

## DAMAGE CAUSED BY WILD GAME AND HUNTERS - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3055 (attached as an appendix) directs the Legislative Council to study the extent and remedies for damage caused to landowners from depredation from big game animals, waterfowl, and turkeys and damage caused to property by hunters. This study may be divided into two areas of study. The first area of study is of damage caused by animals and the second area is of damage caused by hunters.

### DAMAGE CAUSED BY ANIMALS Big Game

Under North Dakota Century Code (NDCC) Section 20.1-01-02(4), the term big game means deer, moose, elk, big horn sheep, mountain goats, and antelope. This memorandum will focus on the damage caused by deer due to the relatively large number of deer throughout the state. The main damage done by deer is done to haystacks during severe winters.

This state has a hunting season for deer. Combined statistics for bow and gun season show a little over 100,000 permits are issued for deer. With a success rate of approximately 80 percent, over 80,000 deer are harvested each year. In addition, there are hunting seasons for elk, moose, and antelope. The number of permits issued for these species is much lower than for deer. In 1997, 127 permits or licenses were issued for elk, 145 for moose, and 520 for antelope. In 1997 the success rate for these species was 73 percent for elk, 81 percent for moose, and 76 percent for antelope.

Under NDCC Section 20.1-02-05(19), the director of the state Game and Fish Department may carry out a private land habitat and access improvement program that includes carrying out practices that will alleviate depredations caused by big game animals. Under Section 20.1-02-05(18), funding for the private land habitat and access improvement program is provided from the interest earned on the game and fish fund and habitat restoration stamp fees and is placed in the land habitat and deer depredation fund. Senate Bill No. 2019 (1999) appropriates \$2,703,224 for land habitat and deer depredation. Section 2 of this bill states that up to \$2.5 million of this amount is from the land habitat and deer depredation fund and is to be used for the purposes of leasing privately owned lands for wildlife habitat to reestablish wildlife population, to improve wildlife habitat on private lands, and to alleviate big game and fur-bearer depredation. Deer depredation expenditures were \$255,139 for the 1991-93 biennium, \$576,515 for the 1993-95

biennium, \$1,123,107 for the 1995-97 biennium, and \$170,445 for the 1997-99 biennium.

The deer depredation fund provides dollars for activities used to alleviate or minimize damage caused to private livestock feed supplies by deer. The department does not provide damage compensation through monetary payments, neither does it provide depredation hunting permits. The department policy is to prevent depredation through short- and long-term assistance. Short-term assistance includes cracker shells, blood meal and other repellents, propane cannons, snow fence for wrapping stacks, and intercept feeding sites. Long-term assistance is provided through the deerproof hay yard program that provides materials and supplies for the establishment of deerproof hay yards in or around private farmsteads with chronic deer problems.

As to laws relating to providing solutions to big game depredation, Ms. Ruth S. Musgrave and Ms. Mary Anne Stein with the Center for Wildlife Law at the Institute of Public Policy at the University of New Mexico, recommend in the *State Wildlife Laws Handbook*, that whenever possible, landowners should be required to mitigate damages and a state natural resources or game and fish department should attempt to aid materially in providing fencing materials or similar mitigating materials rather than paying for damage claims. They further recommend that damage claim payments are preferable to killing the animal, and if killing is required, the state department be notified of damage before killing the wildlife. They recommend that the meat from the animals be retained by the state department or donated to charity.

In pursuit of these policies, they recommend that comprehensive control plans be put into place clearly specifying the duties of the landowner and the state department in effecting control, compensating the landowner for damages, and for engaging in mitigation before the fact. They recommend that an independent appraisal board be utilized to assess damages. They further recommend that the state department not award damages to landowners who refuse to participate in available wildlife damage abatement programs or to follow reasonable abatement procedures the department recommends. They also recommended that damage awards be reduced, but not eliminated, for landowners who do not open their lands for hunting and that payments be reduced proportionately if the landowner charges a fee to hunt on the land.

Ms. Mindy Larsen Poldberg in the Spring 1998 issue of the *Drake Journal of Agricultural Law*,

Volume 3, No. 1, in an article entitled "Deer and Management: A Comprehensive Analysis of Iowa State Hunting Laws and Regulations" stated that other states have alternative methods of dealing with deer overpopulation. In Wisconsin, a fund has been established to pay for wildlife damage control. The fund is supplied with money derived from all special deer licenses and a \$1 surcharge placed on every hunting license. The fund is used to pay for fences, for technical assistance, and claims to farmers who allow hunting and work with wildlife biologists. The fund works somewhat like an insurance policy. A property owner is not eligible for damage assistance until after \$250 of damage has occurred, much like an insurance deductible. The damages that the state will pay are limited to \$5,000. The property owner must permit hunting of the animals causing wildlife damage on the land where wildlife damage occurred and on contiguous land under the same ownership and control.

Other states, including Idaho, Massachusetts, Nevada, New Hampshire, Utah, Vermont, Washington, Wisconsin, and Wyoming, have monetary compensation for wildlife crop damage. In Idaho for example, the state may offer financial compensation for crop damage over \$1,000 which is not covered by other sources. In Vermont, reimbursement may be available to landowners whose land is not posted against hunting and who have suffered damage to crops by deer. In Washington, the claim may not exceed \$2,000.

In addition, in Iowa, a producer who has crop losses or potential crop losses in excess of \$1,500 in one growing season is eligible for a depredation management plan through the Wildlife Bureau. The plan may include preventive measures including pyrotechnics and cannons, guard dogs, temporary fencing, allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective. The depredation management plans are long-term solutions, and the producer must implement the measures outlined in the plan or depredation permits will not be issued. Depredation permits are not intended to be permanent solutions to the deer overpopulation problem, rather the permits are only issued to temporarily reduce deer numbers until long-term preventive measures become effective. There are two types of deer depredation permits: a deer depredation license or a deer shooting permit. The deer depredation licenses are issued to a producer of the crop and the producer is allowed to designate any hunter to the Wildlife Bureau as having permission to purchase a license for the producer's land. A depredation license may only be used to shoot an antlerless deer. Other states, including Arizona, Idaho, Utah, and Virginia, have depredation hunts.

A deer shooting permit may be attained if damage cannot be controlled by hunting during the regular hunting season. This permit is issued directly to the

producer who may shoot as many deer as needed up to the number specified in the permit.

### **Waterfowl**

Under Section 20.1-01-02(42), the term waterfowl includes all varieties of geese, brant, swans, ducks, rails, and coots. This memorandum focuses on damage caused by what are commonly known as geese and ducks because of their relatively high numbers in this state.

Most of the spring and summer damage is caused by resident Canadian geese. Most fall damage is caused by ducks feeding on cut grain crops. The problem geese are the resident breeding pairs that hatch four to seven goslings each spring. Starting in June, the adults begin moulting their flight feathers rendering them flightless and the goslings are pre-fledged. The adults and goslings seek out larger, more secure wetlands. This explains why a wetland can have hundreds of birds present that were not there during the nesting season. Flocks can range from 50 to 400 birds that must walk from the water onto surrounding crop fields to feed. The damage they impose can accumulate very quickly. Soybeans are preferred due to their high protein content. Another group of geese that cause damage but in a lesser degree are nonbreeding birds. Nonbreeding birds travel in bands of 10 to 100 birds and may mow down sprouting crops. The nonbreeding birds may be deterred with simple frightening techniques including flags and propane cannons. Flightless birds are more difficult to scare.

According to the North Dakota Game and Fish Department, one method that works with young goslings is to create vegetative buffer strips surrounding sloughs in cropland. The vegetative buffer strip acts as a fence. Another method for reducing resident bird numbers is to have an early September hunt. The Game and Fish Department is considering a September goose season for this purpose. The season would likely run from September 1 to September 15. South Dakota and Minnesota have gone to September seasons in recent years.

All waterfowl abatement programs in the state are conducted by the United States Department of Agriculture's Division of Wildlife Services, previously called Animal Damage Control. Under Section 20.1-02-05(15), the director of the Game and Fish Department may cooperate with the Commissioner of Agriculture, the United States Fish and Wildlife Service, and other agencies in the destruction of destructive birds. Under Section 5 of 1999 Senate Bill No. 2019, the Game and Fish Department was appropriated \$100,000 from the game and fish fund for the purpose of providing grants to the Division of Wildlife Services for projects to alleviate wildlife depredation and damage. Projects funded under this section may include projects to alleviate waterfowl depredation

and damage and must be approved by the director of the Game and Fish Department. The 1999-2001 biennium is the first biennium in which Wildlife Services has been a line item in the Game and Fish budget. In the past, grants have been made to the Division of Wildlife Services; however, for at least the last 20 years no grant has been used for the alleviation of waterfowl depredation. The moneys have been used for other depredation and damage control, including the killing of predators. For example, the money has been used for matching dollars for cooperative projects to alleviate or minimize damage to private livestock caused by coyotes.

Under Section 4-01-17.1, the Agriculture Commissioner may cooperate with the United States Department of Agriculture and other appropriate federal agencies in the control and destruction of small game causing crop damage or substantial economic loss. This control and destruction must be approved by the director of the Game and Fish Department. The North Dakota Agriculture Department has received an appropriation for the last two bienniums of \$779,694 for cooperative projects with the Division of Wildlife Services.

The following tables were obtained from the Division of Wildlife Services and list the damage caused by waterfowl as verified through investigations based upon complaints. The following also lists the amounts spent for the management of waterfowl to prevent crop damage.

Extent of Waterfowl Damage to Crops		
Year	Number of Investigations	Verified Damage
1995	93	\$45,700
1996	50	\$26,700
1997	25	\$43,000
1998	45	\$44,700

Funds Expended for the Management of Waterfowl Damage to Crops	
Year	Amount
1995	\$958
1996	\$1,387
1997	\$2,987
1998	\$3,530

The tables show, for example, that in fiscal year 1998, \$3,530 was spent resolving waterfowl damage to crops and a total of 45 complaints were investigated, in which \$44,700 in damages were verified. It is important to note that in fiscal year 1998 the Division of Wildlife Services spent \$89,665 that it received from the North Dakota Agriculture Department for crop damage programs. In fiscal year 1998, Wildlife Services did not receive any North Dakota Game and Fish Department money for crop damage, but did receive in total \$18,588 for damage caused to livestock.

Other states have extensive programs to deal with waterfowl abatement, including South Dakota. One reason South Dakota has its own waterfowl depredation abatement program is the lack of a presence in the state by the Division of Wildlife Services. South Dakota collects a \$5 surcharge for all adult hunting licenses. This money is earmarked one-half for hunter access programs and the other half for depredation programs. This surcharge collects between \$800,000 to \$1 million for all depredation programs.

South Dakota has evaluated a number of depredation management techniques as they relate to waterfowl. According to a representative from the South Dakota Department of Game, Fish, and Parks, there are definite methods that work and are cost-effective. A major part of South Dakota's waterfowl abatement program relates to resident geese. Throughout the summer, the South Dakota program receives between 100 and 200 complaints of depredation done by resident geese. The South Dakota Game, Fish, and Parks Department has a number of remedies and programs for resident goose depredation.

One program is the food plot program area. This program provides payments to landowners for depredation done to crops in the field. In this program, the landowner allows the geese to eat the cash crops planted by the landowner and receives a cash payment from the Game, Fish, and Parks Department. The payment per acre is based on the appraised value of the land per acre multiplied by the Farm Services Agency multiplier used to determine rental value as percent of value plus \$25 per acre for production costs. The department also places electrified fences around sloughs that contain goslings and adult moulting birds. The department also places lathes around sloughs with mylar reflective tape or survey flags attached to scare geese from entering fields. In addition, the department uses scare kites--bird of prey kites on the end of a string attached to a ten-foot pole. The department also has used woven wire around sloughs and has made public land adjacent to private land more attractive to divert geese from the private land. All these methods appear to be effective in different circumstances.

### Turkeys

Although the number of turkeys in this state is relatively low, the state Game and Fish Department still receives a small number of complaints--under five--of damage being caused by turkeys each year. The main complaint received is of turkeys eating and defecating on feed piles.

In response to complaints received on turkey damage, the department does offer technical assistance and has trapped and moved turkeys when appropriate. In South Dakota, the Game, Fish, and Parks Department uses scare kites to repel turkeys. According to the department, the kites work quite well.

This state does allow the hunting of turkeys; however, this state does not have a nonresident turkey license. According to the Game and Fish Department, there are numerous resident applicants for each turkey permit. The number of fall turkey permits has increased from under 1,000 for all years prior to 1980 to a high of 5,938 in 1988. In 1997, 3,273 fall permits were issued. The number of spring turkey permits has increased from under 1,000 for all years prior to 1990 to a high of 1,807 in 1993. In 1998 the total was 1,695. The total number of turkeys in this state has fluctuated between 6,000 and 10,000 birds over the last 10 years.

### **DAMAGE CAUSED BY HUNTERS**

Research does not reveal any exact statistics on the extent and types of damage caused by hunters. However, there is anecdotal evidence of the types of damage caused by hunters. A common complaint is that hunters damage roads by driving on them in wet conditions. Although there are no official statistics on damage caused by hunters, there are statistics on violations of state laws by hunters. As to violations that relate to respect for landowner's property--using a motor vehicle off established trails and hunting on posted land without permission--there are statistics on these violations. In fiscal year 1997, of 184 big game gun season violations, 44 were for these violations. Of a total 47 violations for upland game hunters, 14 were for these violations. Of a total 1,596 game and fish violations in 1997, 67 were for these violations. There are similar statistics for fiscal year 1996. Of 192 big game gun season violations, 41 were for these violations. Of 110 upland game violations, 35 were for these violations. Of a total of 1,554 game and fish violations in 1996, 77 were for these violations.

During the 1999 legislative session, two bills--House Bill No. 1214 and House Bill No. 1244--were introduced to provide funding for roads damaged by hunters. House Bill No. 1244 would have created a special road and trail damage fund to be used for reimbursing landowners for damage caused by hunters to roads and trails that are not maintained with public funds. The amount of \$100,000 was to be transferred biennially from the game and fish fund on a continuing basis. House Bill No. 1214 required 20 percent of the fees generated from the sale of licenses to be sent to the county in which the licensee intends to hunt. One apparent reason for the failure of these bills is that testimony was received that the Game and Fish Department could not use the fees it receives from hunters for the purpose of compensating road damage or funding the county general fund because of federal regulations.

The fiscal note for each bill stated that the Game and Fish Department would lose approximately \$2.5 million per year in federal aid for wildlife restoration funds if either bill were to pass. These funds

come from an excise tax on hunting equipment, including firearms and archery equipment. The fiscal notes went on to state that these funds would be lost because of a federal requirement that state hunting license fees not be used for anything other than the administration of the state's Game and Fish Department. In addition, North Dakota would remain ineligible for this funding until the license fee dollars were returned to the state game and fish fund.

Under NDCC Section 20.1-02-16.1, this state has a policy of having the income of the state Game and Fish Department deposited in the state game and fish fund for the exclusive use of the department. Under Section 20.1-02-17, this state has assented to the rules and regulations of the federal government, including the use of state game and fish funds, as part of receiving funding for wildlife restoration projects and fish restoration and management projects. The section states, "hunting and fishing license fees and application fees assessed under section 20.1-03-12.2 may only be used for departmental programs and administration." The passage of this section of law was a prerequisite to receive federal funding. The Federal Aid and Wildlife Restoration Act, 16 U.S.C. 669-669j, defines the kinds of programs that the state can fund and does not include within that definition funding for compensating individuals for damage to roads or for the maintenance of general purpose roads.

In the 1940s, South Dakota passed a law similar to 1999 House Bill No. 1214, which funded counties with game and fish funds. Recently, the South Dakota Game, Fish, and Parks Department was audited as to its use of wildlife restoration funds by the United States Fish and Wildlife Services and was found to have diverted funds. South Dakota will be required to compensate the license fee fund with funds not gained from licensing. Effective July 1, 1999, the law that provided funding to the county with game, fish, and parks money will be repealed.

There are avenues for addressing damage to private roads. Under Section 12.1-22-03, a person is guilty of a Class B misdemeanor if that person enters in any place as to which notice against trespass is given while knowing that that person is not licensed or privileged to enter that place. It is a Class A misdemeanor for a subsequent offense within a two-year period. A person is guilty of a Class B misdemeanor if that person remains on the property of another after being requested to leave that property. For a subsequent offense within a two-year period, a person is guilty of a Class A misdemeanor. In particular, under Section 20.1-01-18, a person who hunts on posted land without permission is guilty of a Class B misdemeanor for a first offense and a Class A misdemeanor for a subsequent offense within a two-year period. Under Section 20.1-01-23, a person is guilty of a Class B misdemeanor if that person opens a gate and leaves the gate open unless the person is in lawful

possession of the premises. In addition, under Section 20.1-01-07, a person may not use a motor vehicle on any land other than an established road or trail. As per Section 20.1-01-01, a violation of this section is a Class B misdemeanor. Under Section 12.1-32-02, a person convicted of any of the preceding offenses may be subject to restitution for damages resulting from the commission of the offense or restoration of the damaged property.

In addition to criminal penalties, there are civil penalties as well. A person could bring a civil action for the tort of trespass against a person who entered upon that person's property without authorization. Generally, a person against whom a tort has been committed is entitled to damages for the tort.

### **SUGGESTED STUDY APPROACH**

A suggested study approach for the Agriculture Committee is to follow the same general organization as this memorandum in researching the assigned

study. The first step would be to receive testimony on the extent and types of damages caused by big game, waterfowl, turkeys, and hunters through anecdotal and statistical information. The committee could then review the remedies and programs used by this state to address the damage. If the committee finds this state's remedies and programs lacking, other state's remedies and programs could be reviewed or testimony could be received on potential remedies and programs. In pursuit of this information, the committee could receive testimony from the state Game and Fish Department, the state Agriculture Department, the Cass County Wildlife Club, the North Dakota Farm Bureau, the North Dakota Farmers Union, the Landowners Association of North Dakota, and other wildlife, conservation, and hunting organizations in this state. Testimony from individual landowners and hunters would be appropriate as well.

ATTACH:1

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine**

**HOUSE CONCURRENT RESOLUTION NO. 3055  
(Representatives Drovdal, Kempenich, Meyer)**

A concurrent resolution directing the Legislative Council to study the extent of and remedies for damage caused to landowners from depredation by big game animals, waterfowl, and turkeys and damage caused to property by hunters.

**WHEREAS**, there were 864 deer depredation sites during the winter of 1996-97 and there have already been 49 deer depredation sites during the winter of 1998-99; and

**WHEREAS**, there was at least \$30,200 in damage caused to landowners by waterfowl in 1994, \$46,570 in 1995, \$33,169 in 1996, \$43,465 in 1997, and \$39,675 in 1998, not including damage caused by wild turkeys; and

**WHEREAS**, between June 30, 1997, and July 1, 1998, there were 1,596 game and fish violations, including 194 big game violations, of which 44 were for hunting off an established trail or hunting on posted land without permission;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the extent of and remedies for damage caused to landowners from depredation by big game animals, waterfowl, and turkeys and damage caused to property by hunters; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.

Filed March 18, 1999