

MEMORANDUM OF UNDERSTANDING
between the National Park Service
and the State of Montana for the
Bison Conservation Plan/EIS for
Yellowstone National Park

This Memorandum of Understanding (“MOU”) is entered into jointly by the State of Montana (“State”) and the United States Department of the Interior (DOI), acting by and through the National Park Service (“NPS”); the NPS and the State are collectively referred to as “Agencies” and individually as “Agency.”

I. CONTEXT

The NPS and the State are preparing a joint Environmental Impact Statement (EIS) to consider possible changes to the management of wild Yellowstone bison and the non-native disease brucellosis given substantial new information, changed circumstances, and the passage of more than 12 years since implementation of the Interagency Bison Management Plan (IBMP) began in 2001.

There is new information regarding (1) bison demography, genetics, and movements, (2) bison immune responses to brucellosis infection and vaccination, (3) the risk of brucellosis transmission from bison and elk to cattle in Montana, (4) interest from the public and Native American Tribes to hunting bison in Montana, (5) the probability of identifying brucellosis-free bison through quarantine, (6) the effects of large-scale culls on bison demography, (7) fertility control, and (8) changes in the views of some stakeholders, IBMP partners and scientists regarding management of the disease brucellosis.

The purpose of management is to conserve a viable wild population of Yellowstone bison while continuing to lessen the risk of brucellosis transmission to cattle, damage to property, and threats to human safety. The actions evaluated by the NPS in the EIS will be how to manage bison and brucellosis within Yellowstone National Park for the foreseeable future given existing conditions and technologies. The actions evaluated by the State in this EIS will be how to manage bison and brucellosis in nearby areas of Montana that are outside of Yellowstone National Park for the foreseeable future given existing conditions and technologies.

The analysis area for the EIS will include the area of bison distribution in Yellowstone National Park and nearby areas of Montana where bison are tolerated under specific conditions. The EIS will include the assessment of the potential environmental effects from a range of feasible alternatives that include various types and intensities of conservation and management actions. The EIS may evaluate alternate objectives for population abundance, brucellosis suppression, and demographic (age, herd, sex) ratios, as well as available habitat and human tolerance scenarios. Management tools that may be considered in the EIS include: restraint (minimal human intervention); hazing, capture, and holding of bison; vaccination; treaty and public hunting on State of Montana and National Forest System lands; quarantine and terminal pasture facilities; translocation of brucellosis-free bison; shipments to research or slaughter; fertility control; test-and-slaughter; habitat improvements; and other tools identified during scoping and

tribal consultation. This EIS will also be used to establish interagency and inter-governmental agreements to implement cross-jurisdictional bison management. The State of Montana, other federal agencies (APHIS, U.S. Forest Service), and American Indian tribes may use this evaluation to make their own decisions regarding the management of Yellowstone bison and brucellosis outside the park. The NPS and the State will continue to implement the current IBMP, as adjusted, until new Records of Decision are signed by each agency respectively.

II. PURPOSE

As provided in the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. § 1506.2, and the DOI regulations at 43 C.F.R. § 46.440, federal agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between the National Environmental Policy Act (NEPA) and state and local requirements, unless the agencies are barred from doing so by some other law. Such cooperation shall to the fullest extent possible include joint environmental impact statements.

The Montana Environmental Policy Act (MEPA) (75-1-102(1)) is patterned after NEPA and requires adequate review of state actions to ensure that environmental attributes are fully considered, and that the public is informed of the anticipated impacts in Montana of potential state actions. The purpose of parts 1 through 3 of MEPA is to (1) declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, (2) protect the right to use and enjoy private property free of undue government regulation, (3) promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, (4) enrich the understanding of the ecological systems and natural resources important to the state, and (5) establish an environmental quality council. Further, MEPA requires the preparation of an environmental assessment or an environmental impact statement to assist the legislature in determining whether laws are adequate to address impacts to Montana's environment, and to inform the public and local officials of potential impacts resulting from decisions made by state agencies.

Thus, the NPS and the State intend to prepare a joint environmental impact statement for the management of Yellowstone bison within and adjacent to Yellowstone National Park, to meet the obligations of both NEPA and MEPA. The Agencies intend to work together to satisfy any other reviews and ensure that documentation prepared pursuant to NEPA and MEPA can be used to satisfy the respective obligations under these and other applicable federal and state statutes, regulations and executive orders, and to the extent necessary, to utilize the results of the planning process in connection with their own environmental responsibilities.

Accordingly, the purpose of the MOU is to establish the NPS and the State as joint lead agencies for the Bison Conservation and Management Plan/EIS. The Agencies agree to commit to engage as joint leads for this EIS in the specific ways listed in sections IV and V of this MOU.

III. STATEMENT OF MUTUAL UNDERSTANDING FOR JOINT LEAD AGENCIES

1. For purposes of conducting the NEPA process, the NPS and the State shall serve as joint lead agencies pursuant to the applicable regulations at 40 C.F.R. § 1501.5 and 43 C.F.R. § 46.220,

as well as other applicable DOI and NPS guidance (including NPS Director's Order 12 and Chapter 56 of the Interior Departmental Manual), and will coordinate on the EIS.

2. The Agencies recognize that this MOU defines the working relationships between the Agencies. It does not infer any contractual relationship or assumption of liability for any action of the other Agency.
3. The Agencies acknowledge that cooperation and collaboration are critical to the successful completion of the EIS and agree to work together as equal partners throughout the planning process.
4. The Agencies acknowledge the need to communicate candidly about relevant substantive and procedural aspects of the EIS in order to facilitate dialogue and problem solving.
5. The Agencies recognize a shared interest in the long-term conservation of Yellowstone bison, while lessening the risk of brucellosis transmission from bison to cattle.
6. The Agencies acknowledge a mutual interest in minimizing travel and meeting time while maximizing awareness among other cooperators about when and how to contribute their special expertise.
7. The Agencies recognize their mutual needs to share data, knowledge, and special expertise, and to clearly indicate how this information was used, or not used, in the EIS development process.
8. The Agencies acknowledge the need to jointly release the draft EIS (DEIS) and final EIS (FEIS).

IV. JOINT RESPONSIBILITIES

1. The State shall designate one representative who will have primary responsibility for acting as the State liaison and point of contact for the EIS. During the planning process, the State of Montana will include participants from Fish, Wildlife and Parks and the Department of Livestock. The NPS shall also designate one representative to act as the NPS liaison and point of contact for the EIS. The Agencies have made their initial selections as set forth in Section IX of this MOU. The agencies have also made initial selections for administrative contacts in Section X of this MOU.
2. The Agencies shall commit to maintaining the confidentiality of all documents and internal deliberations during the period prior to public release by the NPS and the State of the EIS, including drafts, unless release of such information is required by law or regulation.
3. The Agencies understand that only the NPS Contracting Officer (CO) can assign work or direct the work of the EIS Contractor and agree to coordinate communication with the EIS Contractor through the NPS Contracting Officer's Representative (COR).

4. The Agencies shall work to bring together and consider the best available science during the EIS planning process.
5. The Agencies shall jointly lead a series of public workshops to consider scientific topics related to the EIS prior to public scoping meetings.
6. The Agencies shall jointly review and comment on draft products, including but not limited to, public comment reports, the DEIS and FEIS.
7. The Agencies shall jointly develop and agree upon the range of alternatives to be analyzed in the EIS and shall work together to integrate proposed activities that may occur inside and outside of the park into the proposed alternatives.
8. The Agencies shall strive for consensus on a preferred alternative. However, if consensus is not reached, each Agency may identify their respective preferred alternatives pursuant to applicable laws, regulations, and policies, recognizing that these preferred alternatives may differ between the Agencies, particularly in the Draft EIS.
9. The Agencies shall jointly issue notices inviting Cooperating Agency participation by the InterTribal Buffalo Council, Nez Perce Tribe, Confederated Salish and Kootenai Tribes, Animal and Plant Health Inspection Service, and U.S. Forest Service. The Agencies shall decide on joint meetings and other activities, and if the Agencies determine that it is necessary, shall develop a Cooperating Agency Agreement to be signed by the Agencies and the Cooperating Agencies.
10. The Agencies shall be jointly responsible for activities related to the EIS, including public scoping and other public meetings and cooperating agency meetings.
11. The NPS shall be responsible for identifying and advising upon the requirements of NEPA during development of the EIS and the State shall be responsible for identifying and advising upon the requirements of MEPA during development of the EIS. The Agencies shall fully cooperate to carry out relevant NEPA and MEPA-related activities such as the scoping process, cooperating agency meetings, and other public meetings. The Agencies shall also be responsible for ensuring that their own activities related to the EIS comply with each Agency's respective duties under other applicable laws. The Agencies shall, however, cooperate to the maximum extent possible to ensure that the EIS and NEPA/MEPA documentation are in compliance with their respective obligations.
12. The Agencies shall jointly participate in the development of technical information, identification of any impacts on resources in their respective areas of expertise, the development of alternatives for consideration in the EIS and development of mitigation, if required.
13. The Agencies will jointly handle the dissemination of information to the public, cooperating agencies, and others as necessary and will cooperate in the development of a distribution list for mailings for the EIS.

14. The Agencies shall jointly participate in meetings, conference calls and other communications necessary to discuss the EIS, as well as facilitate review of the proposed actions and alternatives for the EIS.
15. The Agencies shall not exclude each other from meetings regarding the EIS with other cooperating agencies.
16. The Agencies shall identify ways to expedite their review of proposed actions, the range of alternatives for the EIS, the DEIS, the FEIS, and other documents throughout the planning process, and to reduce delays by using concurrent review of documents and sharing information on reviews to avoid duplication of effort.
17. The Agencies shall each use their best efforts to provide responses and/or comments on drafts of the Plan and other documents, and act on concurrences and approvals, in a timely manner.
18. To the extent possible, the Agencies will coordinate the timing for the issuance of their respective Records of Decision for the EIS.
19. The Agencies shall work together to develop a joint schedule to complete the EIS.
20. The Agencies shall utilize the National Park Service Planning, Environment and Public Comment (PEPC) system for collecting and analyzing all public comment responses to public scoping and the Draft EIS. The NPS will make all comments received through the PEPC system available to the State of Montana. The NPS and the State will work together to develop responses to comments received on the Draft EIS.
21. The Agencies shall jointly contribute to the preparation of the DEIS and FEIS and be jointly responsible for their quality and content.

V. RESPECTIVE ROLES AND ASSIGNMENT OF RESPONSIBILITIES OF AGENCIES

Each Agency has unique roles in this process related to its own special expertise and proposed actions.

The NPS will:

1. As lead federal agency, be responsible for ensuring compliance with the requirements of NEPA and CEQ regulations, along with all other applicable federal laws, executive orders, regulations, and policies, and shall be responsible for the scope and content of the NEPA portions of the EIS.
2. Have the responsibility of managing a Contractor (EIS Contractor) hired to prepare the EIS, in accordance with Federal Acquisition Regulations (FAR). This includes appointing a Contracting Officer's Representative (COR) to serve as the liaison between the contractor and other project team members, including Yellowstone National Park and State staff.

3. Ensure the EIS contractor addresses all concerns and comments raised by the State on contractor-produced work products.
4. Provide funding for any special studies needed for the development of the EIS, as identified by the NPS.
5. Take the lead on developing alternative actions, developing descriptions of the affected environment, and evaluating the impacts of alternatives for bison management activities that occur primarily within the boundary of Yellowstone National Park in a manner that coordinates with activities proposed outside the boundaries of the park to the extent practicable.
6. Participate in all communications between the State and the EIS Contractor related to preparation of the EIS.
7. Exercise decision-making authority on the EIS and its associated Record of Decision for NPS actions within the boundary of Yellowstone National Park in a manner that coordinates with activities proposed outside the boundaries of the park to the extent practicable.
8. Seek meaningful input from the State, cooperating agencies and tribes, non-governmental stakeholder groups, and the general public primarily at key moments in the NEPA EIS process, including (a) during scoping, when issues and alternatives to be addressed in the EIS are identified, (b) during review of the draft EIS, and (c) during development of response to public and other agency comments, as needed.
9. Keep all parties informed about the time frames for public scoping, release of public documents, public comments, and alternatives under consideration.
10. In the EIS, identify the State as a joint lead on the plan and identify and acknowledge its role and specific responsibilities as joint lead.
11. Allow the State to review all analyses provided as a joint lead, and give meaningful consideration to comments submitted by the State on a timely basis.
12. Arrange for and participate in agency coordination meetings with the U.S. Fish and Wildlife Service for Section 7 consultation, and with the State Historic Preservation Officers of Wyoming, Idaho, and Montana pursuant to Section 106 of the National Historic Preservation Act.
13. Publish notices in the *Federal Register* and satisfy other public notification requirements per NEPA, NPS Director's Order 12 and other laws and regulations.

The State of Montana will:

1. As lead state agency, be responsible for ensuring compliance with all requirements of MEPA and shall be responsible for the scope and content of the MEPA portion of the EIS.

2. Inform the NPS of any issues or concerns associated with the work of and/or NPS management of the EIS Contractor. The Agencies agree to seek mutual resolution to any concerns.
3. Provide funding for any special studies needed for the development of the EIS, as identified by the State.
4. Participate in communications regarding policy and direction between the NPS and the EIS Contractor.
5. Exercise decision-making authority on the EIS and its associated Record of Decision for actions on lands in Montana outside the boundary of Yellowstone National Park for which the State has jurisdiction in a manner that coordinates with management inside the boundary of Yellowstone National Park to the extent practicable.
6. Prepare selected sections of the Draft and/or Final EIS for issues in which the State has special expertise or jurisdiction, which NPS will then review. The State will provide such prepared material to the NPS in a time and manner consistent with the agreed-upon schedule.
7. Provide meaningful input at key moments in the EIS development process, including (a) during scoping, when issues and alternatives to be addressed in the EIS are identified, (b) during review of the draft EIS, and (c) during development of response to public and other agency comments, as needed.
8. Participate in joint interagency meetings as deemed appropriate.
9. Inform the NPS and the other cooperating agencies of specific data for consideration in the EIS, and how they may be useful to the development and analysis of alternatives.
10. Take the lead on developing alternative activities, providing descriptions of the affected environment, and analyzing the impacts of proposed activities and prior state decisions and plans to manage bison in areas of Montana outside the boundary of Yellowstone National Park for which the State has jurisdiction in a manner that coordinates with activities proposed inside the boundaries of the park to the extent practicable.

VI. JURISDICTION & AUTHORITIES

It is understood that each Agency continues to exercise its respective jurisdictional authorities and that the cooperation extended in this MOU does not transfer any jurisdictional roles or responsibilities.

This MOU is based on and consistent with the authorities provided in the following:

- National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.*
- NPS Organic Act, as amended and supplemented, 16 U.S.C. § 1 *et seq.*
- Yellowstone National Park Organic Act and other park-specific statutes
- Montana Code Annotated (MCA) 81-1-102, 81-2-120, 87-1-201, 87-1-216
- Montana Environmental Policy Act (75-1-102(1), MCA)

VII. EFFECTIVE DATES AND TERMINATION

This MOU will be effective from the date of the last signature and will continue until a Record of Decision for the EIS has been signed.

Any party may terminate its participation in this MOU when that party provides thirty (30) days written notice of such termination, including the reason(s) for termination, to the other party.

VIII. AMENDMENTS AND UNDERSTANDINGS ABOUT CONFLICT RESOLUTION

Any party to this MOU may identify a need for an amendment to the MOU and/or a need to schedule further communications with the other party at any time. The MOU may be modified by mutual written consent of both parties at any time.

If an issue arises that cannot be resolved at the primary contact level identified in section IX, the State and the Superintendent of Yellowstone National Park will work together to resolve the issue, which may include a facilitator if the parties agree that one is necessary. If the State and Superintendent are not able to find a mutually agreeable resolution, designees of the Governor of Montana and the Secretary of the Interior will work together to resolve the issue.

IX. PRIMARY CONTACTS FOR THIS MOU

National Park Service:

David Hallac, Chief, Yellowstone Center for Resources
PO Box 168
Yellowstone Center for Resources
Yellowstone National Park, WY 82190

State of Montana:

Tim Baker, Policy Advisor for Natural Resources
State Capitol, Room 204
PO Box 200801 Helena, MT 59620

X. ADMINISTRATIVE CONTACTS FOR THIS MOU

National Park Service:

Jennifer Carpenter, Chief, Planning and Compliance
PO Box 168
Yellowstone Center for Resources
Yellowstone National Park, WY 82190

State of Montana:

Rebecca Cooper
Montana Fish, Wildlife & Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

Communications – The State of Montana will send via email any communications, including comments on draft sections or documents, and operational, logistical, or other matters to the NPS primary contact and administrative contact as identified above.

The National Park Service will send via email any communications, including comments on draft sections or documents, and operational, logistical, or other matters to the State of Montana primary contact and administrative contact as identified above.

Changes in Key Officials – The NPS and the State of Montana may not make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this agreement.

XI. STANDARD CONDITIONS:

- A. Authorities.** Nothing in this MOU shall be construed to extend the jurisdiction or decision-making authority of any party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU shall be construed as limiting or affecting the authority or legal responsibility of any party, or as binding any party to perform beyond the respective authority of each, or to require any party to assume or expend any specific sum of money. The provisions of this MOU are subject to the laws and regulations of the State of Montana; the laws of the United States; and the regulations of the Department of the Interior, as they may be applicable. Nothing in this MOU shall be construed as affecting the decision-making requirements of any party or impairing the independent judgment of each party regarding policy decisions.
- B. LEGAL RIGHTS AND REMEDIES.** Nothing in this MOU shall be construed to alter the legal rights and remedies that each party would otherwise have. No party waives any legal rights or defenses by entering into this MOU or participating in the process contemplated hereby.
- C. SOVERIEGN IMMUNITY.** The State of Montana, political subdivisions, and the agencies of the federal government do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D. SEVERABILITY.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
- E. THIRD PARTY BENEFICIARY RIGHTS.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only among the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.

F. NON-FUND OBLIGATION DOCUMENT. This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate rules, policies, and statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Nothing herein constitutes a binding commitment to fund any of the proceedings encompassed by the MOU. Any specific cost sharing or funding shall be executed separately through other funding mechanisms, as deemed necessary and appropriate by each of the signatories.


G. PARTICIPATION IN SIMILAR ACTIVITIES WITH OTHER ENTITIES. This MOU in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.

XII. APPROVALS

In signing this MOU, the undersigned recognize and accept the roles and responsibilities assigned herein. Each of the Agencies agrees to pursue cooperation, communication, and efficiency in good faith and in a timely manner to ensure that the NEPA & MEPA processes and documentation complies with applicable federal and state requirements.



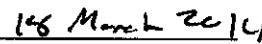
For Yellowstone National Park



Date



For the State of Montana



Date