

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**The Decline of
the Bobwhite Quail**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 44

**COMMONWEALTH OF VIRGINIA
RICHMOND
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Members of the Joint Subcommittee

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Kevin G. Miller, Vice Chairman
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Report of the Joint Subcommittee
Studying the Decline of the
Bobwhite Quail (HJR 114)

I. Introduction

The 1988 Session of the General Assembly established the Joint Subcommittee to study the Decline of Virginia's Bobwhite Quail (HJR 114). The objective of the study was to recommend ways to preserve the population of bobwhite quail. The subcommittee was composed of five members: Delegate William T. Wilson (Chairman), Delegate R. Beasley Jones, Delegate Watkins T. Abbitt, Jr., Senator Kevin G. Miller (Vice-chairman), and Senator Robert E. Russell.

II. Background

As far back as colonial times, Virginia's land provided the habitat for the Virginia quail population to flourish. Because land was so plentiful, older fields were simply abandoned when grain and tobacco production declined and new areas were cleared for cultivation. This resulted in creation of stretches of woodland edges adjacent to the abandoned fields. Quail prospered as the land uses tended to (1) retard natural plant successions, (2) prolong duration of the earlier stages of growth, and (3) create edge and greater diversity among plant species and cover types (Virginia's Bobwhite Quail, p. 16). In the mid-1800's as abandoned acreage of cropland increased Virginia experienced a quail population explosion.

Virginia's quail population continued to flourish until the 1950's but as the state's population increased, the effects of urban sprawl and expansion resulted in significant changes in land use. Once productive farmland was succumbing to the pressures of development and the amount of land devoted to farming was decreasing. Between 1940 and 1982 there was a 42% decline in the acres of land in farms. During this period, Virginia landscape changed from being 64% farmland to 37% farmland. The family farm with its small lots and bushy fence-rows, which provided ideal quail habitat, was being replaced by the large rectangular fields of the commercial farming operations. As the acreage of farmland continued to shrink less cropland remained idle and unharvested, leaving less marginal land available for quail habitat. Practices such as irrigation and drainage, movable fencing, double cropping, mixing and matching of vegetative types and increased cattle production provided evidence of a more intensive use of farmland. This resulted in a greater fragmentation of the remaining quail habitats.

The dramatic increase in the use of agricultural chemicals represents an additional threat to both the health and the habitat of bobwhite quail. Between 1969 and 1982 the use of chemical agents to control weeds and insets increased by 128% (1985 Bobwhite Quail Status Report, p. 2). Evidence of "surprising" levels of chemicals have been found in quail tissue. Such exposure to these pesticides could result in reproductive failure, increased levels of mortality and the loss of food

and cover plants. As the Department of Game and Inland Fisheries (DGIF) notes, "while the total impact of these practices on wildlife is not fully understood, we can consider that these activities are generally harmful."

Although the extremes of weather and the use of pesticides have contributed to the decline in quail inventories over the last several decades in Virginia and throughout the South, quail biologists agree that changes in land use have had the most significant impact on the bobwhite quail population. In Virginia the DGIF has documented through its hunter survey a decline in both coveys found and quail harvested. Several "hunter success" statistics provide evidence of this decline:

- Quail bagged per hunter hour declined from .66 in 1979-1980 to .45 in 1987-1988 (32% decline);
- Coveys flushed per hunter declined from .43 in 1978-1979 to .32 in 1987-1988 (25% decline);
- Total seasonal bag per cooperative party (usually two hunters) declined from 46.6 quail in 1978-1979 to 29.1 in 1987-1988 (38% decline).
(See Attachment A for quail survey results)

However, recent "hunter success" statistics are encouraging. During the 1987-1988 season, quail bagged per hunter hour increased 18% over the previous season and coveys flushed per hunter hour improved 10%. This increase has largely taken place east of the mountains. The past season, according to officials of the DGIF, has been the best for hunting quail in the Piedmont and Tidewater regions in the last seven to eight seasons.

III. Subcommittee Activities

The subcommittee held two business meetings and a work session during the course of its study. The subcommittee's objective was to determine what are the most effective ways or strategies for preserving and enhancing Virginia's bobwhite quail population. To assist it in this effort, the subcommittee appointed a twenty-member advisory committee composed of individuals who are interested in restoring the quail to a place of prominence among Virginia's small game.

During its deliberations the subcommittee received testimony from a broad range of interested parties, including state officials, representatives of corporate landowners, scientists, and sportsmen. The subcommittee sought information detailing past as well as current efforts to preserve the quail populations and recommendations for new initiatives including the role the state might play in the implementation of any new programs.

Past and Current Efforts

Officials of the DGIF cautioned the subcommittee that the current status of Virginia's quail population was not a new problem. In 1926 articles appeared blaming such things as intensive farming methods and the prevalence of dense pine forests for the alarming conditions of quail sites. Over the last twenty years there has been a further curtailment of habitat on farmland. One bright spot has been the practice of the clear cutting of timber stands and the subsequent preparation for reforestation which provide much needed quail habitat. These practices have been utilized since the 1960's.

In the past, several strategies have been used to improve these conditions. The two most notable were the raising of pen-raised quail for release into the countryside and a farm game seed distribution program. The stocking program ended in 1958 and no native game birds have been raised since, although some individuals have continued to raise them as a hobby. What had been overlooked when this program was developed was the crucial role of habitat. It was found that the pen raised birds did not develop the natural skills necessary for survival.

State-sponsored seed programs were an attempt to provide additional habitat. But this approach largely ignored the primary needs of the quail, those being native food and winter cover. The Game Commission discontinued the program in 1979 after thirty years of operation, with no evidence of an appreciable effect from the distribution of such seed materials.

The Game Department's current small game programs operate from the premise that the key to success is the education of hunters, landowners, and wildlife managers as to what constitutes good "year-round habitat." Current strategies include (a) the provision of wildlife management technical assistance, (b) coordination of wildlife needs with other state, federal and private programs and (c) ongoing research, surveys and inventories.

The technical assistance consists of the publication and distribution of bulletins and educational pamphlets; one of which is a guide for establishing a low cost permanent wildlife habitat in Conservation Reserve Program lands. Several small workshops and seminars have been organized. One such workshop held in cooperation with Quail Unlimited was attended by 300 people. The Game Department also provides on-site habitat examination of property by district biologists, upon the request of a landowner. But these opportunities have been limited in the past due to staffing constraints. The subcommittee would anticipate that with the hiring of two additional small game biologists this service could be expanded.

There currently is an effort to coordinate small game wildlife needs with other state, federal and private programs. The Game Department has worked with the Cooperative Extension Service and the U.S. Soil Conservation Services (SCS) to conduct wildlife training for all Department of Forestry personnel. Agency biologists have assisted SCS staff in developing approved seed mixtures and planting recommendations

for managing wildlife to the extent authorized under the Conservation Reserve Program and other farm bill programs. The DGIF which has sought to coordinate state programs with privately sponsored initiatives is currently working with Quail Unlimited in such areas as habitat development, and sponsoring workshops and seminars. The Game Department continues to conduct research and education programs. Recent studies have included: (a) a corporate landowner of eighteen private commercial industrial forests, (b) a private landowner attitude survey to assess problems and concerns associated with hunting wildlife programs, (c) a survey of citizen hunter attitudes towards hunting in Virginia as well as (d) surveys to obtain information on the quail population and status of the small game bird habitat.

IV. Findings and Recommendations

The subcommittee finds that a program which has as its goal to increase the population of bobwhite quail in Virginia should include the following elements: (a) strategies for increasing the acreage and enhancing the quality of quail habitat; (b) education and technical assistance for those who own, manage, or use private or public lands; (c) coordination with federal, state and privately sponsored programs to ensure the maximum benefit for small game habitat; (d) removal of disincentives or obstacles to public access for such purposes as hunting and (e) continued research, surveys and inventories.

A. Expansion and Maintenance of Quail Habitat

The subcommittee received testimony on a variety of proposals aimed at developing additional quail habitat. According to DGIF good habitat in Virginia has the potential of producing one quail per two acres. There are an estimated 30,000 sportsmen who hunt quail in the state. In order to produce an average harvest of ten birds per hunter a statewide population of approximately one million birds will have to be maintained, assuming a harvest represents 1/3 of the total quail population. Therefore, to carry a population of one million birds, at least 2 million acres of productive habitat will be required. Since Virginia's land contains over 25 million acres, more than 12% of the land must be held in productive cover if this goal is to be met. Estimates by the Department of Forestry indicate that effective seeding and maintenance of site prepared and reforested areas could provide up to 500,000 acres of quail habitat on a continually rotating basis.

One approach which holds great promise for the development of new habitat areas is a cooperative right-of-way program. The DGIF would enter into an agreement with other state agencies, individual and corporate landowners to assist them in developing and maintaining small game habitat in those right-of-way areas which they manage. Officials of the Virginia Department of Transportation (VDOT) informed the subcommittee that many of their counterparts in other states had such agreements with their state game and wildlife agencies. Such states as

Connecticut, Indiana and Nebraska were cited as having successful roadside habitat programs. The state of Ohio which conducts a delayed mid-summer mowing program has saved \$875,000 in mowing costs and added 25,000 acres of wildlife habitat. Within three years the number of small nesting birds in these areas has increased three-fold without an appreciable increase in road kills. The subcommittee is encouraged by the VDOT testimony which indicted their interest in instituting a combined program of mowing practices and cover crops to protect the Commonwealth's quail population. Based on experience in other states there is reason to believe that VDOT, which manages rights-of-way along interstate highways (112,459 acres), primary roads (77,077 acres) and secondary roads (161,571) would experience similar positive results if it were to institute a roadside program.

Such agreements should also be extended to corporate landowners as well. The subcommittee was impressed by the receptivity to such agreements by representatives of public utility companies and industrial forest landowners. As part of such agreements the DGIF and the Department of Forestry could provide technical assistance in such techniques as rights-of-way wildlife plantings, maintenance burning, and seeding. Private organizations such as Quail Unlimited have expressed a willingness to work with corporate landowners and provide seed in many of the right-of-way areas. The DGIF might serve as coordinator or intermediary in such an effort.

B. Education and Technical Assistance

A recent survey of rural landowners sought to determine their awareness, interest and participation in a variety of conservation related programs. Dr. Brett Wright, who conducted the survey under a contract with the DGIF, found that less than 5% of the landowners surveyed indicated they had received technical assistance in wildlife management from DGIF. Forty-five percent were unaware of the availability of such assistance, while 31% were aware and would like more information. Dr. Wright found that landowners (a) would be receptive to habitat improvement services, (b) are most interested in receiving assistance in locating seeds for wildlife food and cover and (c) are conservation oriented and want assistance but with "no strings attached."

In light of these findings, which are supported by testimony before the subcommittee, it is recommended that the DGIF increase its education and technical efforts to better inform the public regarding the life history, habitat requirements and management of the bobwhite quail. This can be accomplished through a variety of mediums (i.e. publications, bulletins, videos, seminars and workshops) which would provide information on such things as planting rates, time of planting, as well as encourage the planting of desirable plants such as Korean Lespedeza and discourage the planting of Kentucky fescue. The DGIF should also consider supplementing these types of activities with "hands on" field

demonstrations that stress effective approaches for managing plant communities for habitat development purposes. In developing education and technical assistance initiatives the DGIF should be mindful of Dr. Wright's observation that landowners in Virginia are interested in how they can integrate habitat improvement into their overall land use practices but because of a strong private land ethic, they are not receptive to any programs which "dictates to them."

C. Coordination with Federal and State Agencies

The DGIF is encouraged to continue to develop close working relationships with those state and federal agencies which administer agricultural and conservation programs so as to ensure the coordination of habitat management with other conservation and economic objectives. The 1985 Farm Bill provides the state with an opportunity to promote the development of additional acres of small game habitat. Under the federal program approximately 600,000 acres in Virginia have been identified as highly erodible. In order to stabilize the soil, approximately 35,000-40,000 farm plans will have to be developed. The DGIF should identify these landowners and provide the technical assistance necessary to promote the use of wildlife mixtures and discourage the use of Kentucky fescue in the development of each plan.

This strategy should not be limited to federal programs but also applied to those state conservation programs having soil erosion and water quality objectives. Virginia has recently enacted legislation and implemented programs which recognize the relationship between land use and water quality. Such initiatives as the Chesapeake Bay Preservation Act, conservation easements, various BMP cost-sharing programs administered by the Division of Soil and Water Conservation (Chesapeake Bay Filter Strip Program) and measures recommended by a legislative subcommittee studying flood control policies of the Commonwealth provide an ideal opportunity to coordinate such conservation objectives as the enhancing of wildlife habitat, preservation of land and the protection of water quality.

D. Obstacles to Public Access

If the state is to achieve a significant increase in the quail population over time, quail hunting has to be managed as intelligently as habitat. When setting seasons for quail hunting, land managers "must think once more in terms of the key turning points in the annual life cycle of the species." "For maximum sustained surpluses to harvest, quail hunting should be directed toward harvesting each biological surplus as it occurs." (Virginia's Bobwhite Quail, p. 32)

The hunter's role in the harvesting of the quail population is being affected as the remaining undeveloped open space land is being closed to hunting. DGIF studies of hunter access policies of both corporate and undeveloped private landowners indicate that one of the major obstacles to opening up more private property for recreational uses such as hunting is a growing concern of landowners regarding legal liability.

Virginia law (§ 29.1-509) prescribes the duty of care and liability for damages of landowners who open their lands for recreational use. Currently, if a landowner allows a person to use his property for a variety of specific recreational uses without receiving compensation, he cannot be held liable for simple negligence. Therefore, any liability which may arise or exist would be a result of gross negligence or a willful failure on the part of the landowner to guard or warn against a dangerous condition. If a landowner receives "consideration," which is defined as money or anything else of value for use of his premises, he is then held to a higher standard of care. The one exception is the landowner who leases his property to a governmental source. In such instances any money received from the agreement is not considered compensation. Consequently, a greater standard of care by the landowner is not required.

The subcommittee recommends that this section of the Virginia Code be amended to remove existing disincentives which inhibit landowners from making their property more accessible to the public.(Appendix B) The proposed amendments to § 29.1-509 are intended to reduce a landowner's liability in specified circumstances and to reduce the inconvenience and expense suffered by landowners who lease their property to the Commonwealth for specific recreation uses such as hunting. By changing "consideration" to "fee" and removing the language "or anything else of value," a landowner could no longer be found guilty of simple negligence when he accepts something other than money for allowing a person to hunt on his property (i.e. "I'll allow you to hunt deer on my property if you will give me the hindquarter of the deer you kill"--no liability for simple negligence when amended as suggested). In those instances where a fee for use has been charged, a landowner may be found liable for simple and gross negligence, except when such a fee has been paid by a governmental source to the landowner pursuant to a lease agreement. If that be the case the landowner could only be liable for gross negligence.

The new language contained in subsection E provides that a landowner who leases his property to any agency of the Commonwealth so that the public may hunt, is immune from simple or gross negligence arising out of the public use of the property. Although the landowner (lessor) is immune from liability under this subsection, he might still be named as a defendant in the liability suit. In this event, the new language would require that the Commonwealth provide him with legal assistance at no cost. While the landowner might still have to make one appearance in court, presumably the court would dismiss him from the suit after a determination of immunity is made. Therefore, all the landowner would lose as a result of being sued, in this instance, is time. He would not have to expend any money out of his own pocket. The Commonwealth in such a leasing arrangement would step into the shoes of the landowner for liability purposes and by virtue of the damage cap contained in the Virginia Tort Claims Act (\$75,000 in damages on any particular liability claim).

E. Continuation of Research, Surveys and Inventories

The subcommittee supports the DGIF's current research program as an essential function in providing the Department with the information necessary to manage its wildlife program. It is recommended that such

data be the basis for developing additional low cost effective habitat improvement techniques. The DGIF is encouraged to design specific strategies which focus on where habitat development can take place with the least influence on economic production, and when to burn, plant, or disk so as to create the optimum habitat.

With respect to specific quail-related research efforts the subcommittee recommends continuation of the quail status studies, but, in addition, suggests that the Department conduct a statewide habitat inventory as a means to monitor the cumulative effects of agricultural land use on the bobwhite quail population. The subcommittee recommends that a long-term study (minimum of three years) be initiated to determine the effects of pesticides and herbicides on quail and their habitats. Testimony received describes the presence of pesticides in quail tissue samples, many of which are toxic to quail under laboratory conditions. Research is needed to determine biologically significant pesticide levels for wild quail and to measure the actual exposure of wild birds to pesticides in the field. In addition research is needed to determine if pesticide-induced mortality and the detrimental effects of pesticides on reproduction significantly impact bobwhite quail populations. Therefore, a comprehensive study should be conducted to assess the diverse factors affecting quail population dynamics with a particular emphasis on the role chemicals play in the life cycle of the bobwhite quail.

F. Program and Staffing Costs

The subcommittee has proposed an ambitious program to preserve Virginia's bobwhite quail, and acknowledges that implementation of all its recommendations will require additional personnel and funds. The General Assembly during the 1988 Session authorized two new wildlife biologists positions for the small game program which will enable the Department to expand its current program. Because the DGIF receives no general fund money, the variety of services it provides is dependent on the revenues generated from fees and federal funds. While the subcommittee received testimony describing additional funding alternatives such as the dedication of sales tax on sporting goods, a habitat stamp, and the establishment of a fish and wildlife foundation, it is not prepared at this time to recommend a specific funding mechanism. Absent an increase in fees within the immediate future, the subcommittee would encourage the DGIF to look further into the feasibility of establishing alternative sources of revenue. When there is an increase of fees the subcommittee recommends that a significant portion of the increase be dedicated to the small game program for the following purposes:

Proposed Annual Budget for Small Game Program

| | |
|--|-----------|
| Technical Assistance Biologists (Powhatan, Williamsburg, Lynchburg and Staunton) | \$200,000 |
|--|-----------|

| | |
|---|---------------|
| Research Biologist (Charlottesville) (newly created) | 50,000 |
| Publications, video's, workshops | 175,000 |
| Research Projects (pesticides, inventories, etc.) | <u>75,000</u> |
| | 500,000 |

This level of funding, which includes the hiring of three new technical assistance biologists, will allow the Department to offer habitat development programs in all regions of the state.

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APPENDIX A

Table I

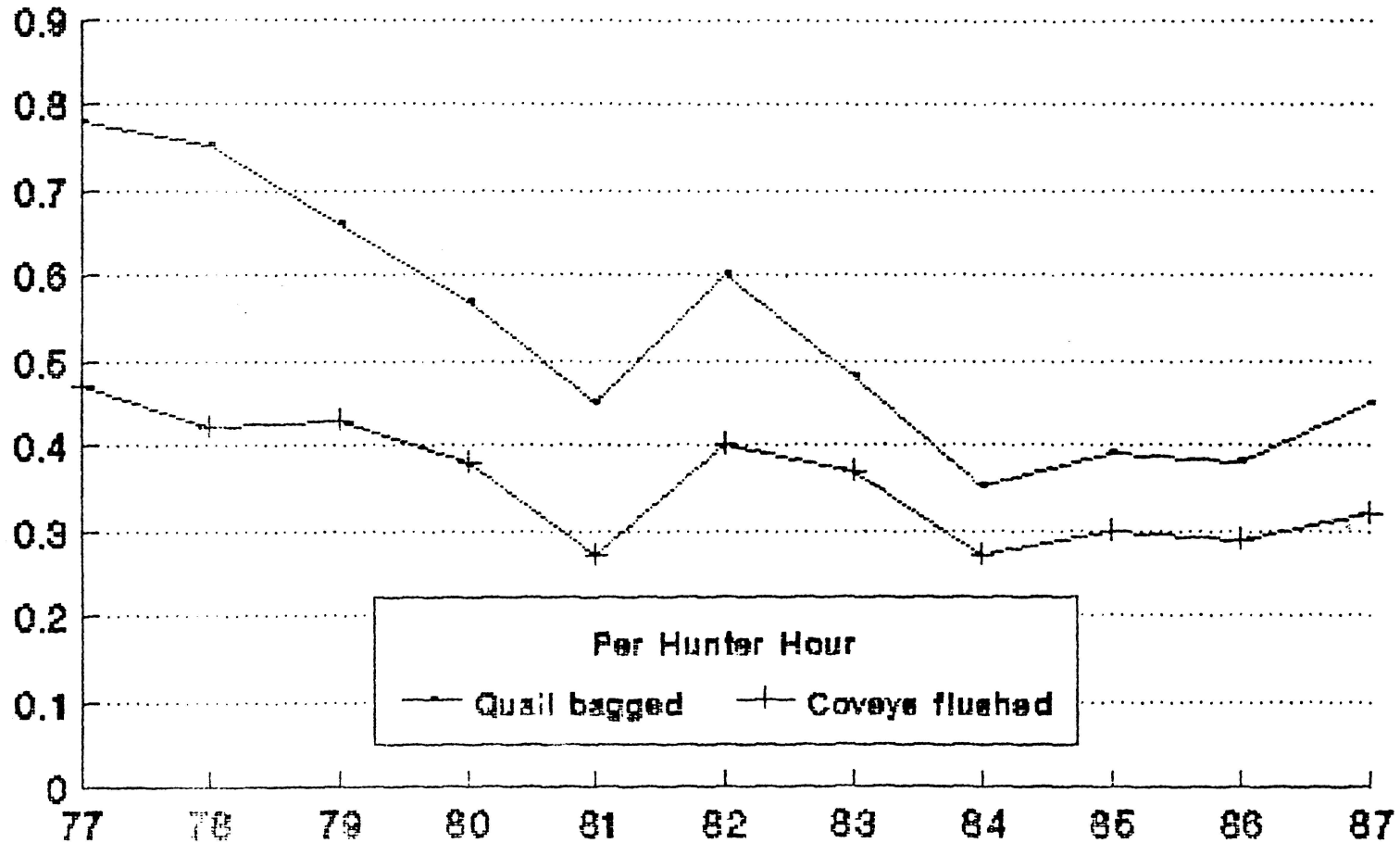
COOPERATING QUAIL HUNTER EFFORT AND SUCCESS
STATEWIDE

| SEASON: | <u>77-78</u> | <u>78-79</u> | <u>79-80</u> | <u>80-81</u> | <u>81-82</u> | <u>82-83</u> | <u>83-84</u> | <u>84-85</u> | <u>85-86</u> | <u>86-87</u> | 79-80 thru 86-87 Avg. | <u>87-88</u> |
|--------------------------|----------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------------------------|--------------|
| | 1. Total Cooperators | 120 | 76 | 69 | 67 | 56 | 176 | 209 | 172 | 194 | 136 | 135 |
| 2. Party Trips | 626 | 452 | 651 | 669 | 395 | 1424 | 1862 | 1402 | 1649 | 1070 | 1140 | 1401 |
| 3. Avg. Trips/Season | 5.2 | 5.9 | 9.4 | 10.0 | 7.1 | 8.1 | 8.9 | 8.2 | 8.5 | 7.9 | 8.5 | 8.2 |
| 4. Hunter Trips | 1192 | 855 | 1271 | 1281 | 828 | 2729 | 3579 | 2732 | 3366 | 2143 | 2241 | 2741 |
| 5. Avg. Hunters/Trip | 1.90 | 1.89 | 1.95 | 1.91 | 2.10 | 1.92 | 1.92 | 1.95 | 2.04 | 2.00 | 1.97 | 1.96 |
| 6. Trip Hours | 2400 | 1629 | 2360 | 2440 | 1618 | 5194 | 7239 | 5623 | 6631 | 4328 | 4429 | 5398 |
| 7. Hunter Hours | 4824 | 3250 | 4887 | 4962 | 3670 | 10488 | 14646 | 11730 | 14332 | 9344 | 9257 | 11159 |
| 8. Avg. Hours/Trip | 4.05 | 3.80 | 3.85 | 3.87 | 4.43 | 3.84 | 4.09 | 4.29 | 4.26 | 4.36 | 4.12 | 4.07 |
| 9. Bagged, Male | 1960 | 1269 | 1675 | 1442 | 854 | 3270 | 3677 | 2103 | 2860 | 1879 | 2220 | 2670 |
| 10. Bagged, Female | 1762 | 1134 | 1496 | 1282 | 783 | 2966 | 3403 | 1919 | 2768 | 1701 | 2040 | 2299 |
| 11. Bagged, Unknown | 39 | 24 | 45 | 99 | 10 | 80 | 11 | 34 | 14 | 5 | 37 | 15 |
| 12. Bagged, Total | 3761 | 2427 | 3216 | 2823 | 1647 | 6316 | 7091 | 4056 | 5642 | 3585 | 4297 | 4984 |
| 13. Males per Female | 1.11 | 1.12 | 1.12 | 1.12 | 1.09 | 1.10 | 1.08 | 1.10 | 1.03 | 1.10 | 1.09 | 1.16 |
| 14. Bagged/Hunter Hr. | 0.78 | 0.75 | 0.66 | 0.57 | 0.45 | 0.60 | 0.48 | 0.35 | 0.39 | 0.38 | 0.48 | 0.45 |
| 15. Bagged/Trip Hr. | 1.57 | 1.49 | 1.36 | 1.16 | 1.02 | 1.22 | 0.98 | 0.72 | 0.85 | 0.83 | 1.02 | 0.92 |
| 16. Bagged/Hunter Trip | 3.15 | 2.84 | 2.53 | 2.20 | 2.99 | 2.31 | 1.98 | 1.48 | 1.68 | 1.67 | 1.98 | 1.82 |
| 17. Bagged/Party Trip | 6.00 | 5.37 | 4.094 | 4.22 | 4.17 | 4.44 | 3.81 | 2.89 | 3.42 | 3.35 | 3.90 | 3.56 |
| 18. Cooperator/Season ** | 31.3 | 31.9 | 46.6 | 42.1 | 29.4 | 35.9 | 33.9 | 23.6 | 29.1 | 26.4 | 33.4 | 29.1 |
| 19. Cripples Lost | 503 | 358 | 515 | 508 | 278 | 1074 | 1033 | 667 | 839 | 491 | 676 | 745 |
| 20. % Cripples/Total Bag | 13% | 15% | 16% | 18% | 17% | 17% | 15% | 16% | 15% | 14% | 16% | 15% |
| 21. Coveys Flushed | 2311 | 1375 | 2088 | 1901 | 978 | 4233 | 5433 | 3216 | 4348 | 2690 | 3111 | 3574 |
| 22. Coveys/Hunter Hr. | 0.47 | 0.42 | 0.43 | 0.38 | 0.27 | 0.40 | 0.37 | 0.27 | 0.30 | 0.29 | 0.34 | 0.32 |
| 23. Coveys/Trip Hr. | 0.96 | 0.84 | 0.88 | 0.78 | 0.60 | 0.81 | 0.75 | 0.57 | 0.66 | 0.62 | 0.71 | 0.66 |
| 24. Coveys/Hunter Trip | 1.94 | 1.61 | 1.64 | 1.48 | 1.18 | 1.55 | 1.52 | 1.18 | 1.29 | 1.26 | 1.39 | 1.30 |
| 25. Coveys/Party Trip | 3.69 | 3.04 | 3.21 | 2.84 | 2.48 | 2.97 | 2.92 | 2.29 | 2.64 | 2.51 | 2.73 | 2.55 |

** Total season bag reported per cooperator for all party members.

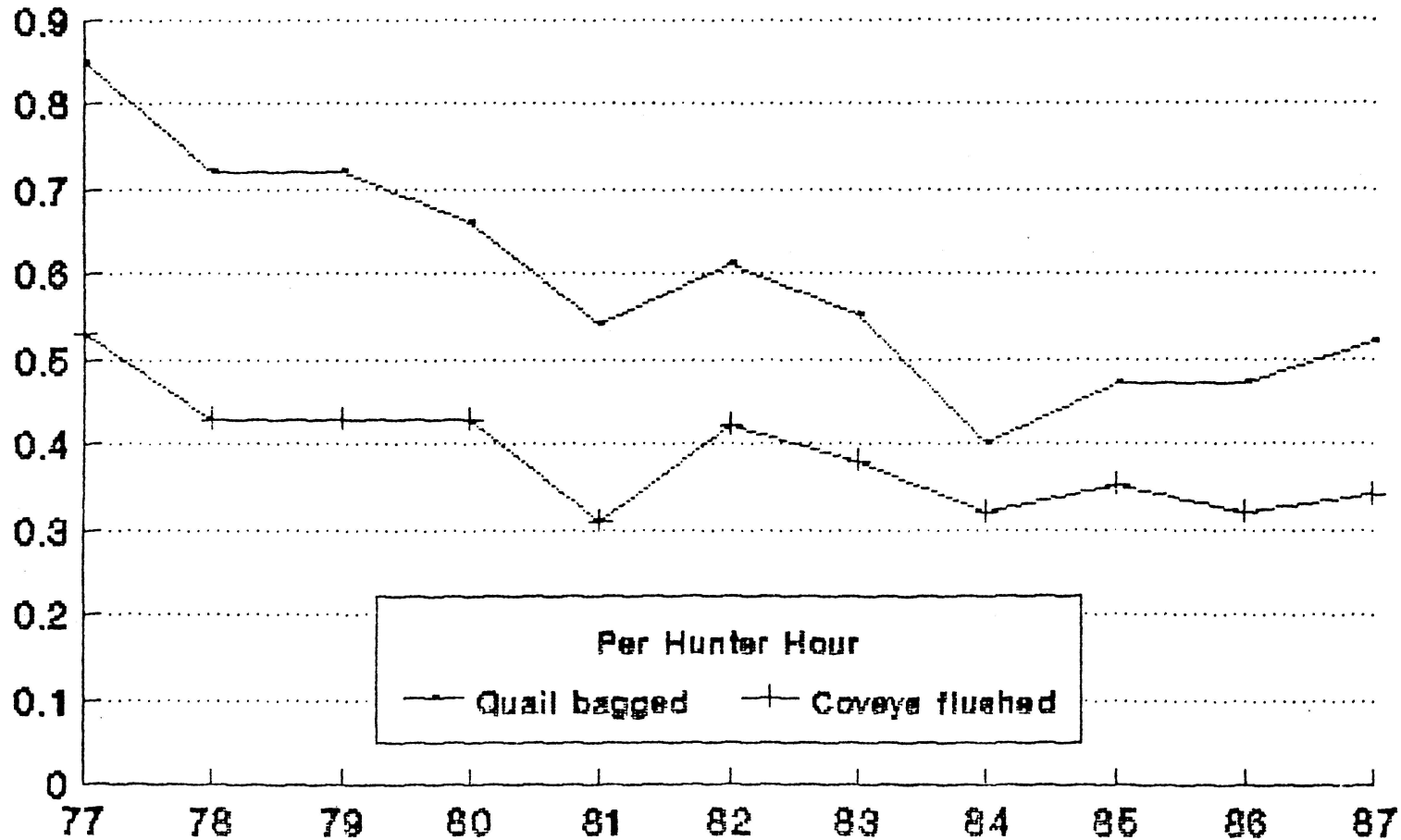
VA QUAIL SURVEY 77-87

Statewide (all Divisions)



VA QUAIL SURVEY 77-87

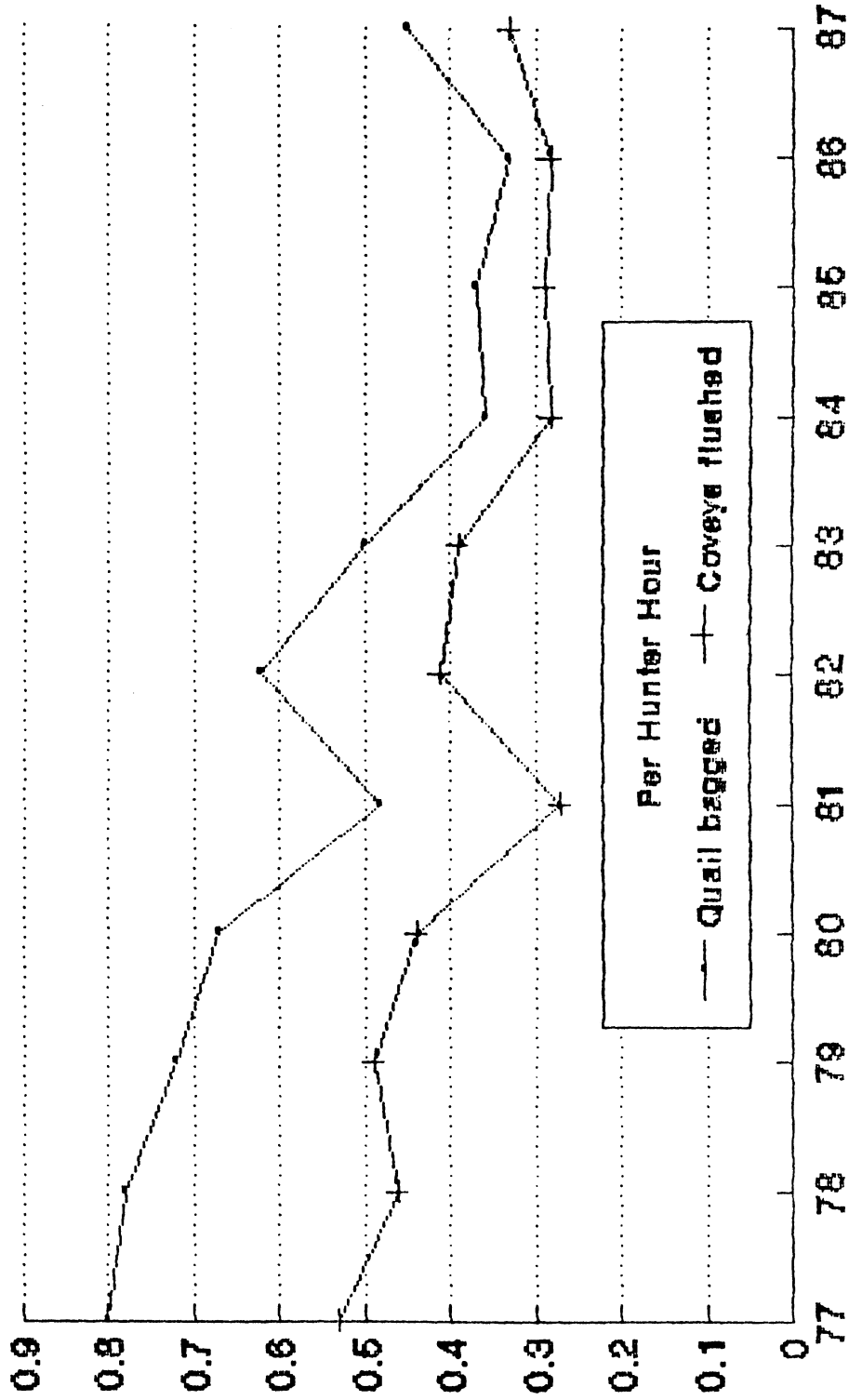
Tidewater Division



VA Quail Study 5-17-88 kgb

VA QUAIL SURVEY 77-87

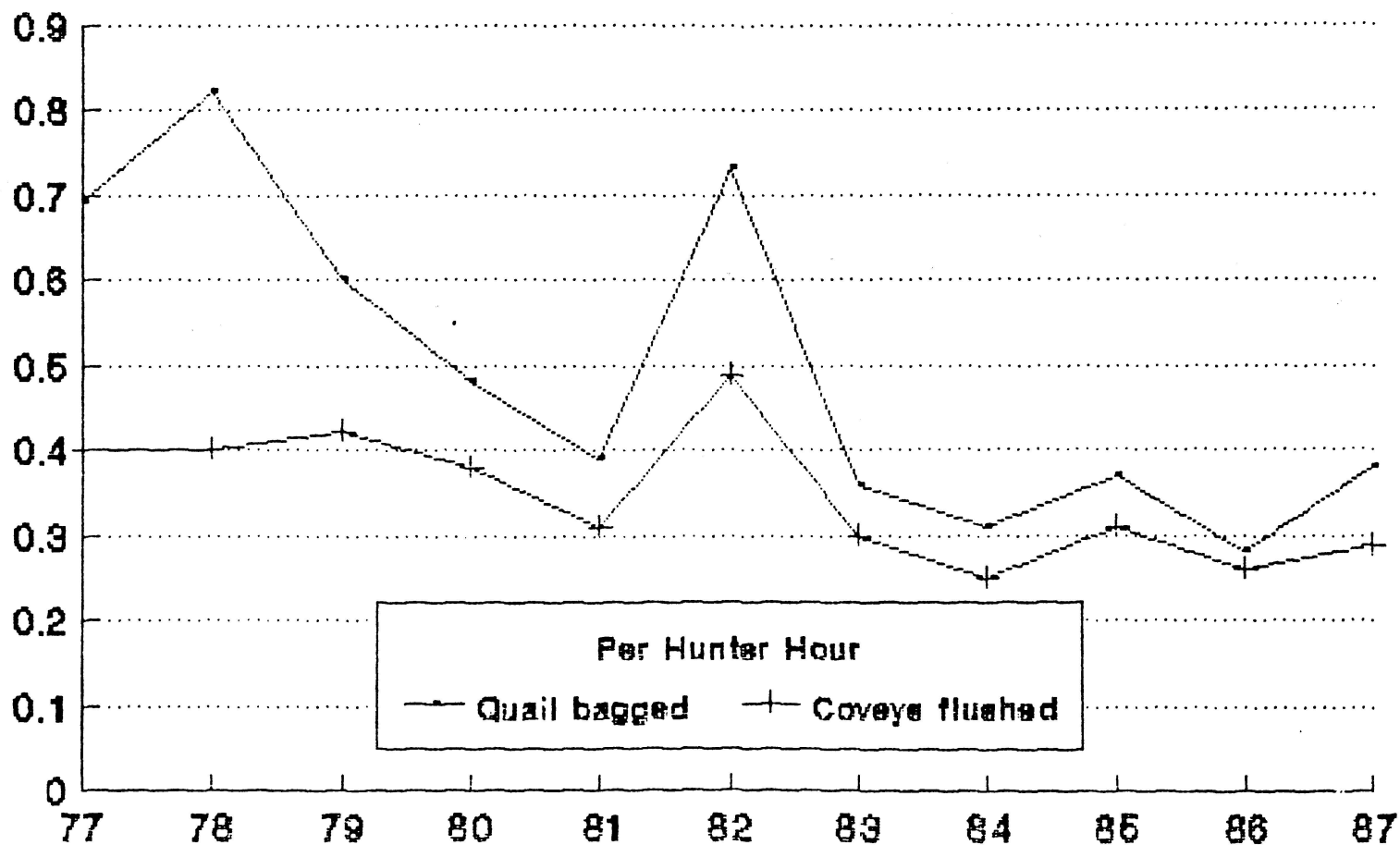
Eastern Piedmont Division



VA Quail Study 6-17-88 kgb

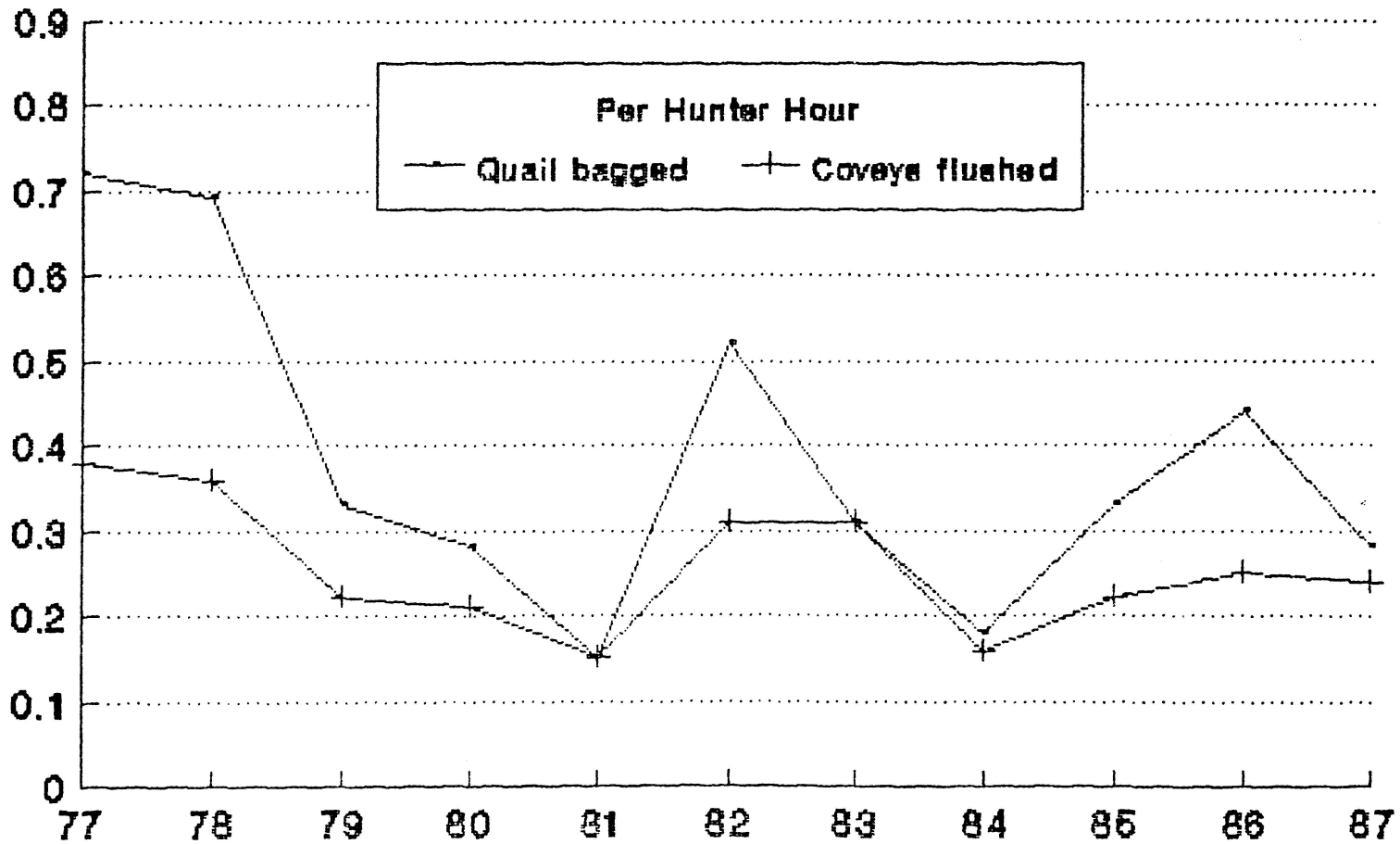
VA QUAIL SURVEY 77-87

Western Piedmont Division



VA QUAIL SURVEY 77-87

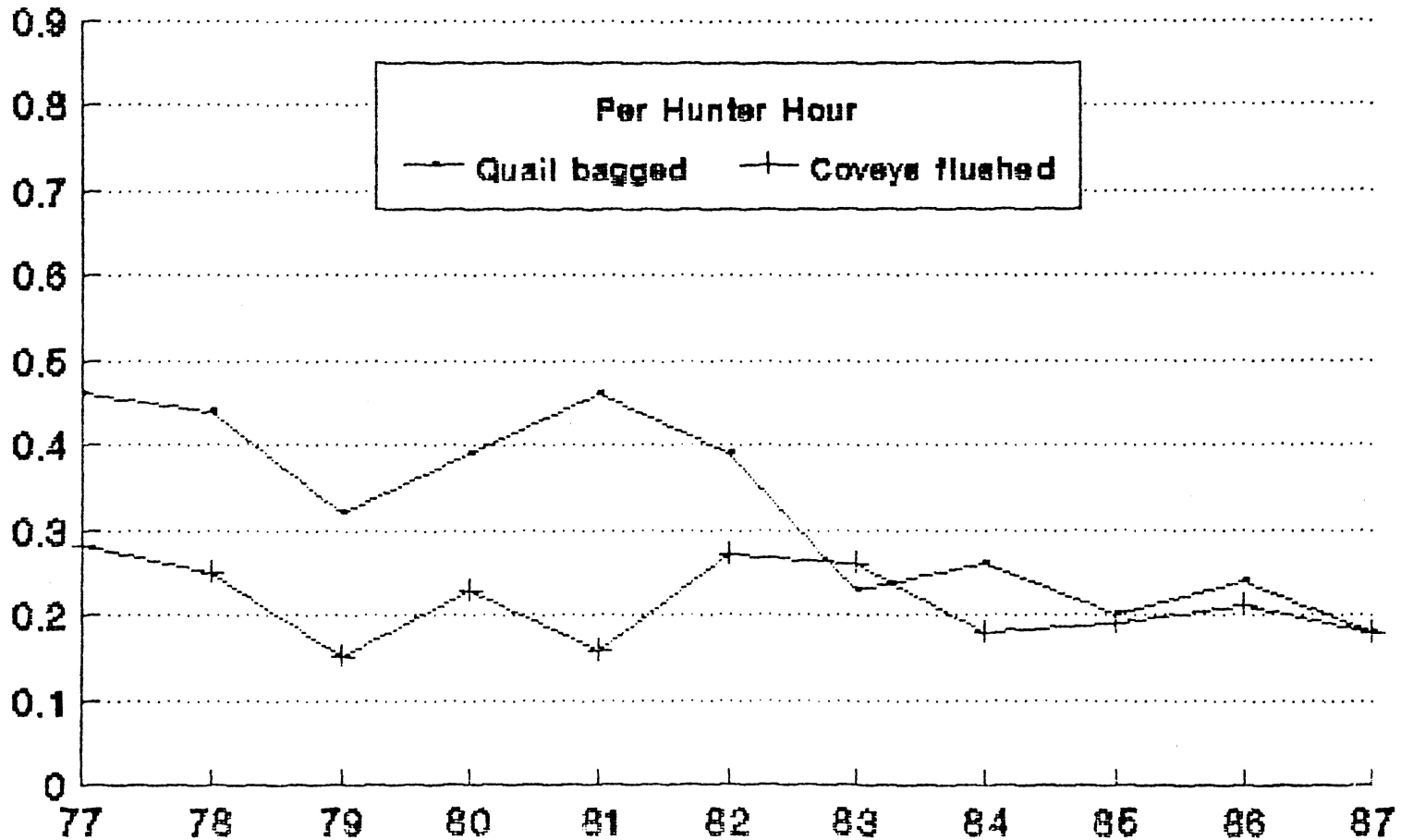
Northern Division



VA Quail Study 6-17-88 kgb

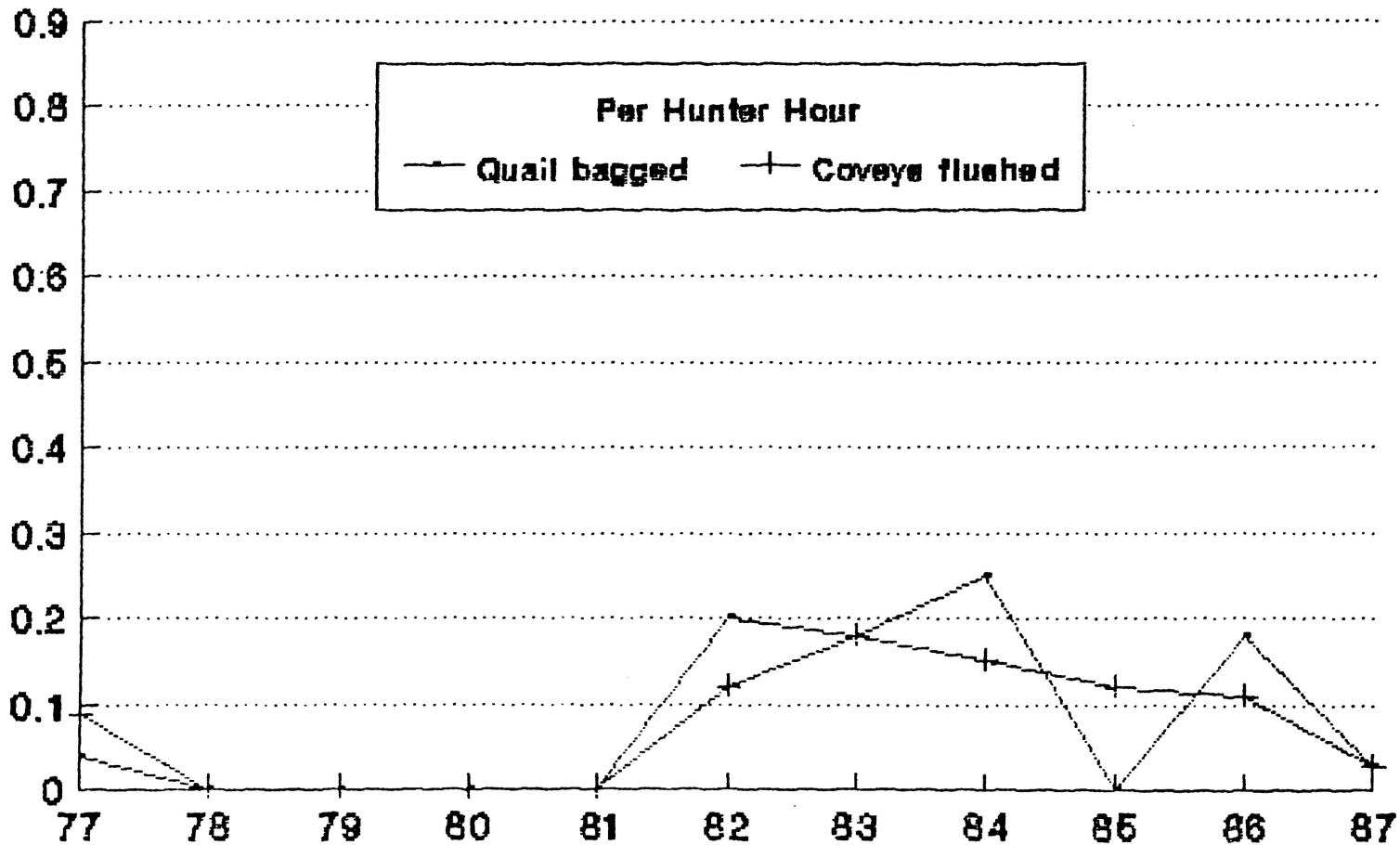
VA QUAIL SURVEY 77-87

Central Mountain Division



VA QUAIL SURVEY 77-87

Southwest Mountain Division



VA Quail Study 8-17-88 kgb

Myt

1 D 1/4/89 Farber C 1/6/89 blh

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 29.1-509 of the Code of Virginia,
4 relating to landowner liability.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 29.1-509 of the Code of Virginia is amended and reenacted
8 as follows:

9 § 29.1-509. Duty of care and liability for damages of landowners
10 to hunters, fishermen, sightseers, etc.--A. For the purpose of this
11 section:

12 "~~Consideration~~" "Fee" means any payment or payments of money ~~or~~
13 ~~anything else of value~~ to a landowner for use of the premises , but
14 does not include rentals or similar fees received by a landowner from
15 governmental sources or payments received by a landowner from
16 incidental sales of forest products to an individual for his personal
17 use.

18 "Land" or "premises" means real property, waters, boats, private
19 ways, natural growth, trees and any building or structure which might
20 be located on such real property, waters, boats, private ways and
21 natural growth.

22 "Landowner" means the legal title holder, lessee, occupant or any
23 other person in control of land or premises.

24 B. A landowner shall owe no duty of care to keep land or premises
25 safe for entry or use by others for hunting, fishing, trapping,

1 camping, participation in water sports, boating, hiking, sightseeing,
2 hang gliding, skydiving, horseback riding, point-to-point racing,
3 bicycle riding or collecting, gathering, cutting or removing firewood.
4 No landowner shall be required to give any warning of hazardous
5 conditions or uses of, structures on, or activities on such land or
6 premises to any person entering on the land or premises for such
7 purposes, except as provided in subsection D.

8 C. Any landowner who gives permission to another person to hunt,
9 fish, launch and retrieve boats, swim, ride, trap, camp, hike, hang
10 glide, skydive, sightsee, engage in point-to-point races, or to
11 collect, gather, cut or remove forest products upon land or premises
12 for the personal use of such person, does not thereby:

13 1. Impliedly or expressly represent that the premises are safe
14 for such purposes; or

15 2. Constitute the person to whom such permission has been granted
16 an invitee to whom a duty of care is owed; or

17 3. Assume responsibility for or incur liability for any
18 intentional or negligent acts of such person or any other person,
19 except as provided in subsection D.

20 D. Nothing contained in this section , except as provided in
21 subsection E, shall limit the liability of a landowner which may
22 otherwise arise or exist by reason of his gross negligence or willful
23 or malicious failure to guard or warn against a dangerous condition,
24 use, structure, or activity. The provisions of this section shall not
25 limit the liability of a landowner which may otherwise arise or exist
26 when the landowner receives ~~consideration~~ a fee for giving another
27 person permission to enter upon land to engage in any activity
28 described in subsections B and C of this section.

1 E. For purposes of this section, whenever any person enters into
2 a lease agreement with agencies of the Commonwealth concerning the use
3 of his land by the public for the purposes enumerated in subsections B
4 and C of this section, the Commonwealth shall be deemed the sole
5 landowner and the lessor shall be immune from liability arising out of
6 such uses. The Commonwealth shall also provide all necessary legal
7 assistance and the costs thereof for any lessor who, by virtue of the
8 provisions of this subsection, shall be immune from liability but is
9 nevertheless named as a party defendant in any such liability suit.
10 Any action against the Commonwealth for negligence arising out of such
11 use shall be subject to the provision of the Virginia Tort Claims Act
12 (§ 8.01-195.1 et seq.). Any such lease agreement shall be construed to
13 include the provisions of this subsection.

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