



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

NOV 28 2008

In Reply Refer To:
FWS/AIA/039266

Commissioner Denby Lloyd
Alaska Department of Fish and Game
Headquarters Office
P.O. Box 25526
Juneau, Alaska 99802-5526

Dear Commissioner  Lloyd:

The U.S. Fish and Wildlife Service (Service) would like to express its support of the State's efforts to establish a free-ranging population of wood bison (*Bison bison athabasca*) within Alaska. We recognize the value of establishing such a population in support of the Canadian Wood Bison Recovery Plan for the long-term conservation of this subspecies.

The purpose of this letter is to clarify the legal status of wood bison and provide a recommended course of action to deal with issues of take and incidental take of wood bison. The wood bison is listed as endangered wherever found and, as such, would retain its endangered status if introduced into the United States. However, introduced populations may be designated as nonessential experimental populations under section 10(j) of the Endangered Species Act (ESA). Under a 10(j) designation, individuals of the subspecies would be treated as threatened for purposes of section 9 of the ESA, and a special rule could be developed, if deemed to be necessary and advisable to provide for the conservation of the subspecies. For purposes of section 7 of the ESA for Federal agencies, the 10(j) population would generally be treated like a species proposed for listing, which reduces Federal compliance obligations as well. The only exception would be any future releases that might occur on National Wildlife Refuge System or National Park System lands, where a nonessential experimental population would be treated as a threatened species for purposes of section 7 consultations under the ESA.

Simultaneously with the 10(j) rule, we could also propose a rule under section 4(d) of the ESA to specify regulations necessary and advisable to provide for conservation of the species. Developing a 10(j) rule and a 4(d) rule would entail publishing proposed and final rules in the **Federal Register**, and developing associated NEPA documents. Public hearings might be appropriate. Legal review would need to be coordinated with the Office of the Solicitor in the Department of the Interior.

We understand that the Alaska Department of Fish and Game is interested in having the maximum flexibility to manage free-ranging populations of wood bison in Alaska. This flexibility can be accommodated within the legal context of 10(j) and 4(d) rules to give your agency the appropriate latitude to manage the wood bison successfully. Once such rules are published by the Service, the State would be allowed to release animals into the wild and appropriately manage them. To expedite this process, we will need your assistance in preparing the scientific and administrative documents that are needed to support a decision for issuance of 10(j) regulations by the Service. Costs associated with these activities could be addressed by amending the current State Wildlife Grant Agreement for wood bison. The rulemaking process does not have to be completed immediately, but must be finalized before animals are released into the wild. Because we understand that you do not intend to release any animals for about 2 years, this should allow the State and the Service ample time to complete the process.

If you concur with this approach, I suggest we draft an agreement identifying each of our agency's respective responsibilities. For further assistance in this matter, please contact Geoff Haskett in our Alaska Regional Office, at 907-786-3542.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale", written in a cursive style.

DIRECTOR