



**FINAL Programmatic Environmental Impact Statement
Bison Conservation and Management in Montana
January 2020**

RECORD OF DECISION

Background

State law (§87-1-201 MCA) provides that Montana Fish, Wildlife and Parks (FWP) has the responsibility to manage wildlife in a manner that assists in the maintenance or recovery of species. Montana statute also requires FWP to manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under the state list of endangered species (§ 87-5-10 MCA) or under the federal Endangered Species Act (16 U.S.C 1531, et seq.) For many years, FWP has successfully worked with diverse stakeholders to implement conservation and management strategies that fulfill these directives for fish and wildlife restoration and assist in the maintenance or recovery of species. FWP desires to fulfill its statutory obligations to manage all wild ungulates in the state, while recognizing that bison management presents additional challenges compared to other species.

Prompted by public request, FWP began to explore bison restoration opportunities in 2012. A critical part of that exploration process included formation of a large and inclusive stakeholder group, the 'Bison Discussion Group.' This group met three times over the course of 18 months to help develop evaluation criteria for potential bison restoration opportunities and alternatives to be considered. FWP finalized a draft Programmatic EIS, Bison Conservation and Management in Montana, during the summer of 2015, held five public hearings, and opened a 90-day comment period.

The Bison Discussion Group chose a range of alternatives that primarily focused on characterizations of land ownership and on project proposal scale. Members of the Bison Discussion Group included Mark Albers, Keith Aune, Jay Bodner, Senator Taylor Brown, Ervin Carlson, Chelcie Cremer, Matt Derosier, Dick Dolan, Tom France, County Commissioner Chris King, Representative Mike Lang, Christian Mackay, Jeanne-Marie Souvigney, Dave McClure, Ron Moody, Vicki Olson, Senator Jim Peterson, Senator Mike Phillips, Rick Potts, Tom Puchlerz, County Commissioner Lesley Robinson, Dean Rogge, FW Commissioner Richard Stuker, and FW Commissioner Larry Wetsit.

The purpose of the programmatic EIS and the responsibility of the Department as outlined in the draft document was to determine if bison restoration is appropriate and if so, what potential opportunities are feasible and consistent within Montana's laws, policies, rules, and regulations.

The objectives of the programmatic EIS were to:

- Evaluate which method (s) for a pilot bison restoration effort may be appropriate, if any.
- Evaluate potential landownership scenarios where a restoration effort may be feasible.
- Evaluate potential costs and benefits of a restoration program.

The alternatives evaluated during the EIS process were:

- Alternative #1: No Action
- Alternative #2: Restoration of a Publicly Managed Bison Herd on the Private and/or Public Lands of Willing Landowner (s)
- Alternative #3: Restoration of a Publicly Managed Bison Herd on Tribal Lands
- Alternative #4: Restoration of a Publicly Managed Bison Herd on a Large Landscape Where there are Minimal Conflicts with Livestock

Decision

The Department of Fish, Wildlife and Parks has the obligation not only to follow the laws of the state of Montana and advance the restoration and recovery of our state's wildlife species in accordance with those laws, but also to credibly evaluate and respond to proposals from Montana's citizens who seek to conserve and restore wildlife, hunting, fishing, park and cultural resources. Our state's largely intact landscapes, rich historical and cultural heritage, and diverse and abundant fish and wildlife remain integral to our identities and quality of life. These values exist today as a product of the past commitments of our citizens, the longstanding management and restoration efforts of the Department of Fish, Wildlife and Parks alongside many federal and non-governmental, and tribal partners, and notably the significant voluntary contributions of private landowners, whose stewardship helps to safeguard the many wildlife and habitat values the public enjoys year in and year out.

Because the EIS was programmatic, and thus did not address site specific details, in this decision FWP has not chosen any one of the action alternatives over another, as any of them—taken alone, in some combination, or with modification—may fulfill the goals of restoration, depending upon the specific elements of a given restoration proposal. Instead, this decision incorporates both the guidance from Senate Bill 212 (passed in 2011 and encoded within §87-1-216 MCA) and the work of the Bison Discussion Group to set expectations for any proposal, parameters for reviewing proposals, and consideration of local community and public input.

In practice, bison restoration may be implemented on various types or combinations of land ownership, and in particular on lands where conflicts with livestock will be minimal. Restoration is also possible at various scales, but any successful effort may benefit from a smaller test project as detailed in the general guidelines found in section 3.3 of the programmatic EIS. This approach can provide opportunities to learn from management

actions and to consider increases or decreases in population incrementally as determined by conditions, resources, public sentiment, and adaptive management.

With this in mind, and based on the analysis completed in the programmatic EIS and public comments received, FWP has concluded that thoughtful implementation of a proposal within the general parameters of Alternatives 2, 3, and 4 or any combination thereof is appropriate. What determines the appropriateness of a specific bison restoration proposal is not the specific land ownership, but rather its application of the guidance from Senate Bill 212 or 87-1-126 MCA and its adherence to the work of the criteria to address set out by the Bison Discussion Group. Because the EIS was programmatic in nature, any concrete proposal for bison restoration will undergo site specific environmental analysis of impacts to the human and physical environment and include a public review process.

In the Programmatic EIS, FWP reviewed how wild bison are being managed at various locations in the U.S. and Canada. Wild bison have been successfully restored under a variety of management regimes and in a wide range of ecosystems. This record demonstrates that a wild bison herd may be restored in Montana, and that FWP, using the management tools it has used for decades with wild ungulate populations, could successfully manage bison by working with a variety of public and private landowners while providing significant hunting opportunities to the public. This is not to understate the potential controversy, or to minimize the legitimate concerns people may have; it is to say that if wild bison are restored to Montana, the record shows that management issues can be successfully addressed at a landscape scale.

Montana Environmental Policy Act & Public Process

The Montana Environmental Policy Act (MEPA) requires FWP to assess potential impacts of proposed actions to the human and physical environment, evaluate those impacts through an interdisciplinary approach, solicit public input, and make a decision as to how to proceed with a proposed action.

FWP completed a draft programmatic EIS in June of 2015 and released it for public comment through September 11, 2015. Statewide press information was submitted to all state newspapers. Additionally, the EIS was posted on FWP's webpage, <http://fwp.mt.gov/fishAndWildlife/management/bison/> and available at FWP offices. FWP held five public hearings during the 90 day comment period.

Summary of Public Comments

Just over 1,000 comments came in through the 'survey monkey' web service, and 108 comments came in via postal mail or email. Over 20,000 comments came in from members of the National Wildlife Federation via email. Comments were received from 149 different Montana zip codes and from 51 counties. Comments were also received from 38 states and one was received from Canada.

Some reviewers were not satisfied that the broad nature of the programmatic EIS met the need to analyze more specific impacts to the human environment. Others took issue with the appropriate order and scope of EA and EIS efforts.

There was support for moving forward with bison restoration, and support for a decision to be followed by a site-specific assessment. Much of the public comment and the attention of the Bison Discussion Group centered on restoration within the complex of lands adjacent to the CMR Refuge and Fort Peck Reservoir in northcentral Montana. There was support for restoration of bison on tribal lands as part of tribal efforts. Some argued that restoration of bison is already underway with the Yellowstone National Park bison currently on the Blackfeet, Fort Peck and Fort Belknap reservations. Others argued that bison herds on the American Prairie Reserve represent adequate bison restoration for Montana, and a few argued further that domestic bison found across Montana represent adequate restoration of the species.

Some reviewers were fearful that bison as wildlife anywhere in the state will threaten the economic stability of local communities, due to potential impacts on agricultural producers, changes in land use, and disease risk. There were concerns that continued discussion of bison restoration will result in the degradation of relationships with landowners and less public access for hunters.

Many reviewers argued that a bison restoration program resulting in anything less than 1,000 animals is too small for conservation of the bison genome and would not represent an honest attempt to restore the species. Other reviewers argued that any movement toward bison restoration, even with a small test project, is a step in the right direction, and pointed to positive ecological and economic opportunities for local communities. Overall, public comment was mixed, both in support of and in opposition to bison conservation and management in Montana.

Process for Advancing a Complete Proposal

This decision incorporates the guidance from both §87-1-216 MCA and the work of the Bison Discussion Group to set appropriate expectations for any proposal, parameters for reviewing proposals, and consideration of local community and general public input. A well developed proposal will include measures to protect the established economic and conservation contributions of working agricultural lands and incorporate strategies that help ensure bison restoration efforts are compatible with the shared values of all Montanans for managing our wildlife, hunting, and recreational heritage.

FWP has an obligation to properly respond to proposals to restore bison and ensure that valid proposals are reviewed in a transparent, timely, and responsible manner by the Department, the Fish and Wildlife Commission, and Montana citizens. Any proposal must recognize the significant challenges bison management entails, and strike an appropriate balance between restoration efforts and continued support for the existing business, conservation, and wildlife management interests of private landowners.

Private landowners have contributed greatly to Montana's wildlife heritage and FWP's management has ensured that the public trust for wildlife and public oversight is central to every decision. FWP provides professional wildlife management in partnership with the public, and is accountable to the public through public process as well as through the Fish and Wildlife Commission, the Montana Legislature, and the Governor. For many years, FWP has recognized that collaboration among knowledgeable and engaged Montanans representing a diversity of backgrounds and views can provide balanced and durable solutions to challenging natural resource conflicts. It is FWP's hope and expectation that this can occur with bison.

Any discussion moving forward must be informed by adherence to state law. The Legislature has clearly articulated these standards for bison through §87-1-216 MCA, and they include the adoption of a management plan by the Commission that addresses:

- Measures to comply with any applicable animal health protocols;
- Compliance with any identification and tracking protocols required by the Department of Livestock;
- Animal containment measures to ensure that bison transplanted or released on public or private land will be contained in designated areas;
- Fencing as determined necessary;
- Contingency plans to expeditiously relocate bison that enter private or public property where the presence of the animals is not authorized by the public or private owner;
- Contingency plans to expeditiously fund and construct more effective containment measures in the event of escape;
- Contingency plans to eliminate or decrease the size of designated areas, including the expeditious relocation of bison if the Department is unable to effectively manage or contain bison.

In addition to the requirements of state law, the Bison Discussion Group provided several factors to consider, including among them these important examples:

- The necessity that any bison restoration be with a wild, publicly managed herd;
- Identification of a specific area or landscape where a wild bison herd might be established with minimal conflicts and where containment requirements can best be achieved;
- Establishment of an advisory group to oversee wild bison management in a specific proposal area;
- Working with NGOs on the potential for establishment of a compensation fund to offset any costs incurred by landowners who may be impacted by the presence of a wild bison herd;
- The use of hunting as a tool for managing a wild herd and how it can be optimized as a tool for managing a wild bison herd; and,

- Consideration of how tribes can be involved in the establishment, management, and harvest of a wild bison herd, in light of the particular cultural and spiritual significance to Montana's native American tribes.

While FWP is not proposing a specific bison restoration effort at this time, and this decision does not change that the Department may consider site specific proposals submitted by interested parties, it is the responsibility of the Department to ensure components of any proposal meet statutory requirements (in particular §87-1-216 MCA) and address the factors laid out in chapter 7 of the final programmatic EIS. These factors lay out the most critical pieces of any proposal, and were put together with considerable thought by the Bison Discussion Group (they are appended to this Record of Decision in their totality for convenient reference). Proponents must present a proposal that addresses the significant factors for a site specific proposal. It is expected that any proposal submitted for consideration will have undertaken an analysis of the statutes, rules, and policies that govern state jurisdiction over wildlife, and any transfer of ownership between private parties and the state. The outcome of that analysis will provide the basis for a determination as to whether the state can or should move forward with any proposal that includes transfer of bison currently held in public or private ownership.

The first step for any proponent is submission of a proposal that addresses all necessary components for endorsement by the FWP Director. Upon endorsement, the Department will assist the proponents in proposal refinement as needed. The Department will also engage in an observer/advisor role at public meetings or advisory groups in order to inform the consideration of a proposal.

Upon deeming a proposal complete, FWP, through approval of the Director, would present the proposal to the Fish and Wildlife Commission. Based on direction from the Commission, FWP would undertake any required site-specific environmental analysis, including associated public comment and engagement. Any final decision would rest with the Commission, given its authority for translocation of wildlife under §87-5-711 MCA. This process best meets the "Benefits of the Proposed Action" as outlined in the programmatic EIS, by allowing for any effort to restore and manage bison to move forward in a timely, responsible, and transparent manner. This process further ensures that the Department and the Commission retain appropriate decision-making roles consistent with their authorities, and that any proposal undergo appropriate environmental review and public engagement in accordance with state law.

The Department anticipates the sideboards outlined in this decision and the final programmatic EIS will provide useful guidance for developing management responses for bison already established under other jurisdictions, such as tribal lands, should out-migrations occur. To be clear, this decision does not address restoration of bison on tribal lands because tribes retain jurisdiction over wildlife management within reservation boundaries, and as such the Department does not have authority over these efforts, some of which are currently underway.

Conclusion

Given the history of controversy and the many competing public expectations surrounding bison management in Montana, it is not surprising that this programmatic EIS has taken longer to complete than initially expected. This effort has consumed staff resources that necessarily compete among many other worthy demands from the public. FWP's responsibilities are broad, and a focus on these other responsibilities has allowed FWP to build strong partnerships for fighting aquatic invasive species, addressing chronic wasting disease, building trust with new Block Management cooperators, and conserving important working landscapes. Even so, in reviewing the public process and work done over this time period, FWP finds that the landscape—biologically, sociologically, legally, and economically—has not changed in circumstance from initiation of the process through today. In fact, a continued dialogue regarding bison restoration is the best way to achieve lasting results. No substantial changes are necessary to the original programmatic EIS, although some additional or corrected information has been added in response to public comments. Public comment and Department response to those comments is included as Chapter 6 in the final EIS. With publication of this notice, the draft programmatic EIS is finalized.

This decision does three things: It outlines how the Department intends to follow the law, it acknowledges and draws from the sideboards provided through the work of the Bison Discussion Group, and it clarifies the public processes that have always been available to those who may wish to bring wildlife restoration proposals to the Department. Through this decision, the state recognizes that the long-term future of bison as wildlife in Montana depends on carefully balancing complex biological, sociological, and economic considerations. Additionally, the success of any bison restoration proposal is dependent upon the involvement of those potentially affected, directly or indirectly, by bison on the landscape. Only through building trust and working diligently across these various interests can any proposal be successful.



Martha Williams, Director
Montana Fish, Wildlife & Parks



Date

For convenient reference, the guidelines from Chapter 7 of the Final Programmatic EIS are found below:

Chapter 7: Factors to be Considered within Any Bison Restoration Project Idea

A group of Montana stakeholders, the 'Bison Discussion Group', developed a list of parameters to guide any project to reintroduce bison as part of a test project or restoration effort. Those parameters along with others deemed important by FWP are described here.

- Projects must serve the long-term greater conservation needs of plains bison and FWP's statutory obligation to manage bison as wildlife.
- Projects must comply with all applicable local, state, federal and tribal policy constraints or laws. Specifically, §87-1-216 MCA and other applicable FWP and Montana Department of Livestock statutes pertaining to wildlife management and wildlife translocation must be followed. Compliance with applicable environmental regulations of recipient jurisdictions must be clear.
- Projects must comply with FWP policy constraints in addition to Montana Environmental Policy Act, National Environmental Policy Act, or Tribal government constraints.
- Bison to be used in a restoration project must be managed as wildlife to the extent possible knowing bison management presents unique challenges.
- For a project area where bison already exist there must be some consideration of how those bison would be separated from or integrated with "restoration bison."
- Projects must have defined timelines, desired outcomes, and benchmarks for both successes and failures.
- Projects must consider detailed monitoring and evaluation plans to inform management decisions and track progress toward meeting objectives.
- Projects must consider a clear process for adaptive management and identification of next steps throughout each stage of the project.
- Projects must involve landowners, sportsmen, conservationists, tribes, and other interested parties in project development.
- Projects must consider how meaningful involvement and guidance from a local working group for site specific planning has been or will be secured.
- Projects must respect private property rights.
- Proposed project site(s) must have defined geographic boundaries. Maps, description of habitat, and details of surrounding landownership must be included within any site-specific site descriptions.
- Projects must have clearly defined containment measures that may include but not be limited to fencing, geography, herding, and hunting. Management plans must reference containment requirements of §87-1-216 MCA.
- Projects must consider solutions to address damages by bison upon a failure in the containment plan (see §87-1-216 MCA.)
- Projects must have defined population objectives suitable for site capacity, competing land uses within the proposed area, and available financial resources for plan implementation. Management plans must include information about the

capacity (size of area, carrying capacity, etc.) of the site to house bison in the year the bison would be introduced, as well as future years, including any increase in population.

- Projects must be compatible with range carrying capacity as determined by public land managers and/or generally accepted range science.
- Projects should discuss efforts to be implemented that will ensure that bison would not unreasonably affect existing land uses, such as timber harvest, energy development, or public land grazing unless mitigated or mutually agreed upon by affected parties.
- Projects must consider options to incentivize participating landowners.
- Projects must propose to use only bison tested and confirmed free of reportable diseases.
- Projects must propose to use only source bison that are genetically intact and free of cattle gene introgression. Management plans must include a description of measures to prevent genetic introgression.
- Projects must consider a herd health monitoring plan designed cooperatively with the MDOL and FWP.
- Projects must consider public hunting as a primary tool for population management and dispersal. Management plans must describe how hunting could be used to aid in population management, including any access provisions.
- Projects must consider processes to be used if dispersal of restoration bison for conservation purposes is to be conducted. Criteria for dispersal of restoration bison must be included in management plans with justifications on when and why dispersal would be used and how it would be conducted.
- Projects must consider contingency planning for unexpected circumstances, changing conditions and natural disasters or unforeseen natural events that may make agreed to management plan implementation impossible.
- Projects must consider how reintroducing bison will contribute to or impact the local ecosystem. Projects must identify if there are potential impacts to other local wildlife species from bison or from infrastructure such as fencing, and how those impacts will be minimized or mitigated.
- Projects should consider efforts to ensure bison would not unreasonably displace other native ungulates or reduce hunting opportunities for other species on public lands.
- Projects must identify secured and potential funding to include sources for all components of plan implementation for a period of at least 5 years.
- Any restoration project plan and site-specific EA would have to include a thorough discussion of budgets and funding sources for both short and long-term project implementation as well as costs or benefits to the surrounding communities to include details on the following:
 - Cost of bison transport and release including staff.
 - Costs of containment set up and maintenance including staff.
 - Costs of disease monitoring and specific herd management including staff.
 - Costs or benefits to range management including staff.

- Costs of any increases in weed management expenses.
- Costs of contingency plan implementation in the event of an unforeseen circumstance.
- Any predicted costs to local communities in the way of increased local services such as increased emergency responder services.
- Any loss of state revenues in the form of lost per capita livestock fees.
- Any change in local tax revenue due to a shift from domestic livestock to bison as wildlife on an operation.
- Any predicted income from the project, e.g., increased visitation to the area by wildlife viewers or hunters.
- Any loss or increase in property value to lands neighboring a bison restoration project.
- Any change to local service providers such as veterinarians if domestic cattle are removed from an area as part of a bison restoration project.
- Projects should consider roles of partners and the agreements needed to secure cooperation, e.g. Memorandum of Understanding.

MOUs with partners would include but not necessarily be limited to:

- Adaptive strategies to meet containment requirements.
- Adaptive strategies to meet herd objectives.
- Commitment to and strategies for disease monitoring and response if disease is detected.
- Commitment to and strategies to implement the agreed to exit strategy if needed.
- Agreement on liability responsibilities of all parties involved in the restoration program.
- Commitments to annual reporting and involvement with information and outreach efforts.
- Strategies for working with a citizen working group.
- Commitments for allowing public access for bison viewing and hunting.
- Commitments to honor FWPs continued management of bison and any agreements that may change ownership of offspring.
- Commitments to provide resources as needed and as agreed to in other sections of the MOU.