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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

ALLIANCE FOR THE WILD ROCKIES, COUNCIL ON FISH & WILDLIFE, Plaintiffs, vs. KATHARINE HAMMOND, National Park Service Regional Director for Interior Regions 6,7, and 8; CAMERON SHOLLY, Superintendent of Yellowstone National Park; and NATIONAL PARK SERVICE, Defendants.	CV- COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1. This is a civil action for judicial review under the Administrative Procedure Act of the National Park Service's July 23, 2024 Record of Decision (Decision) authorizing the 2024 Bison Management Plan (hereinafter "2024 Plan").

2. Plaintiffs attest that the Decision approving the 2024 Plan is arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.

3. Defendants' approval of the 2024 Plan and corresponding documents or lack thereof as written violate the National Environmental Policy Act (NEPA), 42 U.S.C. §4331 et seq, and/or the Administrative Procedure Act (APA), 5 U.S.C. §§701 et seq.

4. Plaintiffs request that the Court remand without vacatur to the Park Service and order preparation of a revised EIS.

5. Plaintiffs seek a declaratory judgment, injunctive relief, the award of costs, and expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412, and/or such other relief as this Court deems just and proper.

II. JURISDICTION

6. This action arises under the laws of the United States and involves the United

States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§1331, 1346.

7. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs' members live in, use, and enjoy the Greater Yellowstone Area for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiffs' members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.

8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiffs' members have been and will be adversely affected and irreparably injured if Defendants implement the 2024 Plan. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA and the APA. The requested relief would redress these injuries and this Court has the authority to grant Plaintiffs' requested relief under 28 U.S.C. §§2201 & 2202, 5 U.S.C. §§705 & 706, and 16 U.S.C. §1540.

9. Plaintiffs fully participated in any available administrative review processes for the 2024 Plan; thus they have exhausted any available administrative remedies. The Court therefore has jurisdiction to review Plaintiffs' APA claims.

III. VENUE

10. Venue in this case is proper under 28 U.S.C. §1391(e) and Local Rule 3.2. The Plan will be implemented primarily within Park County, Montana, which falls within the Billings Division pursuant to Local Rule 1.2.

IV. PARTIES

11. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion,. Its registered office is located in Missoula, Montana. Members of the Alliance observe, enjoy, and appreciate Montana's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the 2024 Plan area. Alliance's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems. Alliance for the Wild Rockies brings this action on its own behalf and on behalf of its adversely affected members.

12. Plaintiff COUNCIL ON FISH & WILDLIFE is a tax-exempt, non-profit public interest organization formed to insure the maintenance of biological diversity and the ecological integrity of all natural ecosystems. Its registered office is in Bozeman, Montana. Its members enjoy and appreciate native wildlife, fish, spiritual connection and renewal, clean water, and high-quality

aquatic and terrestrial habitat in the Greater Yellowstone Area, and expect to continue these practices well into the future, including in the 2024 Plan area. Its members' professional, spiritual and recreational activities are directly affected by Defendants' failure to perform their lawful duties to protect and conserve these ecosystems. Council on Wildlife and Fish brings this action on its own behalf and on behalf of its adversely affected members.

13. Defendant KATHARINE HAMMOND is the National Park Service Regional Director for Interior Regions 6, 7, and 8, and is the official who signed the Record of Decision authorizing the 2024 Plan.

14. Defendant CAMERON SHOLLY is the Superintendent of Yellowstone National Park, and is the official who recommended that Defendant Hammond authorize the 2024 Plan.

15. Defendant NATIONAL PARK SERVICE is an administrative agency within the U.S. Department of Interior, and is responsible for the lawful management of all National Parks, including Yellowstone National Park.

V. FACTUAL ALLEGATIONS

A. Historical Background

16. Tens of millions of plains bison once ranged across western North America.

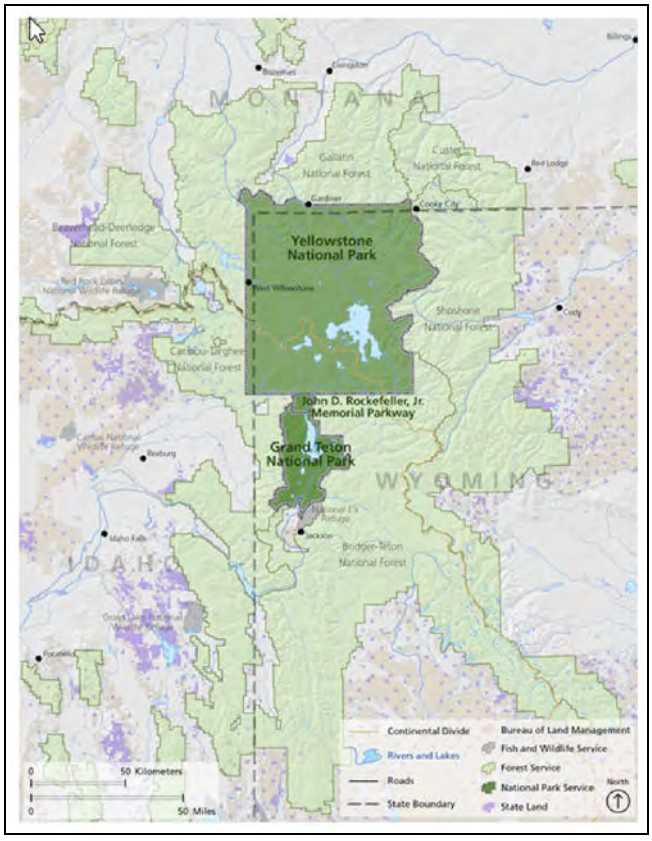
17. Today, across North America, bison occupy less than 1% of their historic range.

18. The government manages approximately 20,000 bison for conservation on public lands.

19. Only about 8,000 of those bison roam without fences, about 5,000 of which live in the Greater Yellowstone Area.

20. The Greater Yellowstone Area is one of the largest, mostly intact, temperate ecosystems in the world.

21. The Greater Yellowstone Area consists of Yellowstone and Grand Teton National Parks as core natural areas that are surrounded by six National Forests, three National Wildlife Refuges, state lands in Idaho, Montana, and Wyoming, Bureau of Land Management lands, and private and Tribal lands:



22. Archeological evidence indicates bison have lived in the Greater Yellowstone Area for more than 10,000 years, and historical narratives suggest they were abundant and widely distributed into the 1830s, when they were almost extirpated by settlers during colonization.

23. Congress established Yellowstone National Park in 1872 ”for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition.”

24. Yellowstone National Park encompasses about 2.2 million acres of Wyoming, Montana, and Idaho.

25. On May 7, 1894, Congress passed An Act to Protect the Birds and Animals in Yellowstone National Park, and to Punish Crimes in said Park, and for Other Purposes.

26. The April 4, 1894, House of Representatives Report that accompanied this Act, states: “out of the vast herds of millions of buffaloes [bison] that a few years ago coursed the plains of America a few hundred only remain, and they are now all in the Yellowstone Park, and one of the purposes of setting aside this park has been to preserve this little herd.”

27. The House Report also states: “Prompt action is necessary, or this last remaining herd of buffalo will be destroyed.”

28. As a result, Section 4 of the 1894 Act mandates that "[t]hat all 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, is prohibited within the limits of said park."

29. Around 1,000 bison were estimated within Yellowstone National Park near the time of its establishment in 1872.

30. By 1902, only 23 bison were counted in the Park.

31. After bison conservation efforts were implemented in the Park, bison numbers increased to about 1,100 by 1930.

32. Most recently, the Park Service estimates that during 2023, the bison population was around 3,960 pre-calving and 4,830 post-calving.

33. Over the last 10 years, the post-calving population averaged 4,890.

34. Yellowstone bison are primarily found within the Park boundaries, but they also use areas outside of the Park to the north and west.

35. The Yellowstone bison herd consists of two sub-herds: central and northern.

36. A second herd of about 700 bison has a core range inside Grand Teton National Park, with most of those bison wintering on the National Elk Range.

37. Yellowstone bison in the northern herd primarily occupy the Yellowstone River drainage and surrounding mountains between the Lamar Valley and Mirror Plateau in the east and the Gardiner Basin in the west.

38. The northern region of the Park is drier and warmer than the rest of the Park, with average snow depths ranging from about 3.5 feet at higher elevations to less than 1 foot at lower elevations.

39. Bison in the northern herd congregate in the Lamar Valley and on adjacent plateaus during the breeding season.

40. Post-calving numbers of bison in the northern herd increased from 1,500 in 2008, stabilizing around 4,000 since 2016.

41. Yellowstone bison in the central herd occupy the central plateau, extending from the Pelican and Hayden valleys to the Madison headwaters area in the west.

42. In this region, winters are often severe, with temperatures reaching negative 44 degrees Fahrenheit, and snowpack exceeding 6 feet in some areas.

43. Bison in the central herd congregate in the Hayden Valley for breeding.

44. After breeding, most bison in the central herd move between the Madison, Firehole, Hayden, and Pelican Valleys, but some travel to the Hebgen Basin in Montana, or the northern region of the Park, before returning to the Hayden Valley for the subsequent breeding season.

45. In the central herd, post-calving numbers of bison rapidly declined from about 3,500 in 2006 to 1,500 in 2008.

46. The best available science indicates that the bison population must exceed

roughly 3,250 individuals because lower numbers of bison would lessen the long-term viability of the population.

47. Thus, the Park Service "does not want bison abundance to decrease below 3,500 total in the population because this could substantially decrease genetic diversity."

48. A Park Service report estimates that the carrying capacity for Yellowstone bison in the Park is approximately 10,000 bison.

49. In addition to bison, there are also more than 125,000 elk in the Greater Yellowstone Area.

50. Yellowstone Park provides summer range for six to seven elk herds, most of which spend the winter at lower elevations outside the Park.

51. Several elk herds have winter ranges in and around the Park, including the northern Yellowstone winter range herd, and the Jackson herds, which have winter ranges in the southern parts of the Greater Yellowstone Area, including the National Elk Refuge, and surrounding areas.

52. Elk migration corridors, summer ranges, and winter ranges are shown in the map below:

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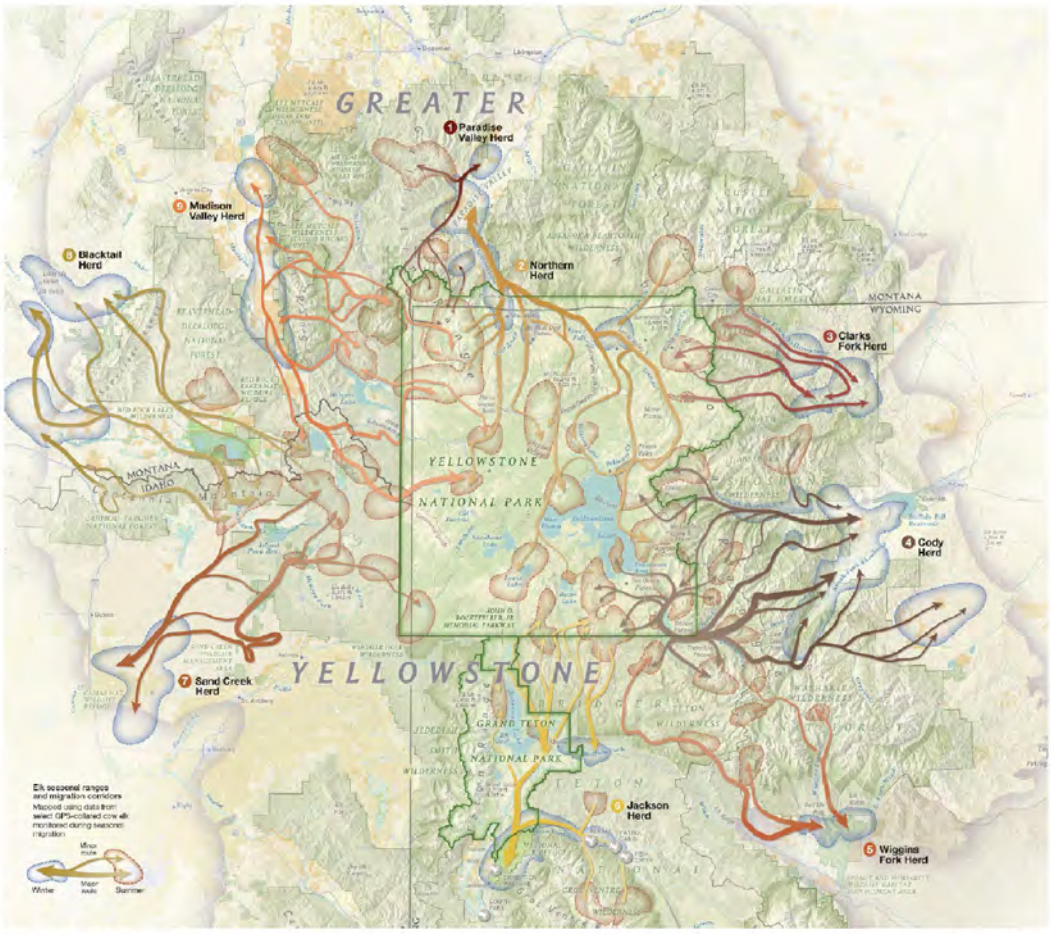

FIGURE 2-1 Map of migration corridors, winter ranges (blue polygons) and summer ranges (tan polygons) of 9 of 11 major elk herds in the GYA. This map excludes approximately one-third of the southern GYA that includes elk in the Afton-Pine, the Pinedale-South Wind River areas, and eastern Idaho, west of Grand Teton National Park (see Figure 2-4 and Tables 2-3 and 2-4). SOURCE: National Geographic, 2016.

53. The northern Yellowstone elk population spends winter on more than 580 square miles of grasslands, sagebrush steppe, and lodgepole pine forests adjacent to the Yellowstone River and its tributaries.

54. About two-thirds of this winter range is within the northern portion of the Park, while the remainder is on state lands in Montana to the north.

55. During the 2000s, predation, in combination with a public hunting program in

Montana and occasional severe weather, rapidly decreased numbers of northern Yellowstone elk by about 70% from a high count of more than 19,000 in the mid-1990s.

56. Subsequently, Montana eliminated the late season hunter harvest of fertile, prime-aged female elk to increase adult female survival and reproduction.

57. In turn, after a low count of 3,915 in 2013, Montana counted 6,651 elk in March 2023.

58. Approximately 80% of the northern Yellowstone elk population spends winter on lower-elevation areas outside the Park.

59. Elk have become more concentrated in the Paradise Valley of Montana during the last several decades, in part because of access to irrigated alfalfa fields. This nutritious, year-round forage source decreases the tendency for elk to migrate away from these areas during late winter and spring.

60. Accordingly, many large groups, totaling thousands of elk, are spending more time in this area and mixing with cattle.

B. Brucellosis

61. Brucellosis is a nationally and internationally regulated disease of livestock.

62. Brucellosis is nonnative, and caused by the bacteria *Brucella abortus* that was introduced to the Yellowstone area when cattle were added to the landscape in the early 1900s.

63. Brucellosis can induce abortions in ungulates, and can be transmitted among bison, cattle, and elk if they contact infectious birthing tissues (amniotic fluids, fetus, placenta) or the newborn calf.

64. As of at least 2012, the Centers for Disease Control and Prevention has found that in the United States, brucellosis is no longer a major human health concern.

65. While *B. abortus* can cause both acute febrile and chronic relapsing brucellosis in humans, it is no longer a major human health concern in the United States due largely to public health interventions such as the pasteurization of milk.

66. Diagnosing brucellosis infection in livestock or wildlife with a high level of certainty requires killing the animals and attempting to culture the bacteria from milk, lymphatic tissues, uterine discharges, and fetal tissues.

67. Alternatively, serology is used to detect antibodies circulating in the blood that indicate past exposure to *Brucella* bacteria.

68. However, a positive serology test (seropositive) does not necessarily mean the animal is still infected or capable of transmitting the bacteria – only that it has been exposed in the past.

69. For example, about 60% of adult female bison in the Park are seropositive, but only 10% to 15% are actually infectious and could potentially shed live

bacteria that spread the disease.

70. Although it is possible that brucellosis could be transmitted between bison, elk, and cattle, all recent cases of brucellosis in cattle in the Greater Yellowstone Area cattle are traceable genetically and epidemiologically to transmission from elk, not bison.

71. Federal and state disease regulators initially believed that elk played a minor role in brucellosis transmission to cattle, but this belief has been disproven as elk have transmitted brucellosis to cattle more than two dozen times since 2000.

72. In contrast, there is no documented transmission of brucellosis from bison to cattle.

73. More specifically, there have been no cases of transmission from Greater Yellowstone Area bison to cattle in the 27 livestock herds infected with brucellosis since 1998, despite no change in the seroprevalence of brucellosis in Yellowstone bison.

74. Elk exposed to brucellosis inhabit an area encompassing about 17 million acres.

75. Seroprevalence in feedground elk ranges from about 10% to 40%.

76. Co-mingling of elk with cattle is the cause of current brucellosis outbreaks in cattle in Montana.

77. The eradication or suppression of brucellosis would require eliminating the disease in elk.

78. Brucellosis concerns livestock producers because if cattle become infected, producers could lose income if they are required to kill or quarantine infected cattle, conduct additional testing, or limit interstate or international sales in order to comply with federal regulations issued by the U.S. Animal and Plant Health Inspection Service (APHIS).

79. In contrast, under APHIS regulations, a brucellosis-free classification allows producers to export cattle to other states or nations without testing.

80. Historically, under APHIS regulations, the entire state lost "brucellosis-free" classification if regulators detected brucellosis in two or more livestock herds within a 2-year period, or if ranchers did not depopulate a livestock herd exposed to brucellosis within 60 days. This reclassification could have significant adverse economic consequences to livestock producers across a state.

81. However, in 2010, the federal government relaxed the APHIS regulations to avoid these consequences.

82. The current APHIS regulations allow livestock producers to deal with brucellosis outbreaks in cattle on a case-by-case basis, and the new regulations eliminate the need to remove whole herds and test cattle across

the entire state.

83. Montana estimates the current APHIS regulations provide a net annual benefit of at least $5.5 million to livestock producers.

84. Additionally, since 2009, livestock disease regulators have implemented the vaccination of livestock calves with high compliance in the brucellosis surveillance area in Montana.

C. 2000 Bison Management Plan

85. Although bison roam relatively freely within the Park's wilderness and undeveloped areas, which encompass about 99.3% of the Park's 2.2 million acres, when snow cover becomes deep, bison generally move to lower elevations where less snow accumulates and food is more accessible.

86. Thus, in Yellowstone Park, in winter, some migrating bison move across the Park boundary into the State of Montana.

87. When bison leave the Park, they are managed by the State of Montana, primarily by the Montana Department of Livestock, and the Montana Department of Fish, Wildlife, and Parks.

88. In 1995, Montana sued the federal government due to speculation that bison infected with brucellosis that migrated outside the Park could pass the disease on to cows in Montana, and thereby jeopardize Montana's (at that time) brucellosis-free status and, in turn, negatively impact interstate and

international cattle trade.

89. As a result, the Secretary of Interior, Secretary of Agriculture, and Governor of Montana signed the Interagency Bison Management Plan in 2000 (2000 Plan).

90. When the 2000 Plan was negotiated during the 1990s, all government agencies believed that bison were the primary risk of brucellosis transmission to cattle.

91. Thus, negotiators of the 2000 Plan chose a population target of 3,000 bison in late winter and early spring to reduce migration outside the Park.

92. To implement this population limit, the 2000 Plan authorizes actions such as capture, slaughter, vaccination, and hazing animals back into the Park with helicopters or other means.

93. Thus, under the 2000 Plan, Park Service personnel hazed and captured migrating bison and either slaughtered them or held them for testing when the population exceeded numeric triggers.

94. In 2009, the Confederated Salish and Kootenai Tribes and the Nez Perce Tribe became members of the 2000 BMP because of their Treaty rights to hunt bison in southwestern Montana.

95. Since 2013, bison numbers have been permitted to range between about 4,400 and 5,900 after calving.

96. Some bison that were captured and tested seronegative have been transferred out of the Greater Yellowstone Area.

97. Between 2019 and 2023, 414 live bison that tested seronegative were shipped to the Assiniboine and Sioux Tribes on the Fort Peck Reservation in northeastern Montana.

98. The Park Service refers to this process as the "Bison Conservation Transfer Program" or BCTP.

99. Up to about 100 to 300 seronegative bison can be entered into the transfer program during most winters; to reach that number, the Park Service would need to capture about 300 to 750 bison.

100. To date, the Fort Peck Reservation is the only approved facility capable of receiving bison from the bison transfer program.

101. When hundreds of bison are removed as part of the transfer program and shipped to northeastern Montana they can no longer be hunted in their natural environment in southwestern Montana.

102. Thus, the bison transfer program has been controversial because it reduces bison available for public hunting as part of State and Tribal hunting programs.

103. In the Park, roughly 60% of Yellowstone bison are seropositive, and that statistic has not changed for decades despite 20 years of capture, testing, and

slaughter operations.

104. Thus, implementation of the 2000 Plan from 2001-2023 has not meaningfully reduced the percentage of bison that are seropositive.

105. The 2000 Plan does not address elk management.

106. Instead, within Yellowstone Park, elk are managed by the Park Service under a policy of natural regulation, which means there are no artificial population control measures (such as hazing for capture, slaughter, or transfer).

107. Elk outside the Park are managed by state and federal wildlife management agencies, primarily with state hunting regulations.

D. Changed Conditions since 2000

108. Since 2000, several of the circumstances that influenced the derivation and implementation of the 2000 Plan have changed, and scientific knowledge regarding bison and brucellosis has improved substantially.

109. Most importantly, federal and state disease regulators initially thought elk played a minor role in brucellosis transmission to cattle, and therefore assumed that bison migrating outside Park would transmit brucellosis to cattle and jeopardize interstate and international trade.

110. To the contrary, a 2020 report by the National Academies of Sciences, Engineering, and Medicine found that elk had transmitted brucellosis to livestock in the Greater Yellowstone Area at least 27 times since 1998 with

no transmissions attributed to bison.

111. There have not been economic sanctions or sustained efforts to restrict the numbers and distribution of elk in areas of Montana where brucellosis is prevalent and spreading from elk.

112. Additionally, since 1998, cattle operations immediately adjacent to the Park have been reduced – which has reduced the possibility that cattle may come into contact with infectious birthing tissues (amniotic fluids, fetus, placenta) or the newborn calf of a brucellosis-infected bison.

113. There are three State-designated "Elk Management Units" (EMUs) adjacent to the north and west Park boundaries in Montana where buffalo migrate: the Madison-Gallatin EMU to the west, and the Northern Yellowstone EMU and Absaroka EMU to the north:

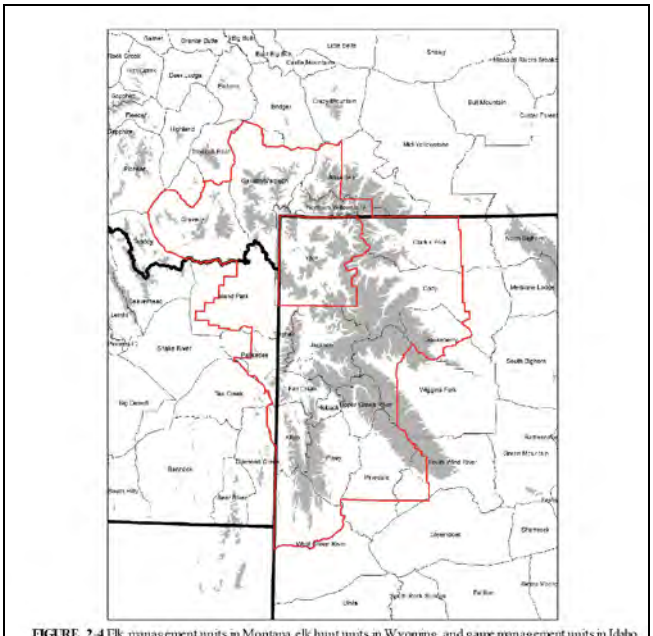

FIGURE 2-4 Elk management units in Montana, elk hunt units in Wyoming, and game management units in Idaho in relation to the designated surveillance area and the YNP boundary, as of 2014 (red lines). Elevations above 2,500 m are shown in gray. SOURCE: MDFWP and WGFD data provided to committee.

114. In the Madison-Gallatin EMU to the west of the Park, there has been a change in land ownership toward landowners who do not make their primary living from cattle ranching.

115. Likewise in the Absaroka EMU to the north of the Park, there has been an increasing number of landowners who do not make their primary living from cattle ranching.

116. Additionally, in 2008, Montana signed a 30-year livestock grazing restriction and bison access agreement with the owners of the Royal Teton Ranch north of the Park.

117. Furthermore, there are no longer any active cattle allotments on public lands in portions of the Hebgen Basin currently used by bison..

118. Although there are a number of grazing allotments on public lands on National Forests and BLM lands in the Park vicinity, most of these grazing allotments are inactive or do not have cattle grazing at the same time of year that bison would be present and presenting an infection risk with infectious birthing tissues (amniotic fluids, fetus, placenta) or a newborn calf.

119. The map below shows legally-designated grazing allotments, whether active or inactive:

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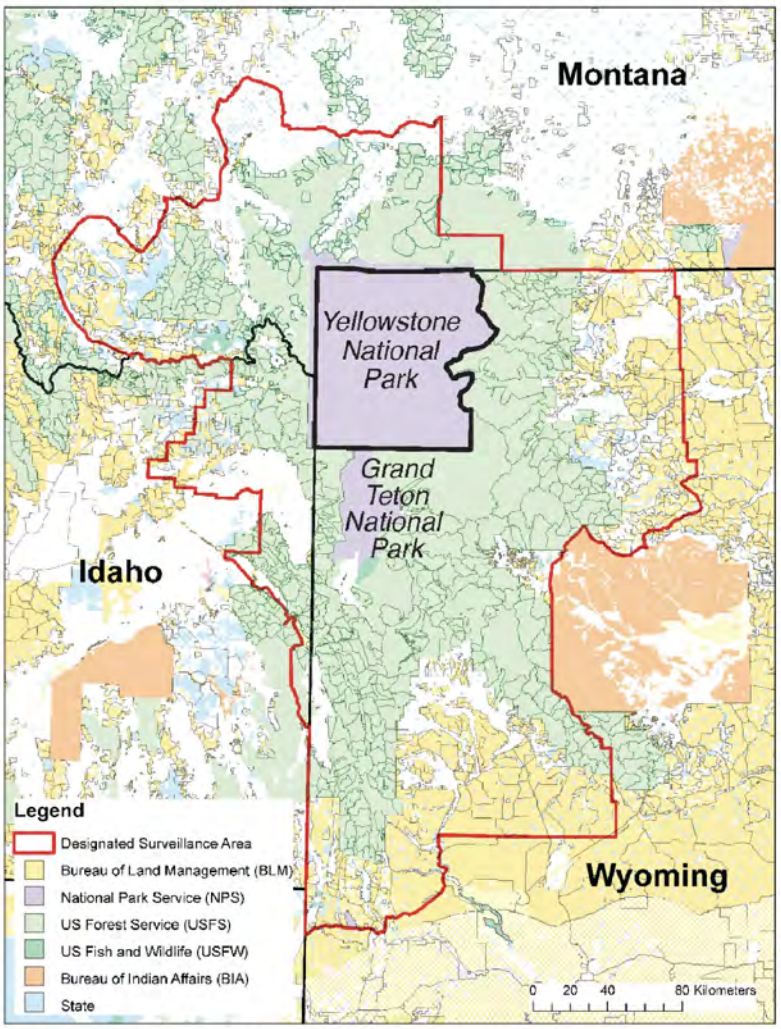

FIGURE 2-13 Grazing allotments throughout the GYA. Each of the drawn polygons is an allotment and the current use of many allotments across the entire region were not easily accessible. SOURCES: BLM (2014) and USFS (2008, 2009, 2015).

120. Due to the reduced numbers of cattle, as well as management operations that maintain temporal and spatial separation from bison, few cattle now have any exposure to Yellowstone bison.

121. Another changed circumstance is the significant change in APHIS regulations discussed above that have reduced the economic impact on livestock producers from brucellosis infections.

122. Another changed circumstance is that since 2006, several American Indian Tribes have asserted their Treaty rights to hunt bison migrating out of the Park onto National Forest lands in Montana.

123. The Tribal hunting season outside the Park generally runs from December through March.

124. The Confederated Salish and Kootenai Tribes of the Flathead Nation, Nez Perce Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation, Confederated Tribes of the Umatilla Indian Reservation, Yakama Nation, Northern Arapaho Tribe, Blackfeet Nation, and Crow Nation hunt bison outside the Park pursuant to their own regulations and seasons.

125. The State of Montana also permits an annual 90-day public bison hunt from November 15 to February 15 on lands adjacent to the Park.

126. State and Tribal hunting programs removed about 4,300 bison from the population during winters from 2001 through 2023: about 260 bison per winter during 2012–2022, and around 1,175 bison in winter 2022–2023.

127. Another changed circumstance is the issuance of a 2015 "Year-Round Tolerance" Decision by the State of Montana to change the "tolerance zones" for bison outside the Park.

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128. The map below illustrates bison distribution and bison tolerance zones, as authorized under the State's 2015 Decision:

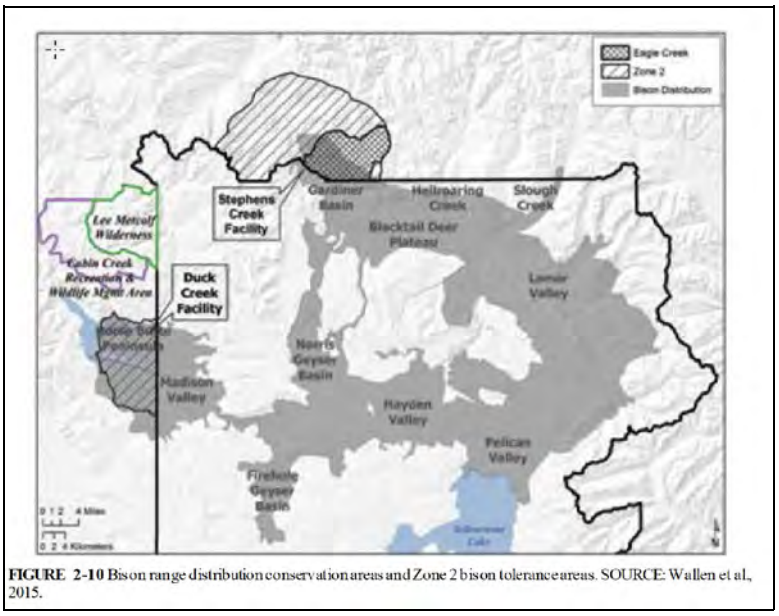
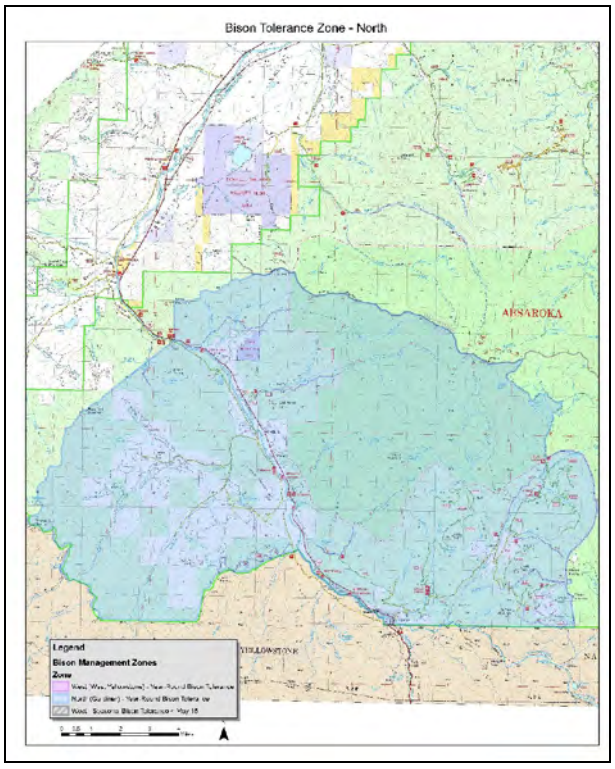
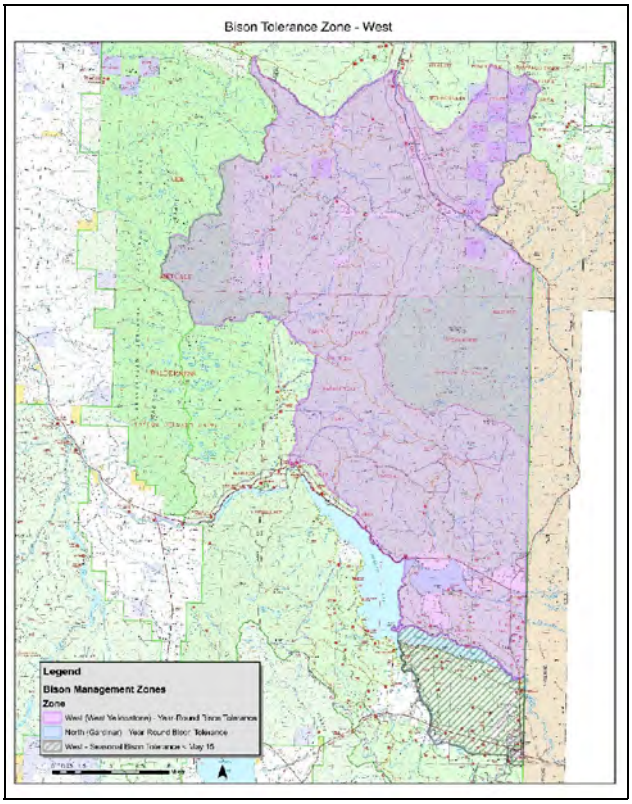


FIGURE 2-10 Bison range distribution conservation areas and Zone 2 bison tolerance areas. SOURCE: Wallen et al., 2015.

129. The map below illustrates more detail for the northern tolerance zone:



130. The map below illustrates more detail for the western tolerance zone:



131. The 2015 Year-Round Tolerance Decision establishes that bison are permitted to migrate out of the Park during winter and spring into these established tolerance zones north and west of the park in Montana.

132. The State found that "modification is appropriate because of several changes in the science and factual circumstances underlying the original IBMP decision that was finalized in the year 2000" including the following:

a. cattle are no longer found on Horse Butte west of the Park;

b. there are no longer any active cattle allotments on public lands in portions of the Hebgen Basin (west of the Park) currently used by

bison;

c. the modification of APHIS regulations reduced the economic consequences to livestock producers from brucellosis infection of livestock;

d. new research indicates negligible risk of brucellosis transmission from bull bison to cattle;

e. new research on brucellosis persistence relative to cattle turnout dates indicates a reduced risk of infection to livestock, and

f. there is now a scientific consensus that elk are the primary transmission route of brucellosis infection to livestock

133. The State Decision was intended to both "provide the potential for greater hunting opportunities and the use of hunting as a tool for bison population management" and "maintain a wild, free-ranging population by providing year-round habitat north and west" of the Park, among other objectives.

E. 2020 Science Report

134. In 1998, the National Research Council (NRC) prepared the report *Brucellosis in the Greater Yellowstone Area* (1998).

135. The 1998 NRC report made eight recommendations for addressing control of brucellosis in the Greater Yellowstone Area by focusing primarily on reducing the risk of transmission from bison to cattle.

136. The potential for progress in reducing the spread of brucellosis was based in part on the assumption that elk were incapable of maintaining brucellosis in the Greater Yellowstone Area population without transmission that occurs among elk in feedgrounds or from bison to elk within the ecosystem.

137. As noted above, the scientific evidence no longer supports that assumption, as the current drivers of the spread of *B. abortus* in the region have become better understood.

138. Thus, in 2017, APHIS requested that the NRC revisit the issue of brucellosis in the Greater Yellowstone Area, as addressed in the 1998 NRC Report.

139. The primary motivations for APHIS to request the study were (1) a need to understand the factors associated with the increased transmission of brucellosis from wildlife to livestock, (2) a need to understand the recent apparent expansion of brucellosis in non-feedground elk, and (3) a need to have science inform the course of any future actions in addressing brucellosis in the Greater Yellowstone Area.

140. In response, NRC appointed a committee to comprehensively review and evaluate the available scientific literature and other information on the prevalence and spread of *Brucella abortus* in the Greater Yellowstone Area (GYA) in wild and domestic animals, and examine the feasibility, timeframe, and cost-effectiveness of options to contain or suppress brucellosis across the

region.

141. The study examined factors associated with the increased occurrence of brucellosis transmission from wildlife to livestock and the recent expansion of brucellosis in non-feedground elk, including whether evidence suggests that brucellosis is self-sustaining in elk or if reinfection through emigration from feeding grounds is occurring.

142. The study also explored the role of feeding grounds, predators, population size, and other factors in facilitating brucellosis infection.

143. The study committee examined disease management activities and vaccination strategies being undertaken or considered at the state, regional, and federal level, and evaluated the biological, animal health, and public health effects of those activities.

144. The committee also examined the current state of brucellosis vaccines, vaccine delivery systems, and vaccines under development for bison, cattle, and elk, as well as the effectiveness of currently available vaccination protocols.

145. In the course of its review, the committee explored the likelihood of developing more effective vaccines, delivery systems, and diagnostic protocols for cattle, bison and elk.

146. Throughout the study, the committee met with wildlife managers, animal

health officials, land managers, Native peoples, and other stakeholders, including members of the public, to understand the implications of brucellosis control efforts on other goals and activities in the region and nationally.

147. The committee examined the societal and economic costs and benefits of implementing various measures to reduce or eliminate the risk of brucellosis transmission to cattle, and within wildlife, relative to the costs and benefits of allowing the persistence of brucellosis in the Greater Yellowstone Area.

148. The committee then published a consensus report ("2020 Science Report") that outlines how to best address brucellosis in the Greater Yellowstone Area based upon the best available science.

149. The preface to the 2020 Science Report unequivocally finds: "There is now clear evidence that transmission of *B. abortus* to domestic livestock in the GYA has come from infected elk, not bison . . . ."

150. Thus, the primary conclusion of the 2020 Science Report is that "[w]ith elk now viewed as the primary source for new cases of brucellosis in cattle and domestic bison, the committee concludes that brucellosis control efforts in the GYA will need to sharply focus on approaches that reduce transmission from elk to cattle and domestic bison."

151. The 2020 Science Report explains: "elk are now recognized as a primary host for brucellosis and have been found to be the major transmitter of *B. abortus*

to cattle. All recent cases of brucellosis in GYA cattle are traceable genetically and epidemiologically to transmission from elk, not bison. This is one of the most significant changes in our understanding of brucellosis epidemiology in the GYA since 1998. . . . In contrast, there have been no cases of transmission from GYA bison to cattle in the 27 herds infected with brucellosis since 1998 despite no change in the seroprevalence of brucellosis in bison."

152. In light of this seismic shift in the scientific understanding of brucellosis in the Greater Yellowstone Area, the 2020 Science Report sets forth seven recommendations for how to manage brucellosis based upon the best available science:

a. **Recommendation 1**: "To address brucellosis in the GYA, federal and state agencies should prioritize efforts on preventing *B. abortus* transmission by elk. Modeling should be used to characterize and quantify the risk of disease transmission and spread from and among elk, which requires an understanding of the spatial and temporal processes involved in the epidemiology of the disease and economic impacts across the GYA. Models should include modern, statistically rigorous estimates of uncertainty."

b. **Recommendation 2**: "In making timely and data-based decisions for

reducing the risk of *B. abortus* transmission from elk, federal and state agencies should use an active adaptive management approach that would include iterative hypothesis testing and mandated periodic scientific assessments. Management actions should include multiple, complementary strategies over a long period of time and should set goals demonstrating incremental progress toward reducing the risk of transmission from and among elk." "Active" is defined: "Many brucellosis management efforts implemented since the 1998 report may appear to have taken an adaptive management approach; however, those efforts have not followed the basic tenet of employing an active approach. More specifically, individual management actions were not designed or established to allow for scientific assessment of effectiveness, which is a central tenet of active adaptive management. Management activities are typically conducted as hypothesis testing, the outcome of which directs subsequent decisions and actions toward the ultimate goal. In the absence of carefully designed management actions that include experimental controls, it is difficult to determine the effectiveness of a particular practice, leading to a slower learning process."

c. **Recommendation 3**: "Use of supplemental feedgrounds should be

gradually reduced. A strategic, stepwise, and science-based approach should be undertaken by state and federal land managers to ensure that robust experimental and control data are generated to analyze and evaluate the impacts of feedground reductions and incremental closure on elk health and populations, risk of transmission to cattle, and brucellosis prevalence."

d. **Recommendation 4:** "Agencies involved in implementing the IBMP should continue to maintain a separation of bison from cattle when bison are outside YNP boundaries."

e. **Recommendation 5**: "In response to an increased risk of brucellosis transmission and spread beyond the GYA, USDA-APHIS should take the following measures:

   i. 5A: Work with appropriate wildlife agencies to establish an elk wildlife surveillance program that uses a modeling framework to optimize sampling effort and incorporates multiple sources of uncertainty in observation and biological processes.

   ii. 5B: Establish uniform, risk-based standards for expanding the DSA boundaries in response to finding seropositive wildlife. The use of multiple concentric DSA zones with, for example, different surveillance, herd management, biosecurity, testing,

and/or movement requirements should be considered based on differing levels of risk, similar to current disease outbreak response approaches.

iii. 5C: Revise the national brucellosis surveillance plan to include and focus on slaughter and market surveillance streams for cattle in and around the GYA."

f. **Recommendation 6**: "All federal, state, and tribal agencies with jurisdiction in wildlife management and in cattle and domestic bison disease control should work in a coordinated, transparent manner to address brucellosis in multiple areas and across multiple jurisdictions. Effectiveness is dependent on political will, a respected leader who can guide the process with goals, timelines, measured outcomes, and a sufficient budget for quantifiable success. Therefore, participation of leadership at the highest federal (Secretary) and state (Governor) levels—for initiating and coordinating agency and stakeholder discussions and actions and in sharing information—is critical."

g. **Recommendation 7**: "The research community should address the knowledge and data gaps that impede progress in managing or reducing risk of *B. abortus* transmission to cattle and domestic bison from wildlife.

i. 7A: Top priority should be placed on research to better understand brucellosis disease ecology and epidemiology in elk and bison, as such information would be vital in informing management decisions.

ii. 7B: To inform elk management decisions, high priority should be given to studies that would provide a better understanding of economic risks and benefits.

iii. 7C: Studies and assessments should be conducted to better understand the drivers of land use change and their effects on B. abortus transmission risk.

iv. 7D: Priority should be given to developing assays for more accurate detection of *B. abortus* infected elk, optimally in a format capable of being performed pen-side to provide reliable rapid results in the field.

v. 7E: Research should be conducted to better understand the infection biology of *B. abortus*.

vi. 7F: To aid in the development of an efficacious vaccine for elk, studies should be conducted to understand elk functional genomics regulating immunity to *B. abortus*.

vii. 7G: The research community should (1) develop an improved

brucellosis vaccine for cattle and bison to protect against infection as well as abortion, and (2) develop a vaccine and vaccine delivery system for elk."

153. The 2020 Science Report further finds that control measures in bison would not affect the dynamics of unrelated *Brucella abortus* strains in elk elsewhere.

154. The 2020 Science Report further finds that the government should not use aggressive control measures on bison until tools became available for an eradication program in elk.

155. The 2020 Science Report further finds that historically, reduction of *B. abortus* transmission risk has not been considered by agencies when making decisions about assigning grazing allotments.

156. The 2020 Science Report thus recommends consideration of grazing allotments, both in terms of location and timing, when assessing brucellosis risk and implementing brucellosis management techniques: "Land use decisions by both livestock producers and natural resource agencies that control grazing allotments . . .may impact the risk of transmission from wildlife to cattle . . . . A better understanding of these drivers and their impacts would be useful to inform land use policy as well as land owner and management agency actions to reduce risk of *B. abortus* transmission."

157. The 2020 Science Report thus recommends that "a more science-based approach in grazing allotment use could be taken to reduce risk. For example, government agencies . . . could [implement the following actions]:

a. leave grazing allotments empty[,]

b. modify the use and timing of grazing allotments in relation to the risk of transmission and knowledge of elk [or bison] migration patterns[,]

c. [change] the formula used annually to adjust grazing fees . . . to a risk-based [] approach [based on] the development and use of a risk map that overlays cattle and elk [and bison] locations relative to the grazing allotments[,]

d. [] estimate when elk [and bison] are less likely to be on federal grazing allotments during the time when abortion and calving events occur[,]

e. [] consider other factors that reduce the likelihood of interactions between elk [and bison] and cattle on grazing allotments[,]

f. [implement] . . . increased fees and/or brucellosis testing prior to and after turnout on grazing allotments. . . [, and]

g. [require] evidence of brucellosis calfhood and adult vaccination for grazers using higher risk lands . . . ."

F. 2022 Endangered Species Act Finding

158. On June 6, 2022, the U.S. Fish & Wildlife Service (FWS) found that the

listing of the Yellowstone bison as a threatened or endangered species under the Endangered Species Act may be warranted, and it commenced a 12-month status review.

159. FWS finds that Plains bison in and around Yellowstone National Park, referred to as Yellowstone bison, had a historical range of approximately 7,720 square miles, but a current range of only approximately 1,226 square miles.

160. FWS finds: "Based on our review of the petitions and readily available information regarding range curtailment (Factor A) and associated regulatory mechanisms (Factor D), we find that the petitions present substantial scientific or commercial information indicating that listing the Yellowstone bison as a threatened or endangered [distinct population segment] of Plains bison *(Bison bison bison*) may be warranted. The petitioners also presented information suggesting that overutilization (Factor B), disease (Factor C), and loss of genetic diversity due to culling (Factor E) may be threats to the Yellowstone bison."

161. FWS finds: "Based on our review of the petitions and readily available information regarding range curtailment, we find that the petitioners present credible and substantial information that range curtailment (Factor A) may be a potential threat to the Yellowstone bison."

162. More specifically, "All three petitions present substantial information that range curtailment may impact Yellowstone bison such that listing may be warranted due to the loss of migration routes, the lack of tolerance for bison beyond [Yellowstone National Park] boundaries, and habitat loss []. Existing bison management through the [Interagency Bison Management Plan] may exacerbate the potential threat from range curtailment because of management actions (culling, hunting, hazing) taken to control the potential spread of brucellosis from Yellowstone bison to cattle grazing on adjacent lands."

163. FWS finds: "The petitioners also provide credible information that management actions taken under the Interagency Bison Management Plan may curtail the species' available winter habitat through culling, hunting, hazing, and quarantine (Factor D)."

164. More specifically, since 1998, more than 6,000 Yellowstone bison have been removed from the ecosystem during their annual winter migrations to lower elevations.

165. FWS concludes: "Therefore, we find that the petitions present substantial information indicating that one or more of the petitioned entities may warrant listing."

166. Additionally: "The petitioners also presented information suggesting that overutilization (Factor B), disease (Factor C), and loss of genetic diversity

due to culling (Factor E) may be threats to the Yellowstone bison."

G. 2024 Bison Management Plan

167. In July 2024, the Yellowstone National Park Superintendent and Regional Director of the National Park Service issued a new Record of Decision for the Bison Management Plan (2024 Plan).

168. The area specifically subject to the 2024 Plan includes approximately 500,000 acres in the central and northern portions of the Park and adjacent areas in Montana.

169. The Record of Decision for the 2024 Plan was issued after the Park Service completed a full NEPA EIS process.

170. The formal NEPA process and 30-day public scoping period was initiated on January 28, 2022, with the publication of a Notice of Intent in the Federal Register.

171. During the public scoping period, the Park Service hosted two virtual public meetings on February 9 and 10, 2022.

172. The Park Service received approximately 2,540 public comments during the scoping period, as well as additional comments from federal, state, Tribal, and local governments, and nongovernmental organizations.

173. The State of Montana submitted scoping comments on February 28, 2022.

174. The Notice of Availability for the draft EIS was published in the Federal

Register on August 10, 2023.

175. The public comment period on the draft EIS was open for 60 days, from August 10, 2023, to October 10, 2023.

176. During this time, the Park Service hosted two virtual public meetings on August 28 and August 29, 2023.

177. The State of Montana submitted comments on the draft EIS on October 10, 2023.

178. The stated purpose of the 2024 Plan is "to preserve an ecologically sustainable population of wild, migratory bison while continuing to work with partners to address brucellosis transmission, human safety, and property damage, and fulfill tribal trust responsibilities."

179. The EIS for the 2024 Plan analyzed three alternatives, including "no action," which means the continuation of the current 2000 Plan.

180. The Park Service invited the State of Montana to submit an alternative for consideration in the EIS.

181. The State of Montana did not submit an alternative for consideration in the EIS.

182. All three EIS alternatives are designed to reduce the risk of brucellosis transmission from bison to cattle as their primary purpose, and therefore include some level of both (1) capture and slaughter of bison (either on-site or

off-site), and (2) capture and relocation of live bison to northeastern Montana, as their primary management tools.

183. The primary difference between each alternative is the population number at which the Park Service will begin slaughter or transfer activities.

184. However, the EIS states: "The upper population estimates provided for each alternative are intended to guide the implementation of risk management activities; not as targets necessitating immediate population adjustment."

185. EIS Alternative 1 would allow hunting, capture and transfer, and capture and slaughter of bison to reduce the risk of brucellosis transmission from bison to cattle. It would permit a bison population from 3,500 to 5,000, and commence slaughter and/or transfer actions once the population reaches 4,300. It proposes no management actions to reduce the risk of brucellosis transmission from elk to cattle.

186. EIS Alternative 2 would allow hunting, capture and transfer, and capture and slaughter of bison to reduce the risk of brucellosis transmission from bison to cattle. It would permit a bison population from 3,500 to 6,000, and commence slaughter and/or transfer actions once the population reaches 5,200. It proposes no management actions to reduce the risk of brucellosis transmission from elk to cattle.

187. EIS Alternative 3 would allow hunting, capture and transfer, and capture and

slaughter of bison to reduce the risk of brucellosis transmission from bison to cattle. It would permit a bison population from 3,500 to 7,000, and commence slaughter and/or transfer actions once the population reaches 7,000. It proposes no management actions to reduce the risk of brucellosis transmission from elk to cattle.

188. As noted above, implementation of the 2000 Plan, from 2001-2023, has not reduced the percentage of female bison that test seropositive (for brucellosis antibodies), and the Park Service does not expect significant impacts on seroprevalence or annual infection rates under any of the considered alternatives for the 2024 Plan.

189. The EIS discloses to the public neither past, current, nor expected future costs of the management actions authorized by the Plan.

190. The EIS also does not disclose to the public the costs of alternative management techniques – such as permanent grazing buy-outs, conservation easements, and fencing.

191. Instead of disclosing available data on costs of bison management techniques, in the EIS the Park Service argues: "there is no requirement in law, regulation, or policy for the NPS to disclose costs of alternatives in an EIS."

192. None of three EIS alternatives propose management tools to reduce the risk of brucellosis transmission from elk to cattle.

193. Instead, the Park Service states: "The NPS would continue to prioritize minimal management of elk inside YNP and let numbers and brucellosis occurrence vary from year to year based on competition, predation, habitat conditions, weather, and hunting and management actions outside the park. Elk age, sex, and genetic diversity will vary in response to these factors. Elk can move freely within YNP and across the park boundary."

194. Thus, regarding elk, the Park Service has decided: "The NPS has no plans to decrease the occurrence of brucellosis in elk."

195. None of the three EIS alternatives prioritizes hunting as the primary population management tool for bison.

196. None of the three EIS alternatives allow bison numbers and brucellosis occurrence to vary from year to year based on competition, predation, habitat conditions, weather, and hunting and management actions outside the Park.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

In violation of the APA and NEPA, the 2024 Plan EIS fails to take a hard look at the primary findings of the 2020 Science Report – the best available science – which was commissioned by APHIS for the purpose of guiding brucellosis management in the Greater Yellowstone Area, and recommends prioritizing elk management because elk have transmitted brucellosis to livestock 27 times in the last 20 years, whereas bison have not been linked to a single transmission.

197. All previous paragraphs are incorporated by reference.

198. NEPA is America's "basic national charter for protection of the environment."

199. NEPA requires federal agencies to prepare a detailed EIS for any "major Federal actions significantly affecting the quality of the human environment."

200. NEPA forces federal agencies to "consider every significant aspect of the environmental impact of a proposed action."

201. An EIS "shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."

202. An EIS must provide a "full and fair discussion of significant environmental impacts," and inform "decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."

203. An EIS is not simply a disclosure document; instead an EIS "shall be supported by evidence that the agency has made the necessary environmental analyses."

204. In an EIS, the agency "shall discuss any responsible opposing view that was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised."

205. An agency "shall ensure" that an EIS is "prepared with professional and scientific integrity, using reliable data and resources. . . ."

206. Moreover, an agency "shall ensure the professional integrity, including scientific integrity, of the discussions and analyses" in an EIS, and in preparing an EIS, an agency "shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge."

207. Judicial review of agency compliance with NEPA is reviewed under the standard set forth in the APA.

208. Under the APA, a court shall set aside an agency that was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

209. An agency's action is arbitrary and capricious if the agency "relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view of the product of agency expertise."

210. A court must independently review the record to determine whether the agency's decision meets this standard.

211. The primary purpose and need for the 2024 Plan is to control brucellosis, but the record is unequivocal that brucellosis cannot be controlled without elk management. Thus, the EIS fails to meet the purpose and need – brucellosis management – because it does not address the most important aspect of this problem: elk management. It is undisputed that elk have transmitted

brucellosis to livestock 27 times, and bison have never transmitted brucellosis to livestock. Thus, the Science Report – which is the best available science in the record and was commissioned by APHIS to guide brucellosis management – issues a number of recommendations for how agencies should manage elk. The EIS fails to fully disclose, meaningfully analyze, and implement these recommendations, and therefore fails to take a hard look at an important factor, ignores the best available science, fails to respond to opposing scientific viewpoints, and fails to analyze the issue of brucellosis management with scientific integrity.

212. For all of these reasons, the 2024 Plan EIS violates the APA and NEPA.

SECOND CLAIM FOR RELIEF

In violation of the APA and NEPA, the 2024 Plan EIS fails to take a hard look at the efficacy of the most aggressive and controversial management action allowed under the Plan – the capture and slaughter of thousands of wild bison during their natural winter migration to lower elevations outside the Park.

213. All previous paragraphs are incorporated by reference.

214. As discussed above, under the 2000 Plan, for the past 20 years, government agencies have implemented agressive measures to round up wild Yellowstone bison during their natural winter migration to lower elevations outside the Park, hold them in a "capture facility," and then slaughter them or ship them to slaughter elsewhere.

215. The Science Report states: "Management activities are typically conducted as hypothesis testing, the outcome of which directs subsequent decisions and actions toward the ultimate goal. In the absence of carefully designed management actions that include experimental controls, it is difficult to determine the effectiveness of a particular practice . . . ."

216. Although there does not appear to have been a control established to determine whether the aggressive management actions authorized under the 2000 Plan were actually impacting seroprevalence, nonetheless, here the Science Report finds that implementation of the 2000 Plan measures, including the capture and slaughter of thousands of wild bison during their natural annual migration, has resulted in "no change in the seroprevalence of brucellosis in bison."

217. The Park Service likewise concedes: "The proportion of adult females that test positive for brucellosis has remained at about 60% under the [Interagency Bison Management Plan]. . . .The [National Park Service] anticipates the prevalence of brucellosis would remain at approximately these levels under current management."

218. Thus, in the 2024 Plan EIS, the Park Service does not dispute the fact that the capture and slaughter of thousands of wild bison over the past 20 years has failed to reduce brucellosis rates in bison.

219. Nonetheless, there is no analysis in the 2024 Plan EIS that analyzes the effectiveness of the measures proposed by the Plan. More specifically, there is no meaningful analysis of the fact that after 20 years of implementation, "capture and slaughter" has proven to be an ineffective management tool to reduce the prevalence of brucellosis in wild Yellowstone bison. There is also no rational reason provided for the continuation of this aggressive and controversial management tool that has proven to be ineffective at reducing brucellosis.

220. The Park Service's failure to take a hard look at the efficacy of its most aggressive and controversial management tool – capture and slaughter – violates NEPA, and the agency's insistence on authorizing the continuation of this practice fails to consider the important factor that this management tool has failed to have any effect on brucellosis prevalence over the past 20 years.

THIRD CLAIM FOR RELIEF

In violation of the APA and NEPA, the 2024 Plan EIS fails to take a hard look and provide an adequate cumulative effects analysis because it fails to disclose to the public and analyze available and detailed information on where and when bison migrations overlap active public land grazing allotments on National Forest or BLM lands. Thus, the EIS fails to provide detailed factual evidence to support its underlying premise that action is needed to separate cattle from wild bison.

221. All previous paragraphs are incorporated by reference.

222. In an EIS, the "comparison of the proposed action and reasonable alternatives

shall be based on the discussion of their reasonably foreseeable effects and the significance of those effects [], focusing on the significant or important effects."

223. "Effects" that must be analyzed include direct effects, indirect effects, and cumulative effects.

224. Cumulative effects "are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non–Federal) or person undertakes such other actions."

225. Cumulative effects "can result from actions with individually minor but collectively significant effects taking place over a period of time."

226. The Science Report finds: "Due to the reduced numbers of cattle and management operations that maintain temporal and spatial separation from bison, few cattle have any exposure to infected YNP bison []."

227. This finding – that "few cattle have any exposure to infected YNP bison" due to reduced or restricted cattle grazing – was not clearly disclosed to the public and meaningfully analyzed in the 2024 Plan EIS.

228. This finding – that "few cattle have any exposure to infected YNP bison" due to reduced or restricted cattle grazing – undermines the Park Service's decision to use aggressive and controversial measures such as hazing,

capture, slaughter, and transfer ostensibly to create separation between bison and cattle because the Park Service has failed to establish that bison and cattle would spatially overlap in the absence of these aggressive tools.

229. For this reason, a critical factor that should have been addressed in the 2024 Plan EIS is the location and timing of active cattle grazing allotments.

230. As noted above, the Science Report sets forth a series of recommendations for brucellosis management that relate to the location and timing of grazing allotments.

231. However, the 2024 Plan EIS fails to disclose to the public and analyze the effects of known active grazing allotments.

232. This information was readily available to the Park Service but the agency did not request it.

233. For example, the Park Service could have requested this information on location and timing of active cattle grazing allotments from the Forest Service and BLM, but it did not.

234. Most critically, the Park Service failed to request this information from the Custer-Gallatin National Forest, which is the National Forest that manages most of the land impacted by the central and northern bison herds outside the Park.

235. For all of these reasons, the 2024 Plan EIS fails to take a hard look and

provide an adequate cumulative effects analysis, in violation of NEPA and the APA.

FOURTH CLAIM FOR RELIEF

In violation of the APA and NEPA, the 2024 Plan EIS fails to analyze a reasonable range of alternatives because it does not analyze an alternative that implements the recommendations of the 2020 Science Report, which was commissioned by APHIS to guide brucellosis management in the Greater Yellowstone Area, and represents the best available science on this issue.

236. All previous paragraphs are incorporated by reference.

237. "The alternatives section is the heart of the environmental impact statement."

238. Agencies "shall [] [r]igorously explore and objectively evaluate reasonable alternatives to the proposed action[.]"

239. An agency "shall consider a reasonable range of alternatives that will foster informed decision making."

240. As discussed above, APHIS commissioned the 2020 Science Report to guide brucellosis management in the Greater Yellowstone Area, and the 2020 Science Report represents the best available science on this issue.

241. The 2020 Science Report found that elk have transmitted brucellosis to livestock 27 times in the last 20 years, while bison have not been responsible for any transmissions.

242. The 2020 Science Report found that brucellosis cannot be eradicated without elk management and that aggressive management actions against wild bison

are not warranted at this time.

243. As set forth in detail above, the 2020 Science Report sets forth seven detailed recommendations for brucellosis management in the Greater Yellowstone Area.

244. Nonetheless, the 2024 Plan EIS fails to include a single alternative that proposes and analyzes implementation of the seven recommendations from the 2020 Science Report.

245. The failure to include a single EIS alternative that proposes and analyzes implementation of the 2020 Science Report recommendations – most critically its first recommendation to focus on elk management – constitutes a failure to consider a reasonable range of alternatives, which violates NEPA. The purpose of the 2024 Plan is to manage brucellosis; thus, it is unreasonable for the agency to refuse to consider a single alternative that addresses the primary driver of brucellosis infections – elk.

FIFTH CLAIM FOR RELIEF

In violation of the APA and NEPA, the 2024 Plan EIS fails to fully disclose to the public and meaningfully analyze the findings of USFWS that listing bison as an endangered or threatened species under the Endangered Species Act may be warranted, in part due to the curtailment of the species' range and other actions that have been implemented by the 2000 Bison Management Plan.

246. All previous paragraphs are incorporated by reference.

247. The Endangered Species Act defines an endangered species as a species that

is "in danger of extinction throughout all or a significant portion of its range," and a "threatened species" as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

248. The ESA requires that USFWS determine whether any species is an "endangered species" or a "threatened species" because of any of the following factors:

a. (A) The present or threatened destruction, modification, or curtailment of its habitat or range;

b. (B) Overutilization for commercial, recreational, scientific, or educational purposes;

c. (C) Disease or predation;

d. (D) The inadequacy of existing regulatory mechanisms; or

e. (E) Other natural or manmade factors affecting its continued existence.

249. In response to a petition to list a species under the ESA, USFWS must make a finding on whether a petition to list presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

250. For a petition to meet the "substantial scientific or commercial information" standard, USFWS must determine in the 90-day petition finding that the

petition includes "credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted."

251. As noted above, on June 6, 2022, USFWS found that the listing of the Yellowstone bison as a threatened or endangered species under the Endangered Species Act may be warranted, and it commenced a 12-month status review.

252. Nonetheless, the 2024 Plan EIS does not clearly disclose, much less explain, this finding to the public.

253. Further, the 2024 Plan EIS refuses to disclose the substantive scientific findings made by USFWS, including but not limited to the following:

254. Instead of taking a hard look, and fully and fairly disclosing the findings of USFWS regarding Yellowstone bison status, the EIS states: "The NPS has provided substantial information relevant to the status review of Yellowstone bison to the FWS for them to determine whether these bison constitute a distinct population segment, are threatened or endangered, and have sufficient resiliency, redundancy, and representation. The FWS developed a National Listing Workplan for addressing domestic listing and critical habitat decisions under the ESA. The FWS added Yellowstone bison to its workplan for fiscal

year 2026 (USDOI, FWS 2023). At this time, no decision has been made regarding the listing of Yellowstone bison and for this reason would not influence NPS management actions."

255. This statement is misleading at best – USFWS issued a positive 90-day finding that listing may be warranted, in part due to the management actions authorized by the 2000 Plan, which result in curtailment of range.

256. In light of the USFWS finding that actions authorized by the 2000 Plan may lead to the listing of Yellowstone bison as a threatened or endangered species, it was incumbent on the Park Service to analyze which actions it could change as part of the 2024 Plan to avoid such a listing. Instead, the 2024 Plan EIS refuses to acknowledge the role the Plan is playing in potentially causing the listing. The 2024 Plan EIS also fails to provide any analysis of actions the 2024 Plan could change to avoid an ESA listing. The failure to take a hard look and consider these factors violates the APA and NEPA.

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SIXTH CLAIM FOR RELIEF

In violation of the APA and NEPA, the 2024 Plan EIS fails to take a hard look at the costs to the taxpayer from choosing aggressive and controversial capture, slaughter, and transfer actions as preferred management tools rather than choosing less costly, more permanent, and more publicly-supported tools such as grazing buy-outs, conservation easements, fencing, and hunting.

257. All previous paragraphs are incorporated by reference.

258. In an EIS, if an agency is considering a cost-benefit analysis for the proposed action, the agency shall incorporate the cost-benefit analysis by reference or append it to the EIS.

259. The 2024 Plan EIS does not disclose to the public the actual costs of the management actions authorized by the 2024 Plan – neither past, current, nor expected future costs.

260. The 2024 Plan EIS also does not disclose to the public the costs of alternative management techniques – such as permanent grazing buy-outs, conservation easements, and fencing.

261. Nonetheless, the 2024 Plan EIS rejects a number of alternative management approaches, purportedly due to cost.

262. Without honest disclosure and discussion of costs, it is not possible for the public to determine the veracity of the agency's unsupported assumption that alternative management approaches would be more costly than existing

management approaches. The failure to take a hard look and address this important factor violates the APA and NEPA.

VII. RELIEF REQUESTED

For all of the above-stated reasons, Plaintiffs request that this Court award the following relief:

A. Declare that the 2024 Plan violates the law;

B. Remand without vacatur;

C. Order the agency to prepare a revised EIS for the 2024 Plan;

D. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and

E. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 17th Day of January, 2025.

/s/ Rebecca K. Smith
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