

Decision Memo for Horse Butte Bison Capture Facility Special Use Permit Renewal

**Gallatin National Forest
Hebgen Lake Ranger District
Gallatin County, Montana**

I. Background

In 2000, State and Federal agencies with responsibilities for management of bison and their habitat completed an Interagency Bison Management Plan (IBMP) which provides direction for management of bison in Montana adjacent to Yellowstone National Park (YNP). The IBMP replaced earlier interim bison management plans.

Bison contribute to the biological, ecological, cultural, and aesthetic purposes of YNP and surrounding areas. Yellowstone National Park is not a self-contained ecosystem for bison and periodic migrations into Montana are natural events. Some bison carry the disease brucellosis and may transmit the disease to cattle outside the Park boundaries in Montana. For more discussion on brucellosis transmission see IBMP Final Environmental Impact Statement (USDI 2000) FEIS, Vol. 1, pp. 19-29 and Vol. 2 pp. 180-199) and Appendix A - Response to Comments.

As bison migrate out of YNP and into Montana, they move from one jurisdiction with a set of management objectives to another jurisdiction with different management objectives. Therefore, the cooperation of a number of Federal and State agencies is necessary to manage the herd and the risk of transmission of brucellosis from bison to Montana domestic livestock. (USDI, 2000).

Involved public agencies have agreed that it is their cooperative goal to maintain a wild, free-ranging population of bison while addressing the risk of brucellosis transmission to protect the economic interest and viability of the livestock industry in Montana. In an attempt to meet these objectives, the (MDOL) Montana Department of Livestock and the Montana Department of Fish, Wildlife and Parks (MFWP) in cooperation with the National Park Service (NPS), Forest Service (FS) and the Veterinary Services division of the Animal and Plant Health Inspection Service (APHIS), jointly developed an Interagency Bison Management Plan (IBMP). The Federal Agencies issued a Final Environmental Impact Statement (FEIS) and a Record of Decision (ROD) (USDI, 2000) and the State of Montana concurrently issued an FEIS and ROD (MT, 2000) to implement the Joint Management Plan.

The Forest Service is signatory to the IBMP (USDI 2000). Development of the IBMP was accomplished through an environmental impact statement prepared in accordance with the Montana Environmental Policy Act and the National Environmental Policy Act. The IBMP has been reviewed annually and updated as needed. The findings of the Final Environmental Impact Statement and Record of Decision (USDI 2000) associated with the current IBMP, are incorporated into this Decision Memo by reference.

The IBMP includes a number of activities designed to manage migrating bison. Components of those activities include monitoring, hazing of bison back to the Park, capturing bison outside the Park, testing for brucellosis and removing infected and at-risk individuals. Hazing is the moving of bison in a desired direction to a desired location.

The Interagency Bison Management Plan identifies that capturing bison is a management tool which can be used to help reduce the risk of transmission of brucellosis from bison to cattle. Capturing bison allows for them to be handled to determine if individual animals will be released or removed. Whether or not bison are captured depends on numerous factors including total population size, time of year, weather conditions, number of bison in the area, and where bison are distributed. (USDI 2000, FEIS, pp. 177-195)

Key to the IBMP is the component of adaptive management over time based on changed conditions and new information gathered through monitoring, experience and research.

The Adaptive Management Plan developed in 2008 formalizes and incorporates research, monitoring, new information and experiences implemented, through the IBMP since 2000. The Plan identifies specific goals, objectives, management actions, and measures for bison management and is being used to guide and inform Yellowstone bison management in Montana. The Adaptive Management Plan has three main goals:

1. Increase tolerance for bison north and west of Yellowstone National Park (in Zone 2) with no unacceptable consequences.
2. Conserve a wild, free ranging bison population.
3. Prevent transmission of brucellosis from bison to cattle.

The Montana Department of Livestock was issued a special use permit from the Forest Service, after completion of a site specific environmental analysis in 1998 and a decision notice and finding of no significant impact. (USDA 1998, USDA 1999) The special use permit authorized a portable bison capture facility to be operated on National Forest System (NFS) lands in the Horse Butte area. Horse Butte is approximately 9 miles northwest of West Yellowstone, Montana. This authorization will expire on December 31, 2008. The analysis to determine the site specific environmental effects of the capture facility was conducted through the 1998 Environmental Assessment process and not through the Environmental Impact Statement for the IBMP. The IBMP addresses the need for a capture facility in this area although it did not analyze the environmental effects. This work was already done through the 1998 EA.

The Horse Butte capture facility was been used five of the last ten years, and continues to be an important bison management tool. The capture facility, along with other management tools, provides the framework, under which the Department of Livestock and the other IBMP Agencies can provide for greater tolerance for bison on the Horse Butte Peninsula and the Flats. The capture facility is still needed on Horse Butte Peninsula.

II. Proposed Action

The Forest Service is proposing to renew, for a 10 year term, MDOL's permit, which authorizes continued use of NFS lands for the operation of the Horse Butte bison capture facility.

MDOL would continue to use NFS lands to install, operate and maintain a temporary, portable bison capture facility on approximately 2 acres of NFS lands on Horse Butte in the SW¹/₄NW¹/₄ Section 36, T12S, R4E., P.M., Gallatin County, MT. The capture facility consists of metal corral panels configured into a pen with wing panels to direct bison into the main facility, and is approximately 100' x 300' in size. MDOL would also be authorized continued use of Forest Service Roads 610 and 2530D to access the capture facilities. Facilities would be used annually from November 1 to April 30, and would be removed outside the operating season.

The Special Use Permit would authorize the MDOL to occupy NFS lands for the specific purpose of exercising State authority to manage brucellosis diseased bison. DOL would utilize the facility to capture bison migrating from YNP. Operating the capture facility is a key element in DOL's program of controlling the spread of brucellosis from migrating bison to domestic livestock. DOL would construct and operate the capture facility in accordance with the IBMP (USDI 2000) and the Terms and Conditions of the Special Use Permit.

Scope Of The Proposed Action

The scope of the proposed action is limited to the renewal of a Special Use Permit which authorizes MDOL for use on NFS land for the installation and operation of the temporary, portable bison capture facility.

Bison management tools identified in the IBMP will continue to be used whether or not this facility is authorized. Some level of hazing would occur in association with the bison capture operation. Broader issues relating to the management of migrating bison and tolerance limits including the application of adaptive management were addressed in the IBMP, the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Interagency Bison Management Plan for Montana and Yellowstone National Park (USDI 2000) and are outside the scope of this proposed action.

Scope Of The Analysis

The analysis of the environmental effects associated with this action is limited to the direct, indirect and cumulative effects related to the installation and operation of the temporary capture facility. This DM and supporting analysis do not address the direct and indirect effects associated with implementation of other portions of the IBMP including for example, the probability of brucellosis transmission from bison to cattle. A site specific environmental analysis was completed in 1998 and a decision notice (DN) and finding of no significant impact (FONSI) in 1999 that analyzed this proposed action. (USDA 1998, USDA 1999) These supporting documents are incorporated by reference.

III. Decision to be Implemented

I have decided to renew for a 10 year term, MDOL's permit, which authorizes continued use of NFS lands for the operation of the Horse Butte bison capture facility.

MDOL will be authorized to continue use of NFS lands to install, operate and maintain a temporary, portable bison capture facility on approximately 2 acres of NFS lands on Horse Butte in the SW¼NW¼ Section 36, T12S, R4E., P.M., Gallatin County, MT. MDOL will also be authorized continued use of Forest Service Roads 610 and 2530D to access the capture facilities. Facilities can be used annually from November 1 to April 30, and will be removed outside the operating season.

In addition, there will be periodic reviews to determine whether changed circumstances or new information exists which may necessitate correction or revision of this decision.

The following mitigation measures continue to be a part of the authorization.

1. Closure of the Area. - Law enforcement agencies will assure security of the operation which may require some restrictions around the facility during operations.
2. Soil and Vegetation Protection and Rehabilitation. - To protect soil and vegetation resources in and around the facility, the following practices will be employed:
 - Only certified weed free hay, straw or feed will be authorized.
 - Every year the facility is used, soil reclamation will be conducted following completion of capture facility operations and is the responsibility of DOL. Reclamation efforts will include removal of soil compaction (recommend using asphalt ripper) and then seeding with native grass seed (recommend using 30 pound /acre, with the following seed mixture 70% bluebunch wheatgrass, 10 % Idaho fescue, 10 % slender wheatgrass, and 10 % prairie June-grass, using only certified noxious weed free seeds). Scatter grass seed as early in the spring as possible. This will help re-establish vegetation in trampled areas.
 - DOL will be responsible for treating all invasive weeds in the area disturbed within the permit area every year, even if the capture facility is not used. The treatment must be effective in preventing weed seed establishment (either pull the plants or use herbicides). This will prevent weeds from increasing on the site. This area has been sprayed for weeds after seasonal operations in past years.
3. The application of the following measures will provide protection for the *grizzly bear*: (BE, Cherry 2008a)
 - Bison carcasses, viscera, and other human and animal attractants will not be available to grizzly bears at or around the capture facility. All attractants will be removed from the site on a daily basis.
 - The USFS Forest-wide Food Storage Order will be enforced.
 - If grizzly bear(s) are active in the area, the permittee may be required to cease operations.

4. The application of the following measures will provide protection for the *bald eagle*: (BE, Cherry 2008a)
- Activities associated with the bison capture facility will be limited to those stated in the project proposal of this document.
 - Shooting activities will not be allowed in Zone I of the Bald Eagle Nests and is permitted in Zone II around the nests along Forest Road 610 and the Lookout Road.
 - Hazing and related activities associated with capture operations with all terrain vehicles, motorcycles, horseback, snowmobiles and vehicles will not be permitted in Zone 1 except from Forest Road 610 and south of Forest Road 610 to the Hebgen Reservoir.
 - Off road/trail hazing from snowmobiles or on horseback will be permitted in Zone 2 of the Bald Eagle nests. However, hazing activities are expected to be of a low intensity and short duration.
 - All-terrain vehicle and motorcycle use is not permitted within Zone II of the eagle nest except on Forest Road 610 and the Lookout Road.
 - Any change in these activities as related to the Horse Butte Capture Facility or in the vicinity of the bald eagle nest or foraging areas must be discussed with, and approved by the Hebgen Lake Ranger District, Gallatin National Forest prior to implementation.
 - The wildlife closure around the Horse Butte bald eagle nest (Attachment 1) to all human activities between December 1 and August 15 will apply to all personnel and activities associated with installation and operation of the bison capture facility unless special permission is requested of and received from the Hebgen Lake District Ranger.
 - Snowmobile travel associated with permitted bison management activities that occur off of designated trails between the rim of the Madison Arm and the snowmobile trail/road (6697) will be kept to the minimum level needed for successful operations. Hazing within 1/4 mile (400 m) of open water on the Madison Arm and Madison River will only be permitted between 10 a.m. and 3 p.m. This requirement will not apply when ice cover is no longer present east of a line running from the north shore of the Madison Arm adjacent to the permitted bison trap site, straight south to the opposite shore of the Madison Arm (Attachment 1). Permission for variance must be requested and obtained by the District Ranger.
 - Bison carcasses, viscera, and other human and animal attractants will not be available to bald eagles at or around the capture facility. All attractants will be removed from the site on a daily basis.
 - There is a no fly zone in effect for Horse Butte (Attachment 1) which restricts aerial operations around all three bald eagles nests on the Butte. This no fly zone will also protect grizzly bear habitat in the non-denning season.
 - A Bald Eagle Monitoring Plan will be implemented. The Plan is included in the Biological Evaluation.

Goals of monitoring the Horse Butte bald eagle nesting territory and bald eagle use of the Madison Arm of Hebgen Lake are:

- To assess occupancy and activity (nest building, incubation, and hatching) of

- the Horse Butte bald eagle nesting territory;
- To attempt to assess affects or trends of the Horse Butte bison capture facility activities on foraging and nesting activities of adult bald eagles associated with the Horse Butte breeding territory as well as adult bald eagles foraging and foraging along the Madison Arm of Hebgen Lake.

Objectives of monitoring the Horse Butte bald eagle nesting territory and bald eagle use of the Madison Arm of Hebgen Lake include:

- Determine if the Horse Butte bald eagle pair initiates nesting and incubation.
- Determine if the Horse Butte bald eagle pair completes incubation activities. If not, when was incubation ceased.
- Determine if the Horse Butte bald eagle pair was productive (did young hatch and how many).
- Assess whether there are changes in foraging/perching use areas along the Madison Arm of Hebgen Lake before, during and after capture facility operations and construction

IV. Categorical Exclusion and Findings of No Extraordinary Circumstances

A proposed action may be categorically excluded (CE) from further analysis and documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if there are no extraordinary circumstances related to the proposed action and if the proposed action is within one of the categories identified in 36 CFR 220.6. My decision is categorically excluded pursuant to 36 CFR 220.6 (e) (15): *“Issuance of a new special use authorization for a new term to replace an existing or expired authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized facilities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”*

Resource conditions that are considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation are listed in 1-4 below. The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist. I have determined there are no extraordinary circumstances related to my decision to authorize continued use of NFS lands for the operation of the Horse Butte bison capture facility. I base this conclusion on the following findings:

1. Effects to federally listed threatened or endangered species or designated critical habitat, species proposed for federal listing or proposed critical habitat or Forest Service sensitive species.

Implementation of the proposed Federal action will have **“no effect”** on Canada lynx, a threatened species on the Gallatin National Forest. The proposed project does not lie within lynx habitat or a Lynx Analysis Unit. Because of the “no effect” determination, there is no requirement to consult either formally or informally with

the US Fish and Wildlife Service (USFWS) under the Endangered Species Act (ESA). (Cherry 2008)

Although in a state of flux, the status of the gray wolf in the Greater Yellowstone Area was nonessential, experimental under the Endangered Species. When delisted by the US Fish and Wildlife Service, the gray wolf became a Forest Service sensitive species. However, a temporary injunction was filed, and the gray wolf was returned to its original status as a nonessential experimental population in the Yellowstone area. Implementation of the proposed Federal action **“will not jeopardize”** the gray wolf. Because of this determination there is no requirement to consult formally or informally with the USFWS under the ESA, for gray wolf. Should the gray wolf return to a sensitive species status in the Yellowstone area, the determination for this project would be “no impact”. (Cherry 2008)

For the following sensitive species, the proposed activity will have **“no impact”** on Black Backed Woodpecker, Flammulated Owl, Harlequin Duck, Northern Leopard Frog, Peregrine Falcon, sensitive fish species, Townsend’s Big-eared Bat, Trumpeter Swan and Wolverine. The proposed activity **“may impact individuals, but will not likely contribute to a trend toward federal listing or loss of viability to the population or species”** for Bald Eagle, Grizzly Bear, western toad and plains spade foot. (BE for Terrestrial Wildlife Species, Cherry 2008a, Roberts 2008 and 2008a)

There are two sensitive plant species with the potential to be affected by this project. The plants are *Mimulus nanus* and *Balsamorhiza macrophylla*. Neither of these plant species has been found within the perimeter of the capture facility. Most bison management activities occur prior to the growing season when plants would not be vulnerable to destruction. Also, results of surveys in 2003 and 2004 indicate that the number of *Mimulus nanus* plants present in this population is influenced much more by environmental conditions than other factors such as bison management activities. In fact, disturbance of soil in areas surrounding the facility resulting from bison management activities could actually help maintain suitable habitat for this species. The determination for *Mimulus nanus* and *Balsamorhiza macrophylla* is that this project may impact individuals but will not lead to a trend toward federal listing. The proposed action will have **“no impact”** on the remaining sensitive plant species that are listed for the Gallatin National Forest. (BE for Sensitive Plants, Cherry 2008c)

2. Effects to Floodplains, wetlands, or municipal watersheds.

Renewal of this permit will result in no adverse impacts effects to water quality, wetlands, flood plains or municipal watersheds. This decision does not authorize any modification of floodplains, wetlands or municipal watersheds. The facility will be located on level ground on a soil type which has low/moderate erosion potential, low landslide risk and low sediment delivery efficiency. The facility has no existing or potential erosion effects on Hebgen Reservoir or other water related resources. (Water, Wetlands, Floodplains Report, Story 2008 and Air Quality report, Story 2008a)

3. Effects to congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas; inventoried roadless areas, potential wilderness areas or Research Natural Areas.

I reviewed the Forest Plan direction and allocation for these congressionally designated areas. The permit area included in my decision is not within areas with these “designations”.

4. American Indians and Alaska native Religious or cultural sites, and Archeological sites or historic properties or areas.

The Gallatin Forest Plan incorporates the requirements under the following statutes: the National Historic Preservation Act (NHPA) (1966) and the American Indian Religious Freedom Act (1978). Forest Plan standards that are applicable to this project reflect the mandates under the above statutes and includes inventory procedures, evaluation procedures, protection/preservation procedures, and coordination/consultation procedures (see FP II-14 and II-17).

The temporary facility does not impact any historic properties. (Allen 2008) The tribes were contacted during scoping and provided no expression of interest in this authorization. (Scoping letters and Tribal Contact List, March 2007)

During scoping, concern was expressed for cultural impacts related to indigenous peoples. The context for this comment related to managing the bison population under the IBMP. The Final Environmental Impact Statement for Bison Management for the State of Montana and Yellowstone National Park, 2000 (FEIS) addressed potential cultural impacts related to bison management activities in the IBMP. Discussion related to Social Impacts and Cultural Resource Impacts is discussed in the Executive Summary, pp. 74-75, 80-82, and the FEIS, Volume 1 pp. 327-333, 362-367, 477-498, 618-633.

5. Other Considerations

The special use permit has been in place for 10 years and the environmental impacts have been minimal, as predicted. During that time the temporary facility was set up in seven of the years, and capture operations took place in five of the ten years. The facility was used approximately five or fewer times in each of the years the temporary facility was set up. The permittee is in full compliance with the terms of the permit. As is typically the case, there have been occasional differences of interpretation of permit terms or conditions. Any indication of noncompliance during day to day operations has been quickly corrected. There are photos of the operation and the area of impact after restoration seeding was complete in the project file and on the Forest website along with this Decision Memo.

Based on this past use and specialist conclusions about future use, the predicted environmental effects from my decision are not significant. (Air, Amphibian,

Fisheries, Invasive Weeds, Recreation and Public Safety, Scenery, Soils, Water, Wildlife and Sensitive Plants Effects Worksheets, 2008)

The Decision Notice and Finding of No Significant Impact for the Horse Butte Bison Capture Facility (1/1999) authorized use of the bison capture facility for the last ten years. A determination of no significant impacts was made at that time. The decision and FONSI was supported by the Horse Butte Capture Facility EA (1998). These documents are incorporated by reference to further support my decision. A changed condition analysis was conducted as part of the current NEPA process to renew the permit. I conclude that there have been no significant environmental effects related to this use. The minimal environmental impact resulting from the capture operation validates the analysis, anticipated effects and conclusions in the previous decision. The current analysis supports that there are no extraordinary circumstances related to renewal of this authorization.

Since 1999 there have been some changes associated with species listings for threatened, endangered and sensitive species. The Bald Eagle, Grizzly Bear and Peregrine Falcon were threatened or endangered species in 1998 and have since been de-listed. These species are now considered sensitive species. A Biological Evaluation was completed to determine potential impacts to sensitive aquatic, plant and wildlife species. (Cherry 2008a, 2008c, Roberts 2008, 2008a) The Canada Lynx and Gray Wolf are now threatened species. A Biological Assessment (Cherry 2008) was completed to determine potential impacts to these species. Again minimal impacts are anticipated related to these species and their habitat. The changed condition indicates a less precarious state for various species that could be affected, which could justify fewer protective measures. The renewal, however, will include the same level of protections for the grizzly bear and bald eagle.

Another important issue in 1999 was potential “Impacts to local residents and recreationists”. Mitigation was incorporated in the special use permit through the annual Plan of Operations to allow continued use by recreationists and ensure public safety. During the past ten years when the permit was being used, heavy snowmobile use continued on Horse Butte, up to an estimated 150 sleds on some days (Fisher 2008). During capture operations, law enforcement has been effective at ensuring public safety. The capture facility has not deterred use by recreationists and local residents. There have been no reported safety related conflicts between forest users during capture operations. There have been occasions where individuals intentionally place themselves in the midst of capture operations at their own risk.

While there is passionate disagreement about bison management associated with the IBMP (USDI 2000) those potential effects are outside the scope of this proposed action. The limited effects associated with the construction and operation of the temporary capture facility, are not highly controversial or unknown. Conclusions related to effects analysis conducted for this action utilized common analysis methods and knowledge gained during the previous ten year of this authorized use.

V. Forest Plan Consistency and Findings Required by and/or Related to Other Laws

Forest Plan Consistency (National Forest Management Act) – This Act requires the development of a long-range land and resource management plan (Plan). The Gallatin Forest Plan was approved in 1987, as required by this Act. The Forest Plan provides for guidance for all natural resource management activities. The Act requires all projects and activities to be consistent with the Plan.

My decision is consistent with all applicable goals, objectives, standards and amendments of the **Gallatin National Forest Land and Resource Management Plan (1987)**. The Forest Plan contains no specific direction relevant to management of bison but it does provide the following guidance for coordinating management with other agencies and for issuing special use permits:

Forestwide Goal 21. "Coordinate with the land and resource management and planning efforts of other Federal, State, local agencies, and private landowners. Strengthen this coordination within the entire Greater Yellowstone Area." (Forest Plan, page II-2).

Forestwide Standards for Special Use Authorizations (Forest Plan, page II-27). "Special use applications will be evaluated on a case-by-case basis. The principle criteria used to evaluate special use applications will be:

1. Applications for uses that conform to the Forest Plan may be granted.
2. Applications for private use of National Forest land will not be granted if location and development of non-National Forest land is reasonably possible.
3. Special-use authorizations that primarily afford the applicant a lower cost or less restrictive location or merely accommodate the applicant's wishes will not be granted.
4. Preference will be given to special-use applications that offer service or benefit to the public over single-purpose or private uses."

The special use application was reviewed prior to being accepted to ensure these criteria were met.

The "use" to be renewed lies within Forest Plan Management Area 15 (Forest Plan, page III-47). This management area emphasizes recovery of the grizzly bear, livestock grazing and dispersed recreation use. Forest Plan direction for this Management Area contains no goals, objectives or standards for bison or for special use authorizations.

My decision to issue a special use permit to the Montana Department of Livestock for the purposes of installing and maintaining a bison capture facility, is consistent with the above direction. This action is consistent with the broad management goal to strengthen the coordination of resource management in the Greater Yellowstone area. As discussed earlier in this document I have also concluded that this action does not conflict with management goals to provide for grizzly bear recovery, livestock grazing and dispersed recreation. Two site specific Forest Plan Amendments were made in the Decision Notice and Finding of No Significant Impact for the Horse Butte Bison Capture Facility (January 1999, pp. 3-6). These amendments exempt the capture facility from a "partial retention" Visual Quality Objective (VQO) (USDA 1987, pp. II-16, 41 and 42); and exempt the action from the Forest Plan standard which adopts the bald eagle management plans (USDA 1987, pp. II-19, H-9) by

allowing the facility to be located within ½ mile of a bald eagle nest. (USDA 1987, pp. II-19, H-9). Use of the facility over the last ten years has not resulted in nest abandonment, which was the primary concern related to Bald Eagle.

Gallatin National Forest Travel Management Plan – This decision is consistent with the Gallatin National Forest Travel Management Plan. My decision does not relate to public access management.

USDA Forest Service. 2006. **Amendment for Grizzly Bear Habitat Conservation for the Greater Yellowstone Area National Forest.** Current direction on grizzly bear in the Greater Yellowstone Area comes from this document. This direction pertains primarily to secure (non-motorized) habitat, motorized access route densities, developed sites and livestock allotments. The proposed project complies with the direction from this Amendment because there is no decrease in secure habitat, no increase in motorized route densities, and no increase in developed sites over the baseline. Livestock allotments are not relevant to this decision. This proposed project complies with current direction for the grizzly bear in the Greater Yellowstone Area.

Northern Rockies Lynx Management Direction (2007) Current direction on the Canada lynx comes from the Northern Rockies Lynx Management Direction (2007) that amended the Forest Plans in lynx habitat. There is other general direction for management of threatened and endangered species under the Endangered Species Act and NFMA. Direction also comes from the Forest Service Manual 2670. NRLMD is primarily related to vegetation management. This project does not lie within lynx habitat or within a Lynx Analysis Unit (LAU). Other direction is that a Biological Assessment will be prepared for proposed actions and consultation with USFWS will occur if needed. A BA has been prepared for this project, and consultation was not necessary. (Cherry 2008) The proposed captured facility is consistent with current legal direction for the Canada lynx in the Greater Yellowstone Area (NRLMD 2006).

Endangered Species Act (ESA) – Compliance with the ESA has been accomplished with the completion of a Biological Assessment (Cherry 2008), see Section IV. Item 1.

Sensitive Species (Forest Service manual 2670) – Compliance with this direction was completed with the biological evaluation and incorporation of protection measures for grizzly bear and bald eagle, see Section III and IV. Item 1.

National Historic Preservation Act, Archeological Resources Protection Act, Native Graves Protection and Repatriation Act - See Section IV, Item 4.

Environmental Justice (Executive Order 12898) – This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with the Act. Public Involvement did not identify any local minority or low-income populations that will be adversely affected by this decision. The decision is not expected to adversely effect these populations.

VI. Decision Rationale

In making my decision I determined that the Horse Butte Bison Capture Facility is an appropriate use of NFS land, the facility has been under permit for more than 10 years and there are no environmental issues that lead me to believe that this use should not continue.

The Department of Livestock's request for a special use permit for the Horse Butte bison capture facility is consistent with their efforts to manage bison in accordance with the IBMP(2000 and Adaptive Management Plan (USDI 2008)). In reaching my decision I weighed the objectives of the State of Montana to minimize field removal of bison against the predicted environmental and social consequences associated with allowing a capture facility to be operated on national forest land. On balance, I found the bison management objectives to be most compelling. I am very aware of and sensitive to the controversy that exists over the management of migrating bison and the difficult position the State of Montana is in trying to protect its domestic livestock industry. In the absence of a capture facility the State would be left with no alternative beyond their existing authorities which include hazing and field removal of bison that move to the Horse Butte area and ultimately the lack of the capture tool would limit tolerance for bison in Zone 2 west of Yellowstone National Park. Despite the diverse opinions I hear on how to deal with this issue, most people agree that field removal is the least desirable option. As Forest Supervisor for the Gallatin National Forest, it is my role to coordinate with responsible agencies to the extent possible in their efforts to find and implement solutions to the bison situation. The environmental and social consequences of renewing this use are acceptable.

VII. Collaboration and Public Involvement

The project has been listed in the Forest Service Schedule of Proposed Actions since April 2008. The proposed action and solicitation of public comments was also posted on the Gallatin NF website. Forest Service representatives met with groups and individuals that are involved in regular dialogue with the Agencies regarding bison management. The scoping notice was mailed or emailed to approximately 200 individuals, and representatives for groups or agencies that are on the attendance log for the Interagency Bison Management Plan Public Meeting list.

During scoping the Forest received about 48 different letters from approximately 18,100 people with comments regarding the renewal of the permit or bison management in general. All but approximately 30 of these emails and letters were comprised of eight different form letters or letters with the same comment. These letters generally requested that the agency reconsider bison management due to changed conditions and/or whether slaughter of bison should continue. The remaining letters and emails raised concern for bison management as a whole, whether a capture facility is needed, various wildlife habitat concerns and other concerns. Overwhelmingly the comments related to broader bison management issues than whether to renew the special use permit for this capture facility. Even though most of the comments were beyond the scope of this decision to renew the temporary bison capture facility on Horse Butte we thought it would be helpful to commenters to know where to look for answers to their questions on Bison management. Specific Forest Service responses to the comments received are provided in

Appendix A and is available on the Forest Webpage <http://www.fs.fed.us/r1/gallatin/?page=projects/>.

Appeal Opportunity, Implementation and Contact Person

This decision is not subject to administrative appeal under 36 CFR 215.8.

This decision may be implemented in January 2009 through issuance of the Special use Permit to the Montana Department of Livestock.

For more information, please contact Lauren Turner, District Ranger at the Hebgen Lake Ranger District. Lauren's telephone number is 406/823-6961.

/s/Mary C. Erickson

Mary C. Erickson, Forest Supervisor

January 13, 2009

Date

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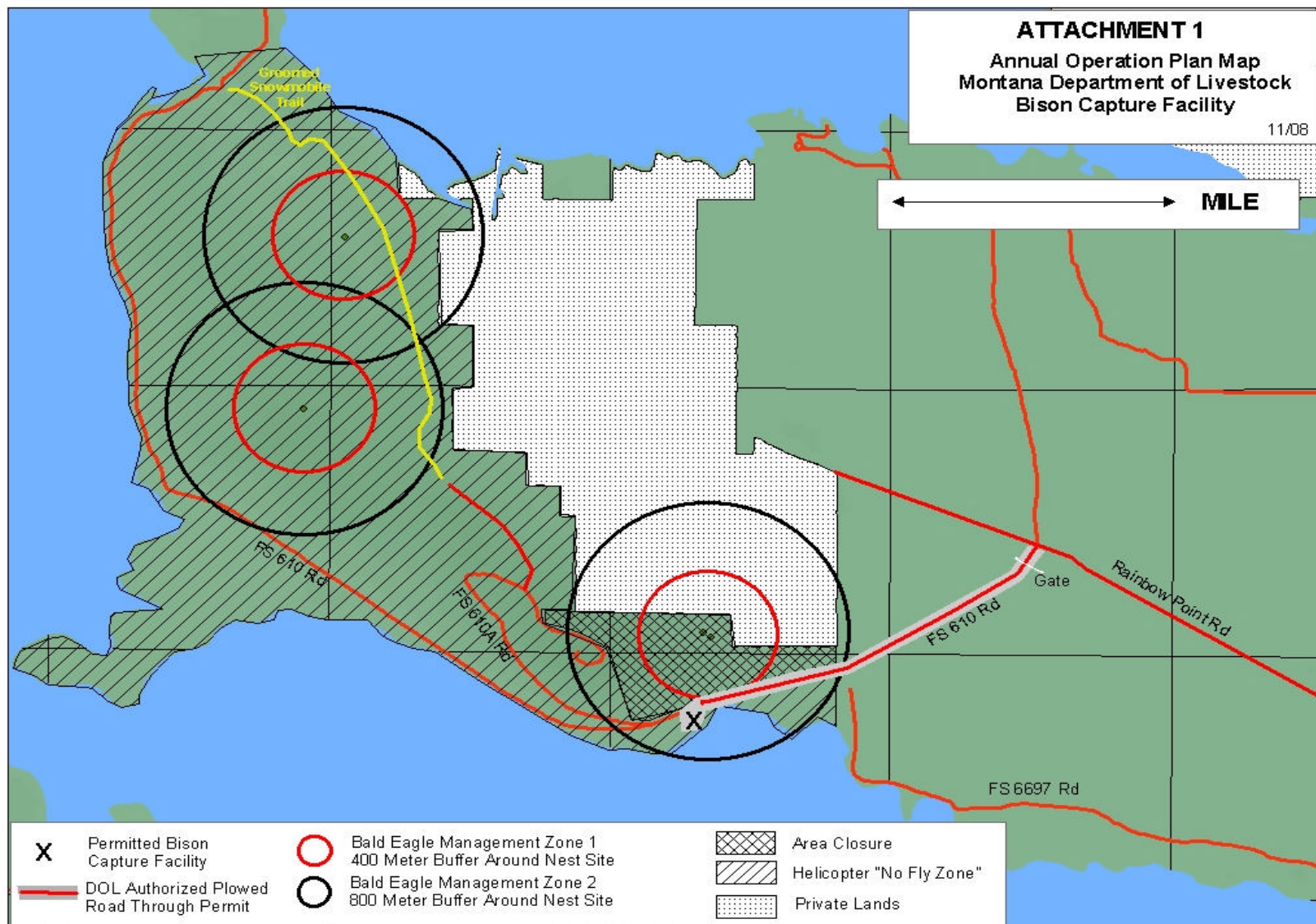
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Appendix A – Response To Comments from Scoping

During scoping the Forest received about 48 different letters from approximately 18,100 people with comments regarding the renewal of the permit or bison management in general. All but approximately 30 of these emails and letters were comprised of eight different form letters or letters with the same comments. These letters generally requested that the agency reconsider bison management due to changed conditions and/or whether slaughter of bison should continue. The remaining letters and emails raised concern for bison management as a whole, whether a capture facility is needed, various wildlife habitat concerns and other concerns. Overwhelmingly the comments related to broader bison management issues than whether to renew the special use permit for this capture facility. Even though most of the comments were beyond the scope of this decision to renew the temporary bison capture facility on Horse Butte we thought it would be helpful to commenters to know where to look for answers to their questions on Bison management. Specific Forest Service responses to the comments received are provided in this appendix.

The following is a list of acronyms used through out Appendix B:

Montana Department of Livestock	MDOL
Montana Fish, Wildlife, and Parks	MFWP
Veterinary Services division of the Animal and Plant Health Inspection Service	APHIS
Yellowstone National Park	YNP
National Forest System	NFS
Interagency Bison Management Plan	IBMP
Final Environmental Impact Statement	FEIS
Record of Decision	ROD
Environmental Assessment	EA
Decision Notice	DN
National Environmental Policy Act	NEPA
United States Department of Interior, Fish and Wildlife Service	FWS

Changed condition – need an Interagency Bison Management Plan revision

There are no more cattle grazing on private or public lands on Horse Butte peninsula so there is no need to capture or kill bison.

There is another bison capture facility on private land if needed. The Horse Butte Facility has not been needed within the last 4 of 9 years. The Horse Butte Capture Facility is no longer needed.

Due to the changed conditions on from the Butte, greater tolerance for Bison under the IBMP is needed. The IBMP needs to revised either be revising or supplementing the NEPA or applying adaptive management principles. Using the adaptive management provision allows denial of the capture facility permit.

Comment letters: 1 (form), 2 (form), 3 (form), 4 (form), 6 (form), 7 (form), 8 Form), 9, 12, 13, 14, 16, 17, 18, 19, 20, 25, 26, 29, 30, 31, 33, 34, 37, 38, 39, 40, 41, 43, 44, 45, 46

Response: *The Interagency Bison Management Partners have agreed to greater tolerance for bison west of Yellowstone National park in the Horse Butte Area. The parameters for greater tolerance are outlines in the Adaptive Management Plan (12/2008) The Forest Service, as one of the IBMP Partners, helped craft the Adaptive Management Plan for the Horse Butte area. One of the goals of this Plan is to increase tolerance for bison outside of the west boundary of Yellowstone National Park with no unacceptable consequences (e.g., transmission of brucellosis from bison to cattle, unacceptable impacts on public safety and private property). Untested male and female bison, will be allowed to migrate and occupy the Horse Butte Peninsula (between the Madison Arm of Hebgen Lake and Grayling Creek) and The Flats (the area east of South Fork Madison River, south of the Madison Arm, and west of Highway 191) each winter and spring in portions of zone 2. The Partners agreed on a number of management responses, should bison push identified geographical constraints (please see the Adaptive Management Plan, Goal #1). If female or groups of females and males push these constraints they will be hazed back to Horse Butte Peninsula, other available habitat, captured, or if necessary, lethally removed. Bison will be moved back into Yellowstone National Park in mid-May. The Adaptive Management Plan (available at www.ibmp.info) will go into effect winter 2008/2009.*

Increasing tolerance for bison on Horse Butte does not negate the need for a capture facility. If bison push the geographical constraints, the capture facility may be one of the management tools needed to ensure spatial and temporal separation of bison and cattle.

Comments relating to decisions establishing migrating bison management goals and objectives are outside the scope of this Decision Memo. The Forest Service does not have the jurisdictional authority to determine how bison populations will be managed, this authority rests with National Park Service while bison are within the boundaries of YNP and MDOL once bison cross onto private or NFS lands. These requests relate to broader issues of bison management and are outside the scope of the decision to renew the temporary bison capture facility on Horse Butte.

The Horse Butte capture facility is necessary for MDOL to implement the IBMP to ensure bison tolerance limits as directed in the IBMP ROD. The IBMP ROD stipulates tolerance for up to 100 seronegative bison on the Western Boundary Area. If bison in excess of the 100 allowed are occupying the Western Boundary Area, and hazing back into YNP is not possible because of environmental conditions or humane considerations, the capture facility will be necessary to capture those bison. There is a capture facility on private land but hazing bison to that facility would increase hazing distance substantially for bison on the Horse Butte Peninsula. Hazing to the capture facility at Duck Creek on private land would more than double the hazing distance which would add considerable stress to animals being moved.

As of 2008, it is not anticipated that cattle will graze on Horse Butte Peninsula in the future. However tolerance for bison occupying the Horse Butte Peninsula will still need to comply with the Adaptive Management Plan (12/2008) which includes geographic boundaries and temporal constraints.

Vaccination in the West Management Area is a necessary step to proceed with advancement of the IBMP. The capture facility will be needed to accomplish this goal.

NEPA - A categorical exclusion is unwarranted and an inappropriate level of analysis. A full NEPA analysis is required, either an EIS or an EA.

***Response:** A proposed action may be categorically excluded (CE) from further analysis and documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if there are no extraordinary circumstances related to the proposed action and if the proposed action is within one of the categories identified in FSH 1909.15. My decision is categorically excluded pursuant to Forest Service Environmental Policy and Procedures Handbook 1909.15, Section 31.2 (15): "Issuance of a new special use authorization for a new term to replace an existing or expired authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized facilities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization."*

The mere presence of one or more of [these] resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist. The decision maker determined that there are no extraordinary circumstances related to the decision to authorize continued use of NFS lands for the operation of the Horse Butte bison capture facility. See the Horse Butte Bison Capture Facility Decision Memo for scope of this decision and more discussion related to use of the categorical exclusion.

Brucellosis transmission

There is no proof of brucellosis transmission from bison to cattle so the need to reduce the risk of transmission is unfounded. Elk transmit the disease and they roam free.

Even if there is a connection, the Forest Service should consider alternatives such as removing cattle before bison.

See Statement by Paul Niccollette (Brucellosis expert) discussing the risk of brucellosis transmission on Horse Butte.

Comment letter: 6 (form), 10, 16, 15, 20, 28, 30, 33, 37, 39

***Response:** See the FEIS and ROD for the IBMP for an explanation of brucellosis transmission from bison to cattle and from elk to cattle, (FEIS, Volume 1, pp. 19-29 and Volume 2, pp. 180-199). A range of different management tools was considered in the development of the IBMP, including the removal of cattle. See the IBMP FEIS, Volume1, pages xiv to xxiv for a summary of management tools.*

The scope of the proposed action is limited to authorizing NFS lands to be used for installation and operation of a temporary capture facility. There are no cattle grazing on NFS land on Horse Butte. Other management tools such as options for vaccinating cattle, hazing or lethal removal do not require Forest Service approval. The capture facility allows for a variety of management options to be exercised if bison leaving Yellowstone National Park do not stay on the Horse Butte Peninsula or The Flats and push the geographical and timing constraints described in the Adaptive Management Plan

The suggestions from these comments relate to broader issues of bison management and are beyond the scope of the decision to renew the temporary bison capture facility on Horse Butte. The Forest Service does not have the administrative authority to consider alternatives to the overall management of bison nor to revisit the decisions made by the agencies which do.

According to Forest Wildlife Biologist Marion Cherry, Dr. Niccolletti's biology (other science) is correct except that veterinarians cannot guarantee that there is no risk of infection. He is also correct that there are presently no cattle on Horse Butte, however private land owners still retain the right to bring cattle onto private lands at any time. The rationale for the bison capture facility on the Butte is that there are private cattle operations both to the north and south of the Butte.

Migratory and Nesting Birds

Migratory and nesting birds need protection including bald eagle, trumpeter swans and sand hill cranes. Bald Eagle Management Plan must be followed. Bald eagle protections need to be revisited in a formal environmental consultation with the USFWS.

Comment Letter: 2 (form), 4 (form), 24, 26, 29, 34, 37, 41, 43

Response: *Analysis of the potential effects to Bald Eagle and habitat for the species is included in the Biological Evaluation (Cherry 2008a) and the effects analysis work sheet for Sensitive Species (Cherry 2008b). The Bald Eagle was de-listed recently and is no longer a threatened species. Therefore, there are no consultation requirements with FWS. Habitat for other migratory birds was given consideration in the effects analysis worksheet for migratory birds. (Cherry 2008b) Extensive mitigation is built into the authorization to protect and monitor Bald eagle including specific protections listed in the Horse Butte Bison Capture Facility Decision Memo, the hazing plan, the area closure, the no flight zone and a monitoring plan. The permit has been in place for ten years and the authorized use has not led to nest abandonment. The permit as authorized adheres to current direction (Cherry 2008b).*

Wildlife – Habitat and Viewing

Public wildlife viewing and wildlife habitat need protection. Consider effects to bald eagles, grizzly bears, moose, lynx, elk, trumpeter swans and other migrating birds, sensitive and Management Indicator Species.

Increased development on private lands on the north side of Horse Butte has degraded wildlife habitat making the south side near the capture facility more important. These lands should be managed for wildlife first.

Comment letters: 2 (form), 4 (form), 24, 29, 30, 34, 37, 38, 39, 40, 41, 43, 45

Response: *The value of the area to wildlife was given consideration in a series of effects analysis worksheets for threatened, endangered, sensitive and Management Indicator Species, as well as migratory birds and other wildlife issues. (Cherry 2008b) Additionally a biological assessment and biological evaluation were completed. (Cherry 2008, 2008a) The implementation of the capture facility special use permit would result in different activities being viewed but would not preclude wildlife viewing. Also, the limited number of days of capture operations, generally fewer than five days in some year but not all years, would not significantly alter wildlife viewing opportunity.*

The approximate two acre site that may be altered is very limited in extent and is an insignificant amount of potential wildlife habitat when compared to the entire Horse Butte Peninsula. The various analyses concluded that there would be minimal impact to wildlife species and habitat due to mitigation that has been incorporated, limited spatial and temporal scope and the fact that the permit has been in place for more than 10 years with minimal disturbance. Aside from capture operations at this facility, activities associated with bison management can occur regardless of whether or not the Horse Butte Bison capture facility is permitted on NFS land at Horse Butte.

Degraded forage, reclamation, permit compliance

The capture facility has led to degraded forage. Native plants have not been planted to reduce disturbance in accordance with the original Special use Permit (SUP). Noncompliance with this provision precludes use of a categorical exclusion to renew the permit.

Comment letters: 5 (form), 37, 39, 41, 43

Response: *The current authorization requires that native seed be used for revegetation. MDOL has complied with these permit provisions. Photos are available at the Forest Website (http://www.fs.fed.us/r1/gallatin/?page=projects/horse_butte) of the permit area during and after capture facility operation showing the level of disturbance and reclamation.*

Use of the capture facility has a direct effect on vegetation by trampling the plants and compacting the soils. These effects on vegetation are very localized, and do not impact areas outside of the permit area. The loss of vegetation and reduction of forage at the capture facility is less than 2 acres, in an area surrounded with more than 860 acres of sagebrush and grass/forb meadows. The meadows are not being grazed as part of an allotment and are available for wildlife.

Traffic associated with permit

There is more traffic associated with use of the bison capture facility than originally estimated.

Comment letters: 5 (form), 37, 41, 43

Response: *The level of traffic associated with the operation has not created unacceptable environmental impacts or a public safety hazard.*

Special Use Permit issued under Interim Plan – no longer needed

The Special Use Permit was developed prior to 2000 under the IBMP. Is the purpose and need for action still valid?

Comment letter: 37

Response: *MDOL is operating under the IBMP and the Adaptive Management Plan. The Horse Butte capture facility is necessary for MDOL to implement the IBMP and Adaptive Management Plan to provide bison tolerance within geographical constraint and timing as directed in the IBMP ROD and the Adaptive Management Plan. While there is greater tolerance provided for bison on Horse Butte and The Flats area, the Adaptive Management Plan states that groups of female bison (or mixed groups of males and females) will not be allowed north of the Narrows; west of Corey Springs; or south and west of the Zone 2 boundary. Bison attempting to enter these areas will be hazed to the Peninsula, other available habitat, captured, or if necessary, lethally remove. While the tolerance thresholds have changed, the Horse Butte capture facility is necessary to maintain geographical and timing constraints as outlined in the Adaptive Management Plan. Finally, vaccination in the West Management Area is a necessary step to proceed with advancement of the IBMP. The capture facility is needed to accomplish this goal.*

Bison should be managed as wildlife not livestock

Remove bison management from MDOL to MFWP.

Comment letter: 22, 33

Response: *Bison are considered wildlife in the State of Montana, and the management of this species is split with MFWP managing the hunt, and MDOL managing disease. This is not likely to change and is at the discretion of the State of Montana and not the Forest Service.*

Why capture male bison

Explain why males are rounded up when females are the carriers?

Response: *This question is addressed in the FEIS for the IBMP and is not within the scope of the decision for this proposed action. For information see the FEIS, Volume 2, pp. 54-56. All bison in the Yellowstone herd are considered exposed to brucellosis and are assumed therefore to represent some risk of transmission to cattle should spatial and temporal separation not be maintained. There is little doubt that the primary means of transmission is by ingestion, from birth tissues, birth fluids, neonatal calves, and aborted fetuses that are contaminated with *B. abortus*. This is why certain classes of bison are considered to pose a low risk of environmental contamination. However, this does not mean environmental contamination is not possible, e.g., from contaminated urine, contaminated feces, a draining brucellosis abscess, or an infected carcass; transmission to calves via milk or across the placenta; or routes as yet unknown. Although the transmission potential of infected bulls is believed to be quite small, it remains unknown. For these reasons, the agencies have measures to ensure temporal and spatial separation of*

brucellosis -affected bison and uninfected cattle. The Adaptive Management Plan incorporates greater tolerance for male bison.

Under NFMA the FS must maintain a viable bison population

The Forest Plan and National Forest Management Act requires the Forest maintain a viable population of bison since it is a native specie.

Comment: 37, 41

Response: *Population viability is a major consideration in the IBMP. See the IBMP FEIS Volume 1pp. 3, 64, 71 82-84. The predicted mortality resulting from the capture facility operation is not expected to threaten population viability.*

Bison Management on NFS lands

Forest Service should provide additional habitat to bison and an underpass or overpass for migration. Providing bison habitat is the Forest Service primary role in the IBMP renewing the permits diminishes available habitat.

National Forests were intended to provide a buffer for National Parks this use should be implemented.

Horse Butte grazing allotment should be permanently terminated and the area should be managed for migrating bison.

Comment letters: 20, 22, 33, 37, 38, 45

Response: *The suggestion for an underpass or overpass relates to other bison management tools that may meet other management objectives or needs but is outside the scope of the decision to renew the temporary bison capture facility on Horse Butte.*

Additional habitat

The temporary capture facility gives a location for management activities to occur farther west of YNP than they could otherwise. The benefit of the capture facility at Horse Butte is that it allows for greater tolerance of bison outside of YNP and increases their winter range. The capture facility may result in fewer hazing attempts to move bison all the way back to YNP. The facility allows bison to be handled and potentially released rather than just removed from the population. (Cherry 2008b) Renewing the permit removes only about 2 out of 860 acres of potential forage habitat from bison use on Horse Butte (Lamont 2008).

There is no direction in the Gallatin Forest Plan designating the area around YNP as a buffer. In general, the National Forests were not designated as a buffer for national parks.

Livestock allotments on the Gallatin National Forest can be managed such that they do not present a barrier to bison. The Horse Butte allotment is vacant and will not be restocked with livestock that create a conflict with bison.

Public Safety, Visual and Sound Quality

Impacts to local residents and dispersed recreation including public safety, visual quality and sound quality standards. The analysis for impacts to safety and the public is restricted to too small an area. People on foot and bicycle need to be considered. Consider moving the facility or using the other capture facilities to avoid safety conflicts with residents.

Comment letters: 38, 42, 45

Response: *This proposed action is limited in scope to the activities associated with the capture operations. General hazing operations can occur with or without this authorization. Law enforcement is present during hazing and capture operations to ensure security and public safety. Forest visitors in the vicinity of capture operations are warned of the operation and either wait for the operation to finish or go around the activity. If residents have concerns with bison presence near their homes on other days they should consult MFWP. During capture operation in the past 10 years there are no recorded public safety conflicts with the public except when those other users intentionally interfered with capture operations.*

The capture operations are intermittent from year to year. In past years when the facility is erected, capture operations occurred in fewer than 5 days. With this level of activity and the mitigation that requires law enforcement presence to divert other forest users there is little chance of public safety conflicts associated with the operation.

The facility is not highly visible on the landscape. The facility is temporary, small and presents a minor imposition on the landscape from a visual point of view. Given experience from the past 10 years, the capture operation is intermittent and temporary and does not result in significant visual degradation.

There would be some sound associated with the facility but the decibel level and nature of the sounds is similar to other sounds one would expect in this area. The sounds of the operation would typically include snowmobile, ATV or horse use, pick up trucks or similar vehicle, sounds one would expect in a small corral and some snow plowing. All of these sounds would be expected near homes in a rural setting and on NFS lands open to motorized use.

Impacts to bison and other wildlife during operations in general and specifically from motorized vehicles used during hazing and capture

Impacts of hazing and capture operations, snowmobiles and other vehicles and helicopters on bison and other wildlife in the area.

Comment letters: 10, 35, 41, 45

Response: *The impacts to wildlife, including bison, from the capture operation are predicted to be minor because all of the bison management activities and associated use of snowmobiles and other vehicles may occur whether or not the capture facility is present. (Cherry 2008b) Hazing can occur with or without the presence of this capture facility and are not part of this decision. Helicopter hazing is not allowed in the vicinity of Horse Butte.*

Cumulative effects

Consider cumulative effects analysis that addresses other land use changes and decisions on Horse Butte and the greater Hebgen Basin, including increased human population.

Consider cumulative effects of lost habitat for wild bison from six decisions related to Bison Mgmt. The scope of this decision is properly a part of these other decisions.

Cumulative effect of the Forest Service grazing program and decisions on land use is in direct conflict with the principal role prescribed for it, [in the IBMP] to provide habitat for bison and the Gallatin National Forest must manage the land for indigenous wildlife species.

Environmental footprint is broader than the 2 acre permit area due to vehicles, ATV's, helicopters etc and limited access to large area.

Comment Letters: 16, 31, 34, 37, 45

Response: *The scope of this decision is limited to the renewal of the Horse Butte Bison Capture Facility installation and operation. The direct and indirect impacts are predicted to be insignificant based on the use and impacts during the last ten years and expected future use, due in large part to the intermittent need for the facility and limited duration of activities in a given winter. Other bison related activities such as hazing, field removal, hunting etc. can occur with or without this authorization. For these reasons, the potential for cumulative effects is minimal to non-existent.*

Past, present and reasonably foreseeable activity was considered for the vicinity around Horse Butte. However, since this activity is not a connected action to the other bison management decisions there would be no significant cumulative effect. There is no cattle grazing on Horse Butte on NFS land and the impacts from this capture operation are physically removed from other livestock grazing areas on NFS land so there would be no cumulative effect from the Forest Service grazing program.

In general, the additive impact from this temporary, portable capture facility authorization is insignificant in combination with other land use changes including the increased human population.

Specialists identified the spatial area of boundary that they used for effects analysis. The effects analysis worksheets are contained in the project file. Access roads and the 2 acres footprint was the minimum area considered for potential effects. Helicopter use is not authorized in association with the capture operation.

Cumulative effect analysis should “count what counts”, not produce superficial analyses of a long laundry list of issues that have little relevance to the effect of the proposed action or the eventual decisions.” (CEQ, January 1997, pp12) To state it differently, in relation to a project, a possible cumulative effect relates to whether the proposal would have a significant additive effect relative to a resource such as sensitive plants, soils, wildlife or fisheries. This strategy for cumulative effects analysis is further supported by recent guidance from the Council of Environmental Quality, Guidance on the Consideration of Past Actions in Cumulative Effects Analysis (6/24/2005) which states, “Generally, agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into historical details of individual past actions.”

Permit term

Consider a shorter term permit because there should not be a long term need for the facility due to changed land use i.e. no cattle.

Stop any and all special use permits for 5-10 years then re-evaluate the need for any taking of wildlife.

Comment letter: 26, 39, 42

Response: *The capture facility and its associated Special Use Permit are needed to implement the goals and objectives of the IBMP and the Adaptive Management Plan. Issuance of Special Use Permits with 10 year tenure is a customary practice for the Gallatin National Forest. If the IBMP goals and objectives are changed prior to expiration of the Special Use Permit and there is no longer a need for capture facilities, the authorization can be easily revoked as there are no permanent improvements associated with this authorization. If the goal and objectives of the IBMP are changed and the Special Use Permit requires modification to comply with a new IBMP, the Forest Service has full authority to make these modifications as the Special Use Permit is a license to use NFS lands and does not convey any property right interest.*

Permit is not in compliance with IBMP

Permitting the capture facility is no longer authorized under the IBMP since it does not reduce the risk of brucellosis transmission and is at odds with conserving free ranging bison.

Comment letter: 41

Response: *The two well-documented goals of the IBMP are to ensure a wild, free-ranging bison population and preventing the transmission of brucellosis from bison to livestock. The IBMP has been successful in maintaining a wild, free ranging population within the limits defined by the plan. The IBMP has also been successful in preventing the transmission of brucellosis from bison to livestock through spatial and temporal separation.*

The Adaptive Management Plan provides greater tolerance for untested bison on Horse Butte and The Flats areas to allow more opportunity for free ranging bison.

The Horse Butte capture facility allows for some tolerance of brucellosis positive bison within Montana, and helps ensure spatial and temporal separation between these animals and brucellosis negative, but susceptible livestock.

See the background section in the decision memo and the response to comments on “Changed Condition” and “Special Use Permit issued under the Interim Plan- so is no longer needed”.

Other management ideas

Protect livestock that enter the area until June 15 with progressive fencing techniques. Managing risk by protecting private property on the Povah Ranch, Red Canyon Ranch and Stinnet property can save money for other uses. MDOL can haze bison onto suitable habitat to avoid trapping.

Implement temporal and spatial separation to a higher degree.

Comment letters: 29, 38, 40

Response: *The Forest Service does not have the administrative authority to consider alternatives to the overall management of bison nor to revisit the decisions made by the agencies which do. These authorities lie jointly with YNP and MDOL.*

Fencing is a tool that may be used in some instances where it might be merited under adaptive management of the IBMP. However, fencing private land is not part of the proposal for a capture facility on Horse Butte. Fencing was considered in the IBMP, FEIS Vol. 1. pp. 56 and additional information on fencing in Volume 2, on pages 8-9) Fencing was also discussed during the development of the Adaptive Management Plan (2008) and was incorporated on the north side of the Park.

Economic impacts

Consider economic impacts of the tourist industry when buffalo are present.

Other economic impacts to be assessed – cost of bison management by state and federal officials, effects on local economy due to bison viewing, state and local income from bison hunting, impact of capture facility on hunting all species i.e disruption).

Comment letter: 34, 39

Response: *These concerns were addressed in the IBMP, FEIS, Volume 1 pp. 477-557.*

Sensitive Plant

Biological Assessment is needed for Dwarf Monkey Flower.

Comment letter: 37

Response: *A biological evaluation was completed for sensitive plant species (Cherry 2008c).*

Hebgen Lake is barrier that bison won't cross

Horse Butte is surrounded to the north, west and south by waters of Hebgen Lake substantially restricting bison movement. Where would the bison go in the spring if we left them alone?

Comment letters: 26, 37

Response: *Hebgen Reservoir can be and is crossed by bison in the area called the Narrows on the north side of Horse Butte where it is a few hundred yards across to the area near Red Canyon. This spot can be crossed by swimming bison or by bison walking on the ice when the reservoir is frozen. There are cattle present on the south-west side of the Peninsula (South Fork Madison River area) and north of the Lake across the narrows.*

Annual Plan – permit compliance

Lack of an approved annual plan of operations precludes renewing the permit with a categorical exclusion because MDOL is in violation of their permit terms and conditions.

Comment letter: 37

Response: MDOL has an approved annual plan of operations. It is on file in the permit folder at the Hebgen Lake Ranger District.

Watershed impacts

What are impacts to the watershed from lack of vegetation and erosion? What are impacts to aquatic life from run off?

Comment letter: 35

Response: *Renewal of this permit would result in no adverse impacts to water quality, wetlands, flood plains or municipal watersheds. This decision does not authorize any modification of floodplains, wetlands or municipal watersheds. The facility would be located on level ground on a soil type which has low/moderate erosion potential, low landslide risk and low sediment delivery efficiency. The facility has no existing or potential erosion effects on Hebgen Reservoir or other water related resources. (Water, Wetlands, Floodplains report, Story 2008a)*

The proposed site for the facility and capture operation is located on a bench away from running and standing water with no chance of protect related sediment being delivered to adjacent waters so the capture operation activities and facility are expected to have no impact on aquatic species.(Roberts, 2008a)

Seasonal duration of impacts

Consider year round, four season impacts. Facility in place for more than 1/3 of the year, over 3 seasons and is not temporary.

Comment letter: 34

Response: *The facility is portable and temporary and has been used intermittently. In some years the facility is not even set up. The facility was used in 5 of the last 10 years. In those years the capture operation occurred on 5 or fewer days. The authorization is limited to November 1 to April 30. At the end of the operating season the facility is removed and the area is reclaimed. Although the portable pens are left all winter once erected, the presence of a small corral like structure with no activity imposes very few impacts.*

Each specialist identified the appropriate temporal timeframe for potential effects specific to their resource. The various worksheets are contained in the project file.

Pollution impacts.

Quantify pollution risks unique to this high-altitude winter environment, not limited to decibel levels of helicopters, oversnow machines.

Air pollution from same in Class 1 Airshed

Non-point source water pollution from same, as well as other vehicles and operations at the facility.

Comment letter: 34

Response: *Renewal of this permit would result in no adverse impacts effects to water quality, wetlands, flood plains or municipal watersheds. This decision does not authorize any modification of floodplains, wetlands or municipal watersheds. The facility would be located on level ground on a soil type which has low/moderate erosion potential, low landslide risk and low sediment delivery efficiency. The facility has no existing or potential erosion effects on Hebgen Reservoir or other water related resources. (Water, Wetlands, Floodplains report, Story 2008a)*

A small amount of dust associated with bison movement and the portable bison facility service vehicles on NFS Roads 610 and 2530D is anticipated to occur. The amounts are very similar to background dust levels associated with the surrounding area. The entire Hegben Lake basin is in full compliance with Montana air quality standards and the National Ambient Air Quality Standards. (Air Quality, Story 2008)

There would be some sound associated with the facility but the decibel level and nature of the sounds is similar to other sounds one would expect in this area. The sounds of the operation would typically include snowmobile, ATV or horse use, pick up trucks or similar vehicle, sounds one would expect in a small corral and some snow plowing. All of these sounds would be expected near homes in a rural setting and on NFS lands open to motorized use.

Cultural impacts

Assess cultural impacts related to valuing wildlife, respecting values of indigenous people, especially the 26 tribes formally associated with YNP, improving community morale and support for federal government as controversy eases.

Comment letter: 34

Response: *The context for this comment relates to managing the bison population under the IBMP. The FEIS for the IBMP addressed potential cultural impacts related to bison management activities. Discussion related to Social Impacts and Cultural Resource Impacts is found in the IBMP FEIS Executive Summary, pp. 74-75, 80-82, and the FEIS, Volume 1 pp. 327-333, 362-367, 477-498, 618-633.*

ESA

Violates the endangered species act.

Comment letter: 25

Response: *This decision complied with the ESA with the preparation of a Biological Assessment (Cherry 2008). The Canada lynx and gray wolf are the only species listed at this time. Consultation with the USFWS was not needed due to the determinations made for these species and habitat.*

Hunting

Hunters can control over populated wildlife.

Comment letter: 20

Response: *Hunting quotas are determined by MFWP. At this time, the quotas are not sufficient to control the bison population which is primarily regulated by weather conditions. Bison do not always exit YNP into an area they can be hunted during bison hunting season, and not always available to hunters. The IBMP considers hunting as a bison management tool (IBMP FEIS, Volume 1, pp. xxxii, 300 and volume 2 pp. 73, 78-85).*

Hebgen Lake Zoning Plan Compliance

A conditional use permit or an easement is needed subject to the Hebgen Lake Zoning Regulation and Development Plan.

Comment letter: 20

Response: *Federal land is not subject to state or local zoning regulations.*

Bison Population explosion

A long term solution to the bison population explosion is needed. If they are able to use the Butte it must be fenced.

Comment letter: 11

Response: *This issue is outside the scope of this decision. The IBMP takes appropriate population numbers into consideration. See IBMP FEIS volume 1 pp. 3, 64, 71 82-84. The appropriate scope of this decision is discussed in the decision memo. The Adaptive Management Plan provides for increased tolerance on Horse Butte Peninsula and the Flats and identifies geographical and timing thresholds where management actions would be needed.*