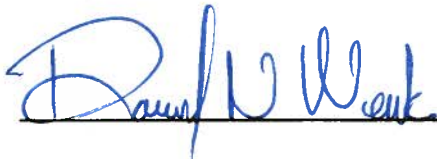


**National Park Service
U.S. Department of the Interior**



Benefits-Sharing EIS Record of Decision

Approved:

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**UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

RECORD OF DECISION

ENVIRONMENTAL IMPACT STATEMENT

The Department of the Interior, National Park Service has prepared this Record of Decision on the *Benefits-Sharing Final Environmental Impact Statement* (FEIS) applying servicewide to the National Park System. This Record of Decision includes a description of the background of the project, a statement of the decision made, synopses of other alternatives considered, the basis for the decision, findings on impairment of park resources and values, a description of the environmentally preferable alternative, a listing of measures to minimize environmental harm, and an overview of public and agency involvement in the decision-making process.

BACKGROUND OF THE PROJECT

Scientific research in parks is encouraged by the NPS, provided that research activities cause no harm to the parks. The rights and responsibilities of researchers and NPS management in connection with the allocation of benefits from valuable discoveries, inventions, and other developments resulting from such research involving research specimens lawfully collected from national parks have been unclear. The National Park Service has determined that it needs servicewide guidance to address the NPS's interest in the financial and other benefits from the results of research involving park research specimens.

The commercial use or sale of research specimens themselves is prohibited by regulation (see 36 CFR 2.1). However, the commercial use of knowledge derived from specimens via research is not prohibited. Commercial use of research results has, in the past, been left entirely up to researchers without involvement from the NPS and without any further obligation or responsibilities to the NPS.

In 1998, Congress enacted the National Parks Omnibus Management Act that includes a provision specifically authorizing the NPS to enter into benefits-sharing agreements with researchers. However in 1999, following a legal challenge over a benefits-sharing agreement between Yellowstone and a biotechnology firm named Diversa Corporation, a federal court directed NPS to review the potential impacts of the agreement. This FEIS responds to the court's directions and examines potential environmental impacts of adopting benefits-sharing throughout the National Park System.

DECISION (SELECTED ACTION)

Description of the Selected Action

Alternative B (Implement Benefits-Sharing) identified three different considerations for disclosing financial information about royalty rate and related information contained in benefits-

sharing agreements. Under each variation NPS would provide Congress and the public with an annual report summarizing the non-monetary and monetary benefits the NPS received under benefits-sharing agreements. The three variations differ according to degree of disclosure of additional financial details, ranging from always disclosing the information (B1) to never disclosing it (B3).

Alternative B2 (Implement benefits-sharing agreements and comply with confidentiality laws regarding disclosure of royalty rate or related information) is the selected action. The NPS benefits-sharing process will apply to research projects involving research specimens collected from units of the National Park System that subsequently result in useful discoveries or inventions with some valuable commercial application. A benefits-sharing agreement negotiated on a case-by-case basis will provide the terms and conditions for the further development and use of such valuable discoveries, inventions, or other research results. All such researchers will be required to enter into a benefits-sharing agreement with the NPS before using their research results for any commercial purpose. The NPS will comply with confidentiality laws regarding disclosure of royalty rate or related information. The existing policies and procedures for research access to national park system units will not be affected by NPS adoption of Alternative B2.

Key Actions

- * If research activities involving research specimens collected from units of the National Park System result in useful discoveries, inventions, or other commercially valuable applications, NPS will consider whether a benefits-sharing agreement with the NPS will be required. If required, this agreement would be negotiated individually with each prospective partner to provide the terms and conditions for sharing with the NPS benefits resulting from the further development and use of that partner's discoveries, inventions, or other commercially valuable applications.
- * NPS units that are federal laboratories within the meaning of the Federal Technology Transfer Act of 1986 (FTTA) could implement benefits-sharing through negotiation of Cooperative Research and Development Agreements (CRADAs). CRADAs and Material Transfer Agreements (MTAs) could be similar, but not identical, to the example CRADA and example MTA published in the FEIS and will be negotiated on an individual, case-by-case basis.
- * Specific terms and conditions describing non-monetary and monetary benefits that are obligated by a benefits-sharing agreement will be negotiated individually for each agreement.
- * All benefits received by the NPS under any type of benefits-sharing agreement will be dedicated to the conservation of resources protected and managed by the NPS.
- * The NPS will submit annual reports to Congress summarizing the amount of royalties or other income received from CRADAs, as provided by the FTTA. In addition, the NPS will report non-monetary benefits generated by CRADAs each year.
- * All benefits-sharing agreements will be made available to the public in their entirety upon request except for any specific information that one or more parties to an agreement objects to being released for reasons satisfying one or more of the statutory disclosure exemptions provided

under the federal Freedom of Information Act (FOIA) or other laws protecting confidential business information.

Mitigating Measures/Monitoring

* Benefits-sharing agreements will not circumvent or supersede any NPS planning process, permitting authority, or other regulatory procedure or policy.

* Benefits-sharing agreements will not authorize any research activities in parks or any other activities that require a permit.

* Projects, activities, or programs proposed to be conducted in a park as a secondary result of implementation of benefits-sharing will receive separate, site-specific environmental review as appropriate in compliance with the National Environmental Policy Act of 1969 (NEPA).

* Specialized benefits-sharing expertise will be available to park superintendents upon request to provide technical assistance to parks with negotiation of benefits-sharing agreements and related issues. In addition, NPS will seek appropriate routine assistance for every park agreement from a Department of the Interior solicitor.

* Research permits will be issued or permit applications denied without regard to whether the permit applicant was or might become a party to a benefits-sharing agreement. Negotiation and establishment of a benefits-sharing agreement will not change or affect the existing procedures relating to the issuance of permits for research activities or management of park specimens catalogued into park collections. Issuance of a research permit or loan of a catalogued specimen will not be conditioned on negotiation of a benefits-sharing agreement. Participation in an existing CRADA will not ensure approval of a researcher's application for a new or renewed research permit.

* Separate individuals will manage preparation of benefits-sharing arrangements and research permit issuance decisions or specimen loan arrangements.

OTHER ALTERNATIVES CONSIDERED

Alternative A would have left unchanged the NPS policies and practices regarding commercial use of research results that existed prior to negotiation of the Yellowstone–Diversa Cooperative Research and Development Agreement (CRADA) in 1997–1998. Currently, the NPS does not negotiate benefits-sharing agreements. This would continue to have been the case under this No Action alternative. Research specimens and material originating as an NPS research specimen would have continued to be usable for approved research purposes (including research activities that might lead to discoveries that could be useful in terms of health care, nutrition, agriculture, environmental management, industrial, or other processes with potential commercial or other economic value), whether collected directly by a permitted researcher or obtained from an authorized third-party source such as a culture collection.

Alternative C would have prohibited the collection of specimens in all units of the National Park System for research that was identified or acknowledged by the researcher to have potential for

commercial development. The development of any inadvertent or other discoveries resulting from research involving NPS research specimens that could have some valuable commercial application would not be authorized unless the NPS director determined, in writing, that such development was in the public interest. Such a determination would be based on a finding by the director that refusal to authorize such development could be harmful to public health or other overriding public interest (such as discovery and development of an important new medicine). Alternative C is responsive to some public comments urging the NPS to prohibit commercialization of NPS-related research.

BASIS FOR DECISION

After careful consideration of the alternatives, their potential environmental impacts, the degree to which they met the project objectives described in the FEIS, and the degree to which each alternative addressed the issues and concerns expressed by the public, the NPS has decided to implement Alternative B2, to implement benefits-sharing on an individual, case-by-case basis and to comply with confidentiality laws regarding disclosure of royalty rate or related information.

The selected alternative provides potential beneficial impacts by dedicating the use of all benefits received by the NPS under any type of benefits-sharing agreement to the conservation of resources protected and managed by the NPS. Any benefits used for this purpose would be above and beyond the conservation efforts funded by ordinary park budgets.

The selected alternative meets the project objectives in the following ways: 1) By clarifying the rights and responsibilities of researchers and NPS managers in the event a researcher wishes to commercialize his/her research results involving study of NPS research specimens; 2) By strengthening conservation and protection of resources managed by the NPS both by strengthening the scientific capacity of NPS scientists through collaboration with non-governmental researchers and through "benefits" presented to the park such as scientific equipment for use in the park or laboratory analyses performed outside the park; and 3) By adhering to existing NPS laws and policies relating to the issuance of Scientific Research and Collecting Permits for access to park resources for research purposes and by establishing the mitigating measures described above.

Alternative B2 is responsive to public comments. The majority of Draft EIS (DEIS) commenters simply wanted the national parks to be protected under all circumstances. Some people were concerned that commercial harvesting of park resources might result from implementation of benefits-sharing agreements. Benefits-sharing agreements will not authorize removal of park resources or any natural products from parks, including research specimens. Other people warned that in the absence of any mitigation measures, implementation of benefits-sharing could result in inappropriate consideration of separate benefits-sharing issues at the time NPS research permit applications are evaluated. Accordingly, benefits-sharing has been carefully separated from the established process parks already use to evaluate applications to perform research in parks. Additional representative public concerns are described in the FEIS.

FINDINGS ON IMPAIRMENT OF PARK RESOURCES AND VALUES

The FEIS analyzed the possible environmental impacts of choosing whether or not to implement a certain type of agreement; hence, its considerations of affected environment and impact topics relate primarily to administrative functions of the NPS. Impairment analyses only apply to natural and cultural resource topics, and do not apply to topics involving visitor use, social resources, or park operations. Impact analysis identified two potential adverse impacts: 1) the obligation to share benefits would have a long-term negligible adverse impact on declared bioprospectors; and 2) the need to administer benefits-sharing agreements would have a negligible adverse impact on park administrative operations. Neither impact applies to natural or cultural resource topics. No impairment would occur from implementation of benefits-sharing.

Implementation of benefits-sharing would comply with all applicable laws, regulations, and policies (including the National Park Service Organic Act of 1916, individual national park organic acts, FTTA, the National Parks Omnibus Management Act of 1998, U.S. intellectual property rights laws, and NEPA). The example standardized CRADA also is consistent with the general terms and conditions that appeared in the initial CRADA negotiated by Yellowstone National Park with Diversa Corporation that has been reviewed by a Federal court and determined to be consistent with the National Park Service Organic Act, the Yellowstone National Park Organic Act, the National Parks Omnibus Management Act of 1998, applicable NPS regulations, and the FTTA.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

The environmentally preferred alternative is determined by applying the criteria suggested in NEPA, which is guided by the Council on Environmental Quality (CEQ). The CEQ provides direction that "the environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's §101: (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradations, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety, of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources."

According to the *"Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations"* (40 CFR 1500-1508, Federal Register Vol. 46, No. 55, 18026-18038, March 23, 1981: Question 6a), "Generally this means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources."

Alternative A (No Benefits-Sharing/ No Action) would satisfy to some extent the majority of the six requirements detailed above. However, Alternative A would fail to use an available legal tool, benefits-sharing, to improve park resource conservation. In addition, under Alternative A,

study of NPS specimens could lead to economic gains for non-NPS entities only, and therefore could be considered to be inadequate management of environmental assets.

Alternative B (Implement Benefits-Sharing) is the environmentally preferred alternative. Alternative B would more completely satisfy NEPA's six criteria through implementation of benefits-sharing. Only Alternative B prepares the NPS to utilize an available legal tool, benefits-sharing, to improve resource conservation through the non-monetary and monetary benefits it could receive from research involving study of NPS resources. Through benefits-sharing, NPS employees could improve their abilities and their tools to perform research to inform resource management decisions. Alternative B would improve resource protection by deepening understanding of biodiversity and ecological processes under NPS management. Alternative B also ensures that researchers could develop their research results for applications that could improve health, safety, and productivity. Under Alternative B, NPS-related research results could be used to develop and commercialize a wide variety of beneficial applications in fields such as health, agriculture, nutrition, and a host of other industries. Alternative B would make no change to the strict resource protection standards in place for NPS research permitting, thus preventing degradation of the environment. No undesirable or unintended consequences of Alternative B have been identified during this NEPA analysis.

Alternative C (Prohibit Research Specimen Collection for Any Commercially Related Research Purposes) would fail to use an available legal tool, benefits-sharing, to improve park resource conservation. Under Alternative C, research that could be expected to lead to discoveries with commercial applications that could improve health, safety, and productivity would be prohibited. Researchers would also be prohibited from developing unexpected research results for commercial applications that could improve health, safety, and productivity. Accordingly, Alternative C would not attain the widest range of beneficial uses of the environment.

Achievement of the final two CEQ criteria would be unaffected by selection of any alternative, because none of the alternatives proposes any use of resources. (Collection and study of resources is governed by a separate research permitting process.)

PUBLIC AND AGENCY INVOLVEMENT

Scoping

Public involvement for the EIS began in June 2001 with scoping (66 Federal Register [FR] 33712, 33713 and 67 FR 18034, 18035). Two newsletters (mailed to more than 5,000 people), a website, and various newspaper articles invited the public to comment on the issues and alternatives to be addressed. In response, 118 scoping comment messages were received from the public. All of the public's concerns were considered as described in FEIS Sections 1.8 and 1.9.

DEIS Public notification

The Benefits-Sharing DEIS was released for public review on September 26, 2006 (71 FR 184). The comment period was extended (71 FR 241) until January 29, 2007, (due to print omissions and delays in delivering the DEIS) for a total of 130 days. Approximately 12,000 people were notified by mail or email about the availability of the DEIS. Press releases were widely distributed and the DEIS was posted on Planning, Environment and Public Comment (PEPC),

the NPS's web-based public comment system. Additional information about the DEIS was posted on the NPS's benefits-sharing website (www.nature.nps.gov/benefitssharing). More than 450 hard copies or compact disks (CDs) of the DEIS were distributed. All American Indian Tribal Governments and Alaska Native Groups were notified and three tribes submitted comments.

Public Comment

About 9,600 individuals and organizations responded during the DEIS comment period, and all but 190 submitted form correspondences. As a result, most comments fell into two categories based on information from one of two advocacy group websites. Correspondents motivated by a National Parks and Conservation Association website urged the NPS to adopt benefits-sharing with certain conditions. Correspondents motivated by a website entitled "Parks Not For Sale" responded to an interpretation of potential "commercial bioprospecting" activities and impacts as presented by the former plaintiffs in the court case that precipitated this EIS. The latter correspondences were especially difficult to interpret since they did not reference the actual proposal or content of the DEIS.

For the most part, comments on the DEIS did not contain relevant new information or scientific data that would necessitate notable changes in the FEIS. While letters of this type are not particularly informative to the NEPA process, they are of importance to decision makers as the comments indicated that the majority of correspondents want the national parks to be protected under all circumstances. All of the public's concerns were considered as described in FEIS Chapter 5.

Agency and American Indian Consultation and Coordination

All American Indian Tribal Governments and Alaska Native Groups were notified about potential NPS benefits-sharing because this decision could affect any national park unit in the United States. Three tribes commented on the DEIS. All correspondence received from tribes is reproduced in Chapter 5 of the FEIS. Issues identified by tribes included cautioning against allowing any extraction of park natural resources for direct commercial use, and cautioning against allowing research to adversely impact park resources or spiritual values. The Shoshone-Bannock Tribes also clarified their social and spiritual connection to Yellowstone National Park and made suggestions about research permitting procedures in Yellowstone.

The 1966 National Historic Preservation Act, as amended in 1992, requires federal agencies to consult with the state historic preservation officer and the Advisory Council on Historic Preservation (Council) regarding undertakings that may affect historic properties. Because the Benefits-Sharing EIS is about a servicewide proposal, formal consultation letters were sent to both the Council and the National Conference of State Historic Preservation Officers. Both the Council and the National Conference determined that the benefits-sharing proposal is not an undertaking as defined in the National Historic Preservation Act and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). Accordingly, pursuant to 36 CFR 800.3(a)(1) and 800.16(y), the NPS has no further obligations for compliance with Section 106 for the development and implementation of benefits-sharing policy and agreements with scientists who conduct research in NPS units.

The Endangered Species Act of 1973, as amended, directs every federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the existence of any federally-listed species or destroy or adversely modify critical habitat (50 CFR 400). In compliance with Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et. seq.), a formal letter was sent to the U.S. Fish and Wildlife Service (USFWS) in May 2007 regarding the DEIS. The USFWS replied in June 2007 with a caution that some specific research activities could require additional consultation in the future. Although research activities are outside the scope of the Benefits-Sharing EIS, the NPS agrees and continues to review research activities for impacts to endangered species under a separate process. The USFWS determined that the benefits-sharing proposal (Alternative B) would be “not likely to adversely affect” threatened or endangered species.

The United States Department of State Office of Ecology and Terrestrial Conservation also provided comments on the DEIS. The NPS was advised that any benefits-sharing program should first and foremost encourage research and scientific innovation, and be negotiated on a case-by-case basis.

CONCLUSION

As described under *Mitigating Measures/Monitoring*, all practical means to avoid or minimize environmental harm from the selected alternative have been adopted. Because there would be no major adverse impacts to resources whose conservation is (1) necessary to fulfill specific purposes in the establishing legislation of the National Park Service; (2) key to the natural or cultural integrity of parks or to opportunities for enjoyment of parks; or (3) identified as a goal in relevant National Park Service planning documents, there would be no impairment of park resources or values. After a review of these effects, the alternative selected for implementation will not impair park resources or values and will not violate the NPS Organic Act.