



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

JUL 06 2010

L7615(2310)

To: National Leadership Council

From: Associate Director, Natural Resource Stewardship and Science

Subject: Interim Guidance for Impairment Determinations in NPS NEPA Documents

In January 2001, the National Park Service (NPS) published the DO-12 Handbook, which provides National Environmental Policy Act (NEPA) guidance, including guidance for preparation of impairment determinations in NEPA documents. Since 2001, parks have implemented the impairment guidance with mixed results. The current guidance has not consistently resulted in meaningful impairment analysis in NEPA documents, and this has been commented upon by judges in several court cases. Because of these inconsistencies, the Environmental Quality Division (EQD) has worked closely with the regional environmental coordinators, the Office of Policy, and the Solicitor's Office to revise this guidance. This new interim guidance is intended to provide a framework for a more thorough analysis of actions which could lead to impairment of park resources.

The Environmental Quality Division (EQD) is currently in the process of updating the DO-12 Handbook to reflect the best NEPA guidance for parks to follow. The interim guidance for Impairment Determinations in NPS NEPA documents will be included in the revised DO-12. In the meantime, parks should use the interim guidance when making an impairment determination during the NEPA process. This guidance provides several changes to the guidance currently in DO-12, including, but not limited to, requiring an impairment determination for the preferred or selected alternative only and requiring an impairment analysis in a stand-alone determination attached to the NEPA document in an appendix.

Should you have any questions, please contact Tammy Whittington, EQD Division Chief, at 303-969-2073.

cc: Chief, Environmental Quality Division

Interim Guidance for Impairment Determinations In NPS NEPA Documents

This document provides guidance for determinations of whether park resources and values would be impaired by a proposed action.

Use this determination to document the impairment findings and how the findings were reached. The determination should be included as an appendix in NEPA documents and in the corresponding decision document. Complete the impairment determination in full so that it demonstrates the reasoned connection between the analysis in the NEPA document and the impairment findings. While the impairment findings should be based on analysis in the NEPA document, the findings should have enough detail to stand on their own and be clear and understandable to the public.

Impairment Determination Required

Whether an action may result in impairment should be considered throughout the planning process. The NEPA document should include a short discussion of the impairment standard as described in *Management Policies 2006* in the Introduction and Background section (Chapter 1). This discussion should acknowledge that a written impairment determination will be made for the preferred and selected alternative and refer to the draft or final impairment determination in the appendix of the NEPA document. All alternatives considered in a NEPA document should be evaluated for impairment, however, a draft written impairment determination is only required for the preferred alternative in an environmental assessment (EA) and draft and final environmental impact statement (EIS). If the preferred alternative is modified during the planning process, the written impairment determination should be updated as appropriate. (An example is when changes made to a preferred alternative after the release of a draft EIS.) A final written impairment determination is required for the selected alternative in a finding of no significant impact (FONSI) or record of decision (ROD) respectively. This written determination is required for any EIS or EA and decision document that could impact park resources and values and to which NPS is a signatory.

If an alternative is dismissed because it would result in impairment, the author should document why the alternative is dismissed in the discussion of Alternatives Considered but Dismissed. On rare occasions, the no action alternative, if continued, may result in impairment. When this is the case, the fact that the no action alternative will result in impairment should be discussed in the impact analysis for the no action alternative.

How is an Impairment Determination Made?

Section 1.4.7 of *Management Policies 2006* states, “[i]n making a determination of whether there would be an impairment, an NPS decision maker must use his or her professional judgment. This means that the decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969 (NEPA); consultations required under section 106 of the National Historic Preservation Act (NHPA), relevant scientific and scholarly studies; advice or insights offered by subject matter experts and

others who have relevant knowledge or experience; and the results of civic engagement and public involvement activities relating to the decision.

Management Policies 2006 further define “professional judgment” as, “a decision or opinion that is shaped by study and analysis and full consideration of all the relevant facts, and that takes into account the decision-maker’s education, training, and experience; advice or insights offered by subject matter experts and others who have relevant knowledge and experience; good science and scholarship; and, whenever appropriate, the results of civic engagement and public involvement activities relating to the decision.”

What is Impairment?

NPS Management Policies, 2006, Section 1.4.5, What Constitutes Impairment of Park Resources and Values, and Section 1.4.6, What Constitutes Park Resources and Values, provides an explanation of impairment.

Impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

Section 1.4.5 of *Management Policies 2006* states:

An impact to any park resource or value may, but does not necessarily, constitute impairment. An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
- Identified in the park’s general management plan or other relevant NPS planning documents as being of significance.

An impact would be less likely to constitute an impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values and it cannot be further mitigated.

Per Section 1.4.6 of *Management Policies 2006*, park resources and values that may be impaired include:

- the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources;

paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;

- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

Additional information parks can utilize for evaluating resource-specific impacts (biological, watershed, air, lightscapes, soundscapes, geologic, and ecosystems) for context, severity, duration, timing and mitigation measures is contained in the document "Interim Technical Guidance on Assessing Impacts and Impairment to Natural Resources- July, 2003" (<http://www2.nrintra.nps.gov/ard/docs/nrimpairment.pdf>); and on the NPS Natural Resource Program Center website (<http://www.nature.nps.gov/>). While information contained in these sources is subject to revision, it provides a starting point for identifying information sources and characteristics of each natural resource to consider when evaluating impacts. See also www.nps.gov/protect.

Instructions for Completing the Written Impairment Determination

An impairment determination must be completed for each resource impact topic carried forward and analyzed for the preferred / selected alternative. Impairment findings are not necessary for visitor experience, socioeconomics, public health and safety, environmental justice, land use, and park operations, etc. because impairment findings relate back to park resources and values, and these impact areas are not generally considered to be park resources or values according to the Organic Act, and cannot be impaired the same way that an action can impair park resources and values.

The following information must be addressed in each impairment determination:

Step 1. List each resource impact topic for the preferred/selected alternative analyzed in the EA or EIS.

Step 2. For each resource impact topic, describe why impairment would not occur. Remember, if your analysis reveals that the alternative selected would result in impairment of a park resource(s), mitigation must be applied to remove the potential for impairment or another alternative must be selected. *Management Policies 2006 8.1.1.*

The level of detail provided should be commensurate with the severity of the impact. It is acceptable to include a reference to the impact thresholds described in the environmental analysis in the EA or EIS, but the determination must also include the following information.

- a brief description of the condition of the resource;

- whether the resource is necessary to fulfill the purposes for which the park was established;
- whether the resource is key to the natural or cultural integrity of the park or to the opportunity for enjoyment of the park;
- whether the resource is identified as a significant resource in the park's planning documents; and,
- a "because statement" as to why the action will or will not result in impairment of the resource. This "because statement" should include a discussion of the context, severity, duration, and timing of any impacts, and also discussion of any mitigation measures, if applicable.

Step 3. Include the completed draft determination in its entirety in an appendix of the EA, DEIS, FEIS, and in the final determination in the FONSI or ROD.



National Park Service Environmental Quality Division

Approval Tracking

Issue Description:	Interim Guidance for Impairment Determinations
EQD Point of Contact:	Lindsay Gillham
Recommended Action:	AD-NRSS signature on memo to National Leadership Council
Approvals (check if required):	Signature and Date:
✓ Associate Director, NRSS	Bert Frost
✓ Deputy Associate Director, NRSS	Beth Johnson
✓ Chief, Environmental Quality Division	Joe Carriero acting /s/ <i>Joe Carriero acting 6/14/10</i>
✓ Administrative Specialist	Michele Klossowsky /s/ <i>Michele Klossowsky 6/14/10</i>
Manager, External Affairs Program	Joe Carriero
✓ Chief, Environmental Planning and Compliance Branch	Patrick Walsh /s/ <i>Michael Edwards acting 6/14/10</i>
Acting Chief, Resource Protection Branch	