the Alaska Division of Lands and involved 20 additional public and private agencies responsible for managing resources important to the Delta region.

Although the primary purpose for the Delta Bison Range is to provide fall and winter food sources sufficient to support the Delta bison population, the DLMPS emphasized the importance of the Range as mitigation for the loss of game habitat and public recreation resulting from agricultural development.

Establishment of the Delta Bison Range and planned habitat management programs on the Range (see Habitat Management Program) have as one important purpose the alleviation of conflicts between bison and agricultural interests. Development of cultivated food plots on the Range and construction of trails to lead bison to such areas and away from farmlands are the principal long-term solutions to existing conflict situations. Construction of a trail and accompanying food plots on the Ft. Greely military reservation was initiated in 1980 to entice bison to areas on the Bison Range slated for forage development.

Preliminary soil surveys by the Soil Conservation Service indicate adequate agricultural soils are available to support cultivated crops on portions of the Bison Range. In addition, water is available for bison on both ends and in the middle of the Bison Range. At no point throughout the range will bison be more than 5 miles distant from free water, which is well within the limits of daily movement patterns for bison in Alaska and elsewhere.

In 1979, five 14-acre fields on the Bison Range were cleared and planted to Weal barley and connected by trails. The fields begin on the western end of the Bison Range and continue east. (Fig. 1). In 1980, construction of an access trail was started to lead bison from summer range across the Ft. Greely military reservation to the developed fields on the Bison Range. Construction of the trail was pursuant to provisions of the Ft. Greely Bison Management Plan, to which the Department of Fish and Game is signatory as one of several cooperating agencies. The trail and the associated food plots, trail plantings, fertilization, and salt baiting are essential supplements to the Bison Range developments, in that without the interconnecting trail routes it is unlikely that bison could be diverted from their present movement patterns and habituated to newly developed Bison Range forage areas.

Although provision of winter range on Bison Range lands will be a major factor in alleviating conflicts between bison and agricultural interests, improvement of bison summer range would be important to efforts to delay bison movements toward agricultural areas until after crops are harvested.

The present summer bison range totals 15,000 acres. A properly planned and controlled fire could double this acreage. Most of the land conducive to a controlled burn is under Bureau of Land Management control. Lands that could

be sprayed and fertilized are under control of the military. Lands totaling 15,000 acres to be considered for summer range development lie within the Delta River flood plain west of the river in T 13S, T 14S and T15S R 9 E. Approximately 8,000 acres are within the Ft. Greely reservation and 7,000 acres are under the management of the Bureau of Land Management. Cooperative management agreements for summer range enhancement need to be established with these agencies and range improvement work should be initiated as soon as practicable.

#### Hunting

Public hunting has been used successfully to stabilize the Delta herd at a level supportable by the range.

Limited hunting for Delta bison began in 1951 and has been permitted in most years since 1961. Since 1975 the annual number of permits issued has varied between 25 and 70, depending on herd status.

Hunters have been selected at random from among permit applicants through the use of a computerized selection program. Between 3,000 and 4,000 applications have been received for each annual quota of hunting permits, reflecting the strong public interest in hunting bison. Most hunters have come from the Fairbanks and Anchorage areas.

Very few nonresidents have hunted the herd, and virtually no professional guiding activities have been involved in the hunts. A \$5 permit application fee was instituted in 1977, providing a small but important source of revenue. In 1979 applications for the Delta bison hunt brought nearly \$20,000 to the Fish and Game Fund. Most of these funds were used in administration of permit hunts, drawings and related activities.

Bulls and cows have been hunted, as specified by permit, to maintain the desired herd sex and age structure. Harvests have ranged from 25 to 75 bison, including crippling loss. Hunter success has been close to 100 percent. Since 1975, 132 bulls and 115 cows have been taken by hunters (Table 2).

The number of permits issued each season has been determined from population composition counts conducted during the preceding winter, with allowance made for known non-hunting mortality. Such mortality has ranged from 7 to 16 animals annually since 1975. Harvests in recent years have been directed toward the 2 to 3-year-olds among males and toward all female age classes in order to establish a bull age structure which assures adequate breeding of cows and still provides some adult bulls for hunters.

Hunting season timing has varied somewhat between years but generally has covered the period from mid-September to mid-November. Hunting effort has been distributed through

the season by assignment of hunters to specific two-week hunting periods. Hunters have been required to check into and out of the hunting area in person.

Hunters also have been required to obtain permission from land owners to hunt on private land. Farmers generally have been cooperative in allowing hunters access to their land, as hunting is important in discouraging bison from using farm fields.

Prior to 1975 hunters were accompanied by Department personnel to assure the harvest of animals of specific sex and age, to reduce crippling loss, and to facilitate hunter access to private lands. Hunting by unaccompanied hunters on a trial basis was successful in 1975, and by 1979 hunts by accompanied hunters were discontinued. A short hunter orientation course reviewing identification of bison sex and age classes, habits, bullet placement, hunter safety and land owner relations has been used to maintain a safe and successful hunting program. Crippling loss has been minimized by the requirement that hunters use a rifle which will propel a 200-grain bullet with a minimum of 2,000-lb. energy at 100 yards.

#### Other Uses

Delta bison have long been an attraction for visitors to the Delta area. They are relatively easy to view and photograph

in the late fall and winter when they are accessible near roads or in farm fields. During the summer the animals are more difficult to observe because of the inaccessibility of their summer range. They can, however, be seen with the aid of binoculars from a vantage point on the Richardson Highway near its junction with the Coal Mine Road where the Department of Fish and Game maintains a bison information sign. At that point the bison are about 5 miles away, across the Delta River. Improved opportunities to observe bison on their summer range could be provided with the development of an observation site on the bluffs above the east bank of the Delta River. Development of this site would need to be carefully planned and coordinated with the military and other participants in the Ft. Greely Bison Management Plan.

Bison have been commercially raised in several areas in other states, and there has been interest among some Alaskans in obtaining bison for this purpose. Bison is one of two species of big game animals (the other being muskoxen) for which specific legislative authorization exists for the Board to grant private ownership of animals (AS 16.40.010-030). Bison were given to a number of land owners in Interior Alaska in 1962; however, no viable commercial enterprises resulted. Interest has increased lately, with requests being reviewed in 1978-79 from about 10 individuals for varying numbers of bison for private ownership. In addition, members of the House Special Committee on Agriculture have publicly suggested that some bison from Delta be given to

private ownership, both to alleviate the agricultural damage problem around Delta and to encourage a new form of Alaskan agriculture.

Because domesticated bison are readily available outside of Alaska and the public support for maintaining this public resource in a wild, free-ranging state has been overwhelming, requests for bison for private ownership have not been granted by the Board of Game.

The Delta Bison herd has also served as the source of animals for transplanting to other areas of Alaska. Transplants from Delta resulted in populations established near Farewell and along the Copper and Chitina Rivers. Preliminary reconnaissance surveys in the 1960's indicated that suitable sites for additional transplants were limited in number and in their capability to support large numbers of bison. No transplants have been conducted since the Farewell herd was established in 1965-68.

#### Public Information Program

The Department has advocated involvement in management of Delta bison by an informed public on both local and state-wide levels. A draft management plan for the herd emphasizing bison range development was presented to and reviewed by the public, and public concerns have been incorporated in revisions to management recommendations. In addition the

Department was an active participant in the 4-year Delta Land Management Planning Study in cooperation with the Alaska Division of Lands, other agencies and the public. More recently, the Department conducted a series of public meetings in 1979 to determine public sentiment regarding transfers of wild bison to private ownership and management of the Delta herd on an other than free-ranging basis.

Information on Delta bison is available in a brochure entitled The American Bison in Alaska, prepared by the Department in 1980 for general public information. Additional information is available in the proposed Alaska Wildlife Management Plans, published in 1977, and in the Department publication Alaska's Wildlife and Habitat published in 1973.

#### Assessment Programs

##### Habitat Assessment

Limited habitat assessment work has been done on Delta bison range. In 1974-75 range utilization measurements were made with exclosure plots on the bison summer range. Results indicated an average utilization of 49 percent of available forage. In addition, potential increases in summer range forage production by the use of fertilizer was measured in 1974 and 1975 using paired plot tests. Forage production on the Delta River bar was increased an average of 195 percent.

in 1974, and an average of 234 percent in 1975, in comparison to forage yields on plots not fertilized.

Summer range utilization surveys were conducted in 1976 and 1978 with the use of the Ocular Estimate Method. In those years 50 percent of the available summer range forage was estimated to have been removed by bison.

In preparation for proposed cultivation of winter forage on the Delta Bison Range in 1980, the Department contracted with the Soil Conservation Service for a survey of soils near the western boundary of the Range. Approximately 5 sections of land were surveyed. Surveyed lands were classed in land capability Classes IV and VI, soils generally unsuitable for cultivation.

#### Population Assessment

Posthunting winter sex and age composition counts have been conducted each year to determine the status of the herd and, when combined with data on known winter mortality, have provided the basis for the subsequent year's harvest quota recommendations. Table 1 summarizes data collected since 1975.

Table 1. Delta Bison Winter Population Composition and Mortality 1975-1979

<u>Year</u>	<u>Bulls</u>	<u>Cows</u>	<u>Yearlings</u>	<u>Calves</u>	<u>Total</u>	<u>Mortality</u>
1975	43	113	56	79	291	9
1976	65	94	70	92	321	9
1977	46	76	80	84	286	16
1978	58	102	57	60	277	7
1979	62	101	52	69	284	11

Periodic aerial reconnaissance has been used, particularly in late summer, fall and winter to determine bison distribution. This information is useful in directing hunting activity or harassment efforts to farm areas where crop damage may occur.

#### Use Assessment

Conditions of the hunting permits have provided the means to assess consumptive use. Currently information is obtained on the sex and age of animals harvested, hunter success rates, timing and duration of hunts and residency of hunters. The number of applications for permits serves as an indication of demand for hunting the herd. Table 2 summarizes information on the Delta bison hunts compiled since 1975.

Table 2. Delta Bison Permit Hunt Statistics 1975-1979.

<u>Year</u>	<u>No. Applicants</u>	<u>No. Hunters</u>	<u>Harvest*</u>	
			<u>♂</u>	<u>♀</u>
1975	3662	50	23	12
1976	3694	50	26	25
1977	2121	70	38	47
1978	3555	50	31	20
1979	3930	25	14	11

\* Includes crippling loss.

Little effort has been made to assess nonconsumptive use of Delta bison. Local residents and other Alaskans have clearly expressed the high value they place on nonconsumptive use of the herd. There is a need to determine if and to what extent the Department will direct its programs to provide or enhance nonconsumptive uses of the herd.