



August 31, 2023

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Public Comments Processing,
Attn: FWS-R6-NWRS-2023-0062
U.S. Fish and Wildlife Service
MS:PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Intent to Prepare Updated Bison and Elk Management Plan for the National Elk Refuge in Wyoming; Environmental Impact Statement (FWS-RS-NWRS-2023-0062)

Dear Fish and Wildlife Service:

Friends of Animals¹ submits this scoping comment in response to the Notice of Intent to prepare an updated Bison and Elk Management Plan (BEMP) and Environmental Impact Statement (EIS) for the National Elk Refuge in Wyoming, published in the Federal Register on August 1, 2023 (FWS-RS-NWRS-2023-0062).² Friends of Animals requests that the Fish and Wildlife Service (FWS) take a hard look at the impacts of implementing an amended BEMP for a new 15-year period and evaluate and consider alternatives that do not utilize hunting or other lethal methods of population control to reduce the herd size and “manage” bison and elk populations in the National Elk Refuge.

1. Factual Background

The Greater Yellowstone Ecosystem is a thriving, vital, and pristine region in which an intricate balance of species and habitat is at play. The National Elk Refuge (NER) is a vital part of the larger Greater Yellowstone Ecosystem, and healthy bison and elk herds are an integral part of the ecosystem’s sustainability and health. In the NER alone, there are 48 native species of wildlife, including elk, bison, bighorn sheep, pronghorn, and mule deer.³ Large predators include coyotes, gray wolves, mountain lions, and black bears.⁴ Large

¹ Friends of Animals is a non-profit international advocacy organization incorporated in the state of New York since 1957. FoA has nearly 200,000 members worldwide. FoA and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals.

² United States Fish and Wildlife Service, *Notice of Intent to Prepare Updated Bison and Elk Management Plan for the National Elk Refuge in Wyoming; Environmental Impact Statement*, 88 Fed. Reg. 50168 (August 1, 2023).

³ United States Fish and Wildlife Service, *Comprehensive Conservation Plan, National Elk Refuge*, p. 53 (accessed at: <https://www.fws.gov/media/national-elk-refuge-comprehensive-conservation-plan>).

⁴ *Comprehensive Conservation Plan*, p. 53.

rodents, small mammals, and midsize predators, such as badgers, bobcat, long-tailed weasels, ermines, and minks also inhabit the ecosystem.⁵

Currently, an estimated 10,600 elk and 450 bison inhabit the approximately 24,700 acres comprising the NER.⁶ This number is significantly lower than the populations of elk and bison that roamed the region before western migration of humans introduced to the ecosystem destructive activities such as hunting and livestock grazing. Sustainable and natural populations of elk and bison, as well as other species, roamed the acreage of the NER for centuries prior to the late nineteenth century, at which point, herds numbering in the thousands were decimated. Only through conservation efforts were populations restored, yet only to a fraction of their historical size. Despite the impact of humans, each year, thousands of animals migrate to the NER, with each species an irreplaceable component to the ecosystem's health and sustainability. It is an ecosystem that thrived for centuries before western expansion and has remained and recovered despite human impact.

In 2007, the National Park Service and FWS adopted the current Bison and Elk Management Plan (BEMP), with a 15-year effective period, to address the bison and elk herds in the NER.⁷ As part of the BEMP, the agencies have set the "sustainable" populations in the NER at 5,000 elk and 500 bison.⁸ To "manage" the populations at this level, the agencies utilized supplemental feeding in the winter by FWS, as well as authorized annual hunting to promote population reduction.⁹ A "step-down" plan was implemented in 2019 to reduce supplemental feeding over a five-year period, ending in 2024.¹⁰ Due to the expiration of the BEMP and the "step-down" plan, the agencies are amending the BEMP. According to the Notice, the agencies seek to further "reduce the number of elk wintering on NER, subsequently reducing reliance on supplemental feeding."¹¹

Friends of Animals supports FWS promoting sustainable and healthy populations of elk and bison. However, Friends of Animals encourages FWS to evaluate and consider alternatives that do not involve hunting or other forms of lethal population control to manage the herds. The Greater Yellowstone Ecosystem and the area of the NER sustained naturally existing herds for centuries without reducing populations through hunting, and FWS should explore alternatives that do not require further reduction of the existing herds.

2. Discussion

In the Notice, FWS notes that hunting is a possible method to be utilized to control the population of bison and elk within the NER, as well as winter feeding, disease

⁵ *Comprehensive Conservation Plan*, p. 53.

⁶ 88 Fed. Reg. 50169.

⁷ 88 Fed. Reg. 50169.

⁸ 88 Fed. Reg. 50169.

⁹ 88 Fed. Reg. 50169.

¹⁰ 88 Fed. Reg. 50169.

¹¹ 88 Fed. Reg. 50169.

management, and habitat conservation.¹² FWS operates under the presumption that the bison and elk populations are not sustainable at their current levels. FWS should utilize the process of updating the BEMP and drafting an EIS to fully evaluate the current populations and their vital place in the Greater Yellowstone Ecosystem.

FWS should also consider a broader scope of alternatives that does not include annual hunts to manage the population. By continuing to include hunting within the scope of alternatives, FWS risks failing to consider more feasible or longer-term solutions that will benefit not only the bison and elk populations in the NER, but the multitude of native species that inhabit the ecosystem with bison and elk. FWS should also look at alternatives to improve the health of the ecosystem, such as allowing for species to exist in their natural state, without hunting, and for limitations on livestock grazing, including retiring grazing permits and privileges that are no longer being used.

a. Under the National Environmental Policy Act, FWS Must Analyze All Reasonable Alternatives to Implementing an Updated Bison and Elk Management Plan

In 1970, Congress enacted the National Environmental Policy Act (NEPA), which requires an agency to prepare an environmental impact statement (EIS) prior to taking action significantly affecting the quality of the human environment. The EIS must analyze: “(i) the environmental impact of the proposed action; (ii) any adverse environmental effects which cannot be avoided should the [proposed action] be implemented; [and] (iii) alternatives to the proposed action.”¹³ When drafting an EIS, as FWS has indicated it intends to do through the PEIS, the agency must evaluate all potential environmental impacts of the proposed action.¹⁴ To meet this obligation, FWS must: (1) analyze all reasonable alternatives to the proposed action; and (2) identify and disclose to the public all foreseeable impacts of the proposed action, including direct, indirect, and cumulative impacts.¹⁵

As stated in the Notice, FWS is updating the BEMP and considering alternatives in how the manage the bison and elk populations in the NER.¹⁶ At this point, it appears that the alternatives FWS will consider continue to utilize hunting as a primary method for population control of the herds, along with winter feeding, disease management, and habitat conservation.¹⁷ Currently, FWS authorizes hunting and supplemental feeding as methods to manage the bison and elk herds. Friends of Animals strongly opposes the continued use of hunting or lethal methods of population reduction to manage and reduce herd sizes.

¹² 88 Fed. Reg. 50169.

¹³ 42 U.S.C. § 4332(2)(C).

¹⁴ *See, id.*

¹⁵ *See id.* § 4332(2); *see also* 40 C.F.R. §§ 1508.7-1508.8, 1508.9(b).

¹⁶ 88 Fed. Reg. 50169.

¹⁷ 88 Fed. Reg. 50169.

Another element FWS must consider is livestock grazing on public lands in the vicinity of the NER. While unclear from the Notice whether there is livestock grazing in the NER or its vicinity, such activity is highly detrimental to the public lands under the authority of federal agencies, including FWS. However, the Notice does note that disease management is one measure that will be evaluated as an alternative.¹⁸ An issue in the Greater Yellowstone Ecosystem is the presence and prevention of brucellosis in the region, which can be prevented or minimized by keeping bison and livestock separated.¹⁹ FWS should consider alternatives that acknowledge the impact livestock grazing has in the region and include alternatives that limit livestock grazing on public lands. Such alternatives could include agreements between federal agencies and ranchers to retire livestock permits. Limiting livestock grazing will assist in disease management and in protecting the ecosystem without resorting to management plans that focus on reduction of herd populations and hunting.

While FWS includes hunting as a possible management tool for the bison and elk herds in the NER, the practice is seeing a general decline from the public. Presently, the number of hunters in the region is far exceeded by the number of people that visit the NER and the greater Yellowstone ecosystem region for non-hunting purposes, such as visitor center attendance and use of observational facilities, such as traffic turnouts.²⁰ FWS should focus on alternatives that promote such activities, as opposed to a BEMP that places hunting as a method for population management. Bison and elk have inhabited the region for centuries. It is only in recent history, with the introduction to the ecosystem of humans and human-centered activities, such as livestock grazing, hunting, and the removal of various predator species, that purported population been “resolved” through lethal means. Hunting was the cause of the severe depletion in bison and elk herds, which has taken decades to minimize, and should not be an alternative for managing the NER herds. Instead, FWS should place greater emphasis on non-hunting alternatives, including consideration of the socioeconomic benefits and impacts from tourism.

b. FWS Must Take a “Hard Look” at the Impacts of Amending the BEMP.

Under NEPA, an agency must take a “hard look” at the impacts of an action prior to making a final decision.²¹ NEPA requires the agency to adequately evaluate all potential environmental impacts of proposed actions.²² The agency must provide “a reasonably

¹⁸ 88 Fed. Reg. 50169.

¹⁹ National Park Service, *Bison Bellows: Brucellosis*, (accessed at: <https://www.nps.gov/articles/bison-bellows-6-2-16.htm#:~:text=Potential%20management%20practices%20must%20include%20integrative%20methods%20such, reducing%20the%20prevalence%20of%20the%20disease%20in%20wildlife>).

²⁰ *Comprehensive Conservation Plan*, p. 78-79.

²¹ *Baltimore Gas & Elec. Co. v. Natural Res. Defense Council*, 462 U.S. 87, 97-98 (1983); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1115-16 (9th Cir. 2002), *overruled in part on other grounds*, *Wilderness Soc’y v. United States Forest Serv.*, 630 F.3d 1173, 1178-79 (9th Cir. 2011).

²² See 42 U.S.C. § 4332(2)(C).

thorough discussion of the significant aspects of the probable environmental consequences.”²³

The NER is part of the Greater Yellowstone Ecosystem and serves as a migratory destination for many species, including elk and bison. As in any ecosystem, removal or unnatural reduction of any species can have a domino effect on all species in the ecosystem. Removal of one can lead to an increase or decrease in the population of other species. FWS, in seeking to amend the BEMP, must take a hard look at how reducing the population of bison and elk will affect the other species and habitats within the ecosystem.

To satisfy its obligation under NEPA, FWS must identify and disclose to the public all foreseeable impacts of the proposed action, including direct, indirect, and cumulative impacts.²⁴ Here, the most foreseeable impact of a BEMP which employs hunting will be the reduction of bison and elk populations in the NER and impacting the vital role these herds play in the larger ecosystem. Reducing elk and bison populations through hunting will remove a source of prey for predator species, as well as limit the positive impact the herds play in the larger ecosystem, such as the role played in seed dispersal and fertilization.

It is imperative, and a statutory obligation, that FWS use the DEIS review process to take a “hard look” at the impacts of reducing bison and elk from the proposed management areas. Friends of Animals requests that after FWS’s review in the EIS process, and review of the significant environmental impacts, it selects an alternative that acknowledges the environmental impacts from herd reduction and emphasizes herd conservation as the most beneficial to the NER and to the human environment.

3. Conclusion

As discussed above, Friends of Animals encourages FWS, in amending the BEMP, to evaluate and pursue alternatives in which hunting and further population reduction of the bison and elk herds is not the primary or preferred method of management in the NER. Bison and elk are a vital part of the NER and the Greater Yellowstone Ecosystem, and further population reduction not only impacts the herds in the NER, but affects all species and habitats within the ecosystem by removing the positive impact of a critical species. The best alternative is that in which hunting is not considered an alternative for management, and the herds of bison and elk are allowed to exist in their natural state, as each did for centuries before human involvement.

Sincerely,
Rob Huss
Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Rd., Suite 385
Centennial, CO 80112
rhuss@friendsofanimals.org
720-949-7791

²³ *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998).

²⁴ 42 U.S.C. § 4332(2); *see also* 40 C.F.R. §§ 1508.7-1508.8.