

Claimed statutory authorities and roles in the Bison Management Plan for the State of Montana and Yellowstone National Park

When bison leave Yellowstone National Park and enter Montana, the management responsibilities and authorities change. Within the boundaries of Yellowstone National Park, the Secretary of the Interior has exclusive jurisdiction to manage the park's natural resources, including the bison. Outside the park the State of Montana has the management authority over the bison. When the bison are on national forest system lands, the U.S. Forest Service has responsibilities under federal laws to provide habitat for the bison, a native species. Federal law requires APHIS to control and prevent the spread of communicable and contagious diseases of livestock. **ROD IBMP PAGE 6**

Statutory Basis for the Joint Management of Yellowstone Bison

The major federal laws that apply to federal agency actions in the Joint Management Plan are the National Park Service Organic Act and General Authorities Act, the Yellowstone Enabling Act, the National Forest Management Act, the Forest Service Organic Act, the Multiple-Use Sustained-Yield Act, the Federal Land Policy and Management Act, the Department of Agriculture Organic Act, the Animal Industry Act, the Animal Disease Control Cooperative Act, the Cattle Contagious Diseases Act, the Act of July 2, 1962, the Endangered Species Act, and the National Environmental Policy Act. These statutes provide our agencies broad discretion to exercise our expertise to manage the lands, programs, and wildlife, as applicable, under our administrative authority in a manner deemed best to meet the purposes Congress has delineated. **ROD IBMP PAGE 8**

Cooperative management of Yellowstone bison requires an ecosystem approach. The federal agencies recognize the importance of cooperating with each other and the involved Montana agencies in the long-term management of free roaming bison in and around Yellowstone National Park. Federal law provides the Secretary of the Interior with exclusive jurisdiction within the boundaries of Yellowstone National Park. Even so, NPS appreciates the importance

of the efforts of APHIS in its National Brucellosis Eradication Program. The agencies are committed to working toward the eventual elimination of brucellosis in bison and other wildlife (see FEIS, vol. 1, p. 44). The National Brucellosis Eradication Program is a cooperative state-federal program based on cooperation between APHIS, state agencies in charge of livestock disease programs, and the livestock industry. The agencies recognize, however, that actions taken under this plan will necessarily differ significantly from actions taken to eradicate the disease in livestock. However, APHIS supports the step-by-step implementation of the Joint Management Plan, as well as the disease control measures, such as vaccination, that are included in the Joint Management Plan. The Forest Service administers national forests for multiple purposes, including providing habitat for wildlife and grazing allotments for cattle. The Forest Service recognizes that the State of Montana has primary management responsibilities for livestock disease and wildlife on national forest as well as private lands surrounding Yellowstone National Park.

The Department of Agriculture Organic Act, the Animal Industry Act, the Animal Disease Control Cooperative Act, the Cattle Contagious Diseases Act, and the Act of July 2, 1962, establish the Department of Agriculture as the agency responsible for establishing a means for the suppression and extirpation of contagious disease of livestock. These laws authorize the Department of Agriculture to suppress and prevent the spread of any contagious and infectious disease of livestock by instituting activities, such as establishing and maintaining quarantines, permitting and regulating the movement of livestock, and seizing, quarantining, and disposing of livestock as appropriate. Additionally, these laws authorize the Department of Agriculture to cooperate with others in efforts to control and eradicate such diseases.

Under the Forest Service Organic Act, the Secretary of Agriculture is given general authority to regulate the use and occupancy of the national forests so as to achieve the objectives for which they were reserved. The Multiple-Use Sustained-Yield Act of 1960 broadened the purposes for which national forests were established and are

managed to include outdoor recreation, range, timber, watershed, and wildlife and fish purposes. That act also established the concepts of multiple use and sustained yield as the guiding principle underlying national forest management. Multiple use means the management of all the various renewable surface resources of the national forests in the combination that best meets the needs of the American people. Sustained yield means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. The Forest Service achieves these objectives for each national forest through the development and implementation of a Land and Resource Management Plan (“Forest Plan”).

In the Endangered Species Act, Congress recognizes that species of fish, wildlife, and plants facing extinction are of aesthetic, ecological, educational, historical, recreational, and scientific value to the United States and its people. The purposes of this act are to provide for the conservation of ecosystems upon which threatened and endangered species depend, to provide a program for the conservation of such species, and to take appropriate steps to achieve the purposes of international treaties and conventions aimed at protecting these species. Under the ESA, all federal agencies must use their authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered and threatened species. Additionally, each federal agency must consult with the Secretary of the Interior and insure that any agency action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Interrelated provisions of the NPS Organic Act and the NPS General Authorities Act of 1970, as amended, provide the most important statutory directive for the National Park Service. The Organic Act requires the Secretary of the Interior to manage park resources and values in a manner that will leave them unimpaired for future generations. The General Authorities Act prohibits the Secretary from managing units of the National Park System in derogation of the

values and purposes for which the various areas have been established, except as Congress may directly and specifically provide. The National Park Service considers these two mandates (no impairment and no derogation) as defining a single standard for the management of the National Park System.

Recently the director of the National Park Service issued guidance interpreting the National Park Service Organic Act (16 U.S.C. 1), and the 1978 amendments to the General Authorities Act (16 U.S.C. 1a-1). These are the fundamental provisions of law with which NPS managers must comply when authorizing activities to occur within areas of the National Park System. Generally, these two provisions direct the Secretary of the Interior to manage parks for conservation purposes and public enjoyment without impairment. The mandate to conserve park resources and values is separate from the prohibition on impairment. The conservation mandate, thus, applies even when there is no risk that park resources or values may be impaired. Although park managers must seek ways to avoid or minimize adverse impacts on park resources and values, they have discretion to allow impacts when necessary and appropriate to fulfill the purposes of a park. This discretion exists, however, only so long as the impact does not constitute an impairment of the affected resources and values. Finally, the purpose of providing enjoyment of park resources and values to the people of the United States ensures enjoyment of park resources and values by all people of the United States. This includes people who directly experience parks and those who appreciate them from afar. It also includes deriving benefit and inspiration from parks.

Congress has provided that when there is a conflict between conserving park resources and values and providing for the enjoyment of them, conservation is predominant. Additionally, although Congress has provided the secretary with limited discretion to allow certain impacts within parks, that discretion is limited by the statutory requirement that the Park Service must leave park resources and values unimpaired, unless a particular law directly and specifically provides otherwise. The NPS, thus, must manage park resources and values to allow them to continue to exist in a condition

that will allow the American people to have present and future opportunities for enjoyment of them.

An impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. The manager must consider several factors to determine if an impact is an impairment. Those factors include: severity, duration, timing, direct and indirect effects of the impact, and cumulative effects of the impact together with other impacts. Any impact to any park resource or value may constitute an impairment. An impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation creating the park.
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park.
- Identified as a goal in the park's general management plan or other relevant NPS planning documents.

An impact would be less likely to constitute an impairment to the extent that it is an unavoidable result, which cannot reasonably be further mitigated, of an action necessary to preserve or restore the integrity of park resources or values. NPS decision-makers must consider the impacts of a proposed action and determine, in writing, whether that activity will lead to an impairment of park resources and values. If there is an impairment, the decision-maker cannot approve the action.

When Congress created Yellowstone National Park in 1872, it set apart the area as a "public park or pleasureing ground for the benefit and enjoyment of the people." (16 USC 21) Congress also declared that the park would be under the "exclusive control" of the secretary of the Interior. Congress charged the secretary with "providing for the preservation, from injury or spoliation...the natural curiosities, or wonders, within the park, and their retention in their natural

condition.” The secretary also must provide against the “wanton destruction of the fish and game found within the park.” In 1894 Congress provided additional protection to wildlife within the park, largely in response to continued poaching of bison. In what is often referred to as the original Lacey Act, Congress prohibited within the boundaries of the park “[a]ll hunting, or the killing, wounding, or capturing at any time of any bird or wild animal, except dangerous animals, when it is necessary to prevent them from destroying human life or inflicting an injury.”

Finally, the National Environmental Policy Act, while not imposing substantive duties on the agencies, supports a planning approach that incorporates an ecosystem perspective. **ROD IBMP PAGES 8-10**

Application of this Decision

1. Application to the National Park Service

The Final EIS, pages 752-753 describes the management plans specific to Yellowstone National Park that would need modification with the adoption of the Joint Management Plan. This decision amends the park’s Master Plan (1974), Statement for Management (1986), and Resource Management Plan (1995) and replaces the Interim Bison Management Plan.

2. Application to the U.S. Forest Service

The FEIS, vol. 1, pp. 753-754 describes the acts, regulations, and plans that provide authority and direction relative to the management of bison on the Gallatin National Forest. The principal role of the Forest Service in implementing the Joint Management Plan is to provide habitat for bison. Cooperating with various agencies of the federal and state governments in performing their respective roles in bison management and animal health management is consistent with this role. The Gallatin National Forest Land and Resource Management Plan (1987) provides habitat management emphasis for the geographic area of the Joint Management Plan, predominantly within management areas for wilderness and wildlife emphasis. No decision by the Gallatin National Forest, USDA Forest Service, is

required to implement the Forest Service roles of providing habitat and cooperating with other agencies in the management of bison and disease. The 1987 Land and Resource Management Plan for the Gallatin National Forest is sufficient to guide proposed actions and activities in facilitating implementation of the Joint Management Plan.

3. Application to APHIS

For more than sixty years APHIS and its predecessor agencies have had a national program to eradicate brucellosis from the nation's livestock. Billions of dollars have been spent in this cooperative federal, state, and industry eradication effort. The implementation of the Joint Management Plan requires the cooperating agencies to take steps to ensure that brucellosis is not transmitted from bison in an affected herd to brucellosis-free cattle. More importantly, although not a plan for the eradication of brucellosis, the management activities of the Joint Management Plan demonstrate a commitment to the eventual elimination of the disease in the bison of Yellowstone National Park. This commitment and the management activities that support the commitment further the efforts of APHIS in eradicating brucellosis. In this regard, APHIS does not need to promulgate any new regulations to implement the Joint Management Plan.

4. Application to Contracts, Permits, and Special Use Authorizations

None of the federal agencies need to revise any existing contracts, permits, or special use authorizations to implement this decision.

5. Application to Research Activities

This decision affects and has relevance to ongoing and future research. The agencies would use the information from these research efforts to modify parts of the final plan, as appropriate. Notably, in Step 1 of the final plan, the agencies will conduct research regarding the viability of *Brucella abortus* bacteria in the environment in the northern and western boundary areas and will conduct research regarding the rate of fetal disappearance in the same areas. The results of the research will allow the agencies to further refine their ability to adjust the temporal separation between cattle and bison. In the final plan, the agencies also may use bison from capture

operations for approved research. Several additional ongoing research topics include, but are not limited to, tests of the safety of vaccines in non-target and endangered species (p. 98, FEIS, vol. 1), testing and development of a safe and effective vaccine for bison (pp. 99-100, FEIS, vol. 1), studies on the epidemiology and pathogenesis of *Brucella abortus* in bison, and *Brucella*-specific blood tests for determining the exposure to *Brucella abortus* and presence of the 15 bacteria (pp.100-102 and Appendix D, FEIS, vol. 1). Regarding research on vaccines and remote vaccine delivery systems, the agencies will vaccinate only vaccination-eligible bison with safe vaccines and will vaccinate bison remotely following research and development of a safe and effective vaccine and a safe and effective remote vaccine delivery system.

6. Relationship to Other Plans and Proposals

Winter Use management in Yellowstone National Park: While Yellowstone National Park has been involved with the long-term bison management plan it also has been developing a winter use plan jointly with Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway. NPS issued the decision on the winter use plan on November 22, 2000. The winter use planning effort considered seven alternatives, some of which would have eliminated motorized visitor activities in parts of Yellowstone National Park, primarily in areas of important winter wildlife habitat. Under the selected alternative the National Park Service will continue to groom roads to allow motorized access on all presently open routes, shifting from primarily snowmobile access to exclusive snowcoach use. The implementation of the winter use plan decision will not affect this decision as bison management actions, except for remote vaccination, occur at or beyond park boundaries and not in the interior of Yellowstone National Park. The remote vaccination program will not require plowed roads or the closing of any winter routes presently open to park visitors. The winter use activities, thus, will not interfere with the joint bison management efforts.

Presently the National Park Service and the U.S. Fish and Wildlife Service are planning to develop a management plan for the elk and bison in Jackson Hole, Wyoming. APHIS has agreed to participate in

this process. Possible partners in that planning process include the U.S. Forest Service and the State of Wyoming. That process should have little, if any, effect on this bison management plan.

We are aware that on November 15, 2000, the State of Montana issued its final EIS on the interagency bison management plan. The state FEIS incorporated by reference and adopted volumes 1, 2, and 3 of the federal FEIS. The state FEIS sets out and analyzes the Joint Management Plan as it existed at one point during the federal-state mediation. One important difference is the state's intent possibly to request the Montana legislature to authorize the Montana Fish, Wildlife and Parks Commission to establish regulations for the public hunting of bison. If approved, the state would administer regulated public hunting outside the park to accomplish bison controls outlined in the Joint Management Plan and to provide recreation on public lands. The state also stated that in addition to controlling the size of the bison population, they may also use hunting to maintain the distribution of bison within Zone 2 in the western boundary area and to prevent movements of bison from public land to private lands or beyond the boundaries of Zone 2. Additionally, if authorized, state employees, including staff of the Department of Fish, Wildlife and Parks and Department of Livestock, as well as the state veterinarian, would develop the bison hunting strategies. The state FEIS does not provide for consultation on the hunting program with the federal agencies involved with the Joint Management Plan. The state FEIS does recognize that additional compliance with the Montana Environmental Policy Act may be required. Until the federal agencies review actual bison hunting proposals, we cannot opine as to the necessity of additional NEPA compliance to implement a public hunt as part of the Joint Management Plan.

7. Relationship to Other Lands This decision is limited to lands under the control or authority of the NPS, USFS, and State of Montana as described in Paragraphs 27 and 32 of the Joint Management Plan, *infra*, and those management zones shown in Figure 1. **ROD IBMP PAGES 14-16**