

Decision Memo

Special Use Permit

Montana Department of Fish Wildlife and Parks - Installation and
Maintenance of Fencing for Bison Management

**USDA-Forest Service
Custer Gallatin National Forest
Hebgen Lake Ranger District
Gallatin County, Montana**

Introduction

This documents the decision to issue a special use permit to the Montana Department of Fish, Wildlife and Parks (FWP) authorizing installation and maintenance of a fence and gate running from an existing cattle guard within U.S. Highway 287 near Kirkwood Campground south to Hebgen Lake. The fence and cattle guard are necessary to keep bison in acceptable areas as described in the Montana Governor's Decision Notice for Year-round Habitat for Yellowstone Bison Environmental Assessment, November 2015. This decision is only applicable to National Forest System (NFS) lands. The cattle guard and fence within the highway right-of-way are currently in place.

Bison are essential to Yellowstone National Park because they contribute to the biological, ecological, cultural, and aesthetic purposes of the Park. However, Yellowstone National Park is not a self-contained ecosystem for bison, and periodic movements of bison out of the Park and into Montana occur regularly.

The Interagency Bison Management Plan (IBMP) employs an adaptive management approach that allows the agencies to gain experience and knowledge before proceeding to the next management step, particularly with regard to managing bison on winter range outside Yellowstone National Park (YNP). The IBMP uses many tools to minimize or eliminate the risk of transmission of brucellosis but primarily relies on the spatial and temporal separation of *Brucella abortus*-infected or exposed bison from cattle on neighboring private and public lands.

The IBMP's adaptive management strategy of spatial and temporal separation works to eliminate bison and cattle from commingling in the same area or adjacent areas at the same time and maintains a specific period between the time bison are moved from an area and when cattle are moved onto those lands.

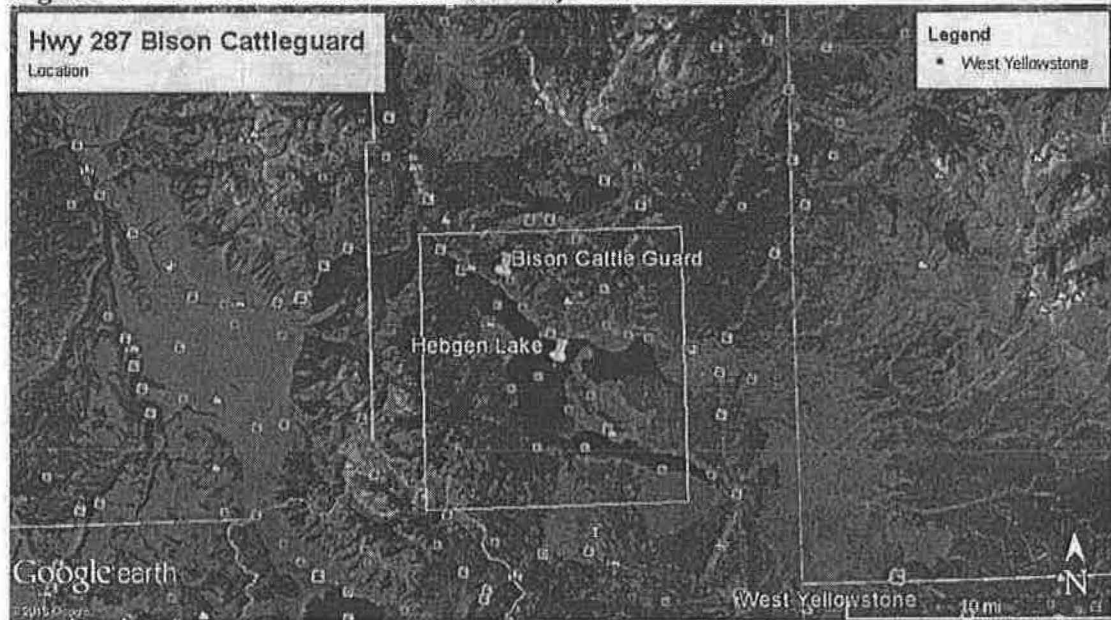
The plan defined three areas bison migrate into Montana beyond YNP. Those three areas are the western (West Yellowstone), northern/east side (Eagle Creek / Bear Creek), and northern/west side (Reese Creek to Yankee Jim Canyon). From there, the areas were further broken down into zones to define the lands where bison were and were not tolerated because of concerns about potential brucellosis transmission. Zone 1 is defined as within YNP bison winter habitat where bison are tolerated but would be subject to

hazing in the spring when bison from Zone 2 are returned to the Park to maintain the 45-day separation period between bison and cattle. Zone 2 is Forest Service winter habitat where bison are managed for bison tolerance limits set forth in the IBMP Step 2. Lastly, Zone 3 is a zero tolerance area because of the likelihood cattle will be using those areas for grazing.

Decision

It is my decision to issue a special use permit authorizing installation and maintenance of fencing and a gate on National Forest System lands. Approximately 30 feet of fence would be located on National Forest System land from the existing cattle guard and fence within the US Highway 287 R-O-W south to Hebgen Lake, approximately 1 mile east of Kirdwood Campground (Sec. 31, T11S, R44E) (see Figure 1). Necessary repairs or modifications will be made as needed. Assuming a 20 foot (10 feet each side of centerline) fence right-of-way (R-O-W) the total affected NFS lands is about 500 square feet.

Figure 1. Location of Bison Cattle Guard, Fence and Gate.



The fence will be a wooden pole jack-leg fence which matches the existing jack-leg fence that is installed south of the cattle guard within the Highway R-O-W. The gate will be a standard metal ranch gate.

The fence and cattle guard are designed to restrict bison from moving further west toward the Madison Valley. Yellowstone bison will have access year-round to Horse Butte, and north along U.S. Highway 191 up to and including the Taylor Fork Drainage. They will continue to have access to the Cabin Creek Wildlife Management Area and the Monument Mountain Unt of the Lee Metcalf Wilderness as they've had since 2000. The purpose of the gate is to allow for the moving of any escaped bison back into the tolerance area.

The permit will be issued under the authority of the Federal Land and Management Policy Act of October 21, 1976. The permit will contain conditions and stipulations addressing the maintenance of the fence and gate. If, at some point, fencing is determined to be no longer needed, all fence materials will be removed from NFS lands at FWP expense.

Reasons for Categorically Excluding the Decision

I have determined that this action would have no significant effect on the human environment individually or collectively. I find that the proposed action may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) as provided at 36 CFR 220.6(e)(3) - "*Approval, modification or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.*"

The proposed fence and gate are minor in scope and result in no ground disturbance. The only identified effect to wildlife is to prevent bison from migrating further west, toward the Madison Valley, which is exactly the purpose of the fence. No impacts to the threatened lynx or threatened grizzly bear are projected (Canfield, 5/26/2016). A walk-through survey of the site was conducted on May 24th, 2016 (Lamont, 5/23/2016) and no sensitive plants, no noxious weeds, and no archeological evidence were found.

I have concluded that this decision is appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment as it is a routine activity within a category of exclusion and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on site visits and information presented in the Year-round Habitat for Yellowstone Bison Environmental Assessment, July 2013, prepared jointly by Montana Fish Wildlife and Parks and the Montana Department of Livestock. I hereby incorporate this Environmental Assessment by reference.

B. Finding of No Extraordinary Circumstances

Based on the site specific environmental analysis documented in the Year-round Habitat for Yellowstone Bison Environmental Assessment, July, I have determined that there are no extraordinary circumstances associated with this action that would preclude the use of the categorical exclusion referenced above.

1. Federally Listed or Proposed Threatened or Endangered Species or Designated Critical Habitat and Forest Service Sensitive Species. There will be no significant effects to federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service/BLM sensitive species.

The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat.

Currently, there are two wildlife species protected under the Endangered Species Act as listed species that are known or suspected to occur in the area covered by the proposed fence and gate installation. They include the Canada lynx and the grizzly bear. Recently, wolverine was added back as a proposed species on the Custer Gallatin National Forest (May 24, 2016). The project area is not lynx habitat nor within the critical habitat boundary, but is within a lynx analysis unit (Upper Madison LAU). The project area is within a grizzly bear subunit (Madison #1). However, bear habitat value specifically associated with this area along the highway is nominal during all seasons. The project area is not wolverine habitat. Using the programmatic screens for grizzly bear and lynx (October 2014), the Forest wildlife biologist determined that there is no effect on lynx, lynx critical habitat and wolverine from this project. She also determined that the project may affect but would be not likely to adversely affect grizzly bears (category 14 in the programmatic BA).

2. Floodplains, wetlands, or municipal watersheds.

Floodplains: Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, "... the lowland and relatively flat areas adjoin inland and coastal waters, including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year." This decision will not affect floodplains.

Wetlands: Executive Order 11990 requires that projects avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, "... areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds." This decision will not affect wetlands.

Municipal Watershed: Municipal watersheds area managed under multiple use prescriptions in land and resource management plans. There will be no negative impacts to municipal watersheds associated with the project. The fencing project is not located near any municipal watersheds.

3. Congressionally designated areas. No wilderness designation, wilderness study areas, or national recreation areas exist within or adjacent to the project area.

4. Inventoried roadless areas.

The project area is not in an inventoried roadless area.

5. Research natural areas. The fence does not pass through or adjacent to designated research natural areas.

6. American Indians and Alaska Native religious or cultural sites. Scoping was undertaken with Tribes that have aboriginal territories in this vicinity in conjunction with the Year-round Habitat for Yellowstone Bison Environmental Assessment, July 2013, prepared jointly by Montana Fish Wildlife and Parks and the Montana Department of Livestock (MFWP/MDOL, July 2013). The Confederated Salish and Kootenai Tribes, InterTribal Buffalo Cooperative, and Nez Perce Tribe also became IBMP cooperating agencies in 2009. As such they also participate in any adaptive management adjustment decisions. The Federal government has trust responsibilities to Tribes under a government-to-government relationship to insure that the Tribes reserved rights are protected. Consultation with tribes helps insure that these trust responsibilities are met. The State consulted with potentially affected tribes on the Year-round habitat for bison proposal which included the anticipated need for a cattle guard and fence along highway 287. The presence of year-round bison on a larger landscape is anticipated to be a minor to major positive impact to tribes and those who view free ranging bison as culturally important (MFWP/MDOL, July 2013, page 95).

7. Archaeological sites, or historic properties or areas. Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered on federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act cover the discovery and protection of Native American human remains and objects that are excavated or discovered on federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through "in situ" preservation, but may encompass other actions to preserve these remains and items. This decision complies with the cited Acts. The project site was visited for Native American religious or cultural sites, archaeological sites, and historic properties or areas that may be affected by this decision (Lamont, 5/23/2016). None were found.

Public Involvement

Public comment opportunities were provided in conjunction with Year-round Habitat for Yellowstone Bison Environmental Assessment (MFWP/MDOL, July 2013). Over 100,000 comments were received but these were predominantly focused on the alternatives presented for allowing bison to occupy areas outside of Yellowstone National Park year-round. A summary of comments received are documented in in the Montana Governor's Decision Notice for Year-round Habitat for Yellowstone Bison Environmental Assessment, November 2015, page 11. The few comments associated with the cattle guards and fences raised concern about the hazard a cattle guard can create

to motorcyclists and bicyclists. In response, the Montana Dept. of Transportation pulls the cattle guard each year during the summer months.

Findings Required By and/Or Related To Other Laws And Regulations

The decision complies with all applicable laws and regulations. Pertinent laws and regulations are summarized below.

Forest Plan Consistency (National Forest Management Act) – This Act requires the development of long-range land and resource management plans (Plans). The Gallatin Forest Plan was approved in 1987 as required by this Act. Forest Plans provide for guidance for all natural resource management activities. The Act requires all projects and activities to be consistent with the Plan. The Plan has been reviewed in consideration of the building of this fence. This decision is responsive to guiding direction contained in the Plans. This decision is consistent with the standards and guidelines contained in the Plans.

Environmental Justice (Executive Order 12898) - This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which we have considered in this decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

Gallatin National Forest Travel Management Plan

This decision is consistent with the Gallatin National Forest Travel Management Plan.

Administrative Review and Appeal Opportunities

The decision [by the Gallatin Forest Supervisor] is not subject to appeal under 36 CFR 215 (36 CFR 215.12(f)).

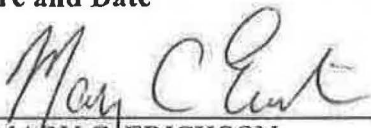
Implementation Date

This decision is effective upon approval. The authorization governed by this decision may be implemented immediately.

Contact Person

Further information about this decision can be obtained from Jason Brey, District Ranger, Hebgen Lake Ranger District, P.O. Box 520, West Yellowstone, MT 59758; Phone: (406)823-6961,

Signature and Date



MARY C. ERICKSON
Forest Supervisor



Date

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Location of Hwy. 287 Bison Cattle Guard

