

Instructions for preparing a Draft or Final Impairment Determination

(Delete this page before attaching to your document)

This template has been developed to meet the new Interim Guidance for Impairment Determinations in NPS NEPA Documents, issued July 6, 2010. Do not change the introductory language that explains the prohibition on impairment, what is impairment, and how an impairment determination is made.

For an EA or Draft/Final EIS:

- The impairment determination should be prepared only for the preferred alternative in an EA or Draft/Final EIS.
- Insert the summary paragraph provided below into Chapter 1 in the section titled Applicable Laws and Policies under NPS Management Policies.
- Title this "Draft Impairment Determination" and include the project name: e.g., Roosevelt-Vanderbilt National Historic Sites Draft General Management Plan/EIS; Valley Forge National Historical Park General Management Plan Record of Decision; etc.
- Attach the entire template to the EA or Draft/Final EIS.

For a FONSI or ROD:

- The impairment determination should be prepared only for the selected alternative.
- Title this Final Impairment Determination, change Appendix to Attachment, and attach to the FONSI or ROD.

Summary paragraph for Chapter 1:

NPS Management Policies 2006, Section 1.4: The Prohibition on Impairment of Park Resources and Values

By enacting the NPS Organic Act of 1916 (Organic Act), Congress directed the U.S. Department of Interior and the NPS to manage units “to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations” (16 USC § 1). Congress reiterated this mandate in the Redwood National Park Expansion Act of 1978 by stating that NPS must conduct its actions in a manner that will ensure no “derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress” (16 USC 1a-1).

NPS Management Policies 2006, Section 1.4.4, explains the prohibition on impairment of park resources and values:

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the Nation Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The NPS has discretion to allow impacts on Park resources and values when necessary and appropriate to fulfill the purposes of a Park (NPS 2006 sec. 1.4.3). However, the NPS cannot allow an adverse impact that would constitute impairment of the affected resources and values (NPS 2006 sec 1.4.3). An action constitutes an impairment when its impacts “harm the integrity of Park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values” (NPS 2006 sec 1.4.5). To determine impairment, the NPS must evaluate “the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts” (NPS 2006 sec 1.4.5). A determination on impairment for the preferred alternative evaluated in this plan/EA is provided in Appendix __.

APPENDIX/ATTACHMENT _____
[DRAFT/FINAL] IMPAIRMENT DETERMINATION
[Project name]

The Prohibition on Impairment of Park Resources and Values

NPS Management Policies 2006, Section 1.4.4, explains the prohibition on impairment of park resources and values:

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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*, provide an explanation of impairment.

Impairment is an impact that, in the professional judgment of the responsible National Park Service 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.

The NPS has discretion to allow impacts on Park resources and values when necessary and appropriate to fulfill the purposes of a Park (NPS 2006 sec. 1.4.3). However, the NPS cannot allow an adverse impact that would constitute impairment of the affected resources and values (NPS 2006 sec 1.4.3).

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 as a goal 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 condition 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, structure, 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.

Impairment may result from NPS activities in managing the park, visitor activities, or activities undertaken by concessionaires, contractors, and others operating in the park. Impairment may also result from sources or activities outside the park, but this would not be a violation of the Organic Act unless the NPS was in some way responsible for the action.

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 judgement. 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 judgement" 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 relation to the decision

Impairment Determination for the Preferred/Selected Alternative

This determination on impairment has been prepared for the preferred alternative described on pages _____ of this [EA/Draft/Final EIS] [or: This determination on impairment has been prepared for the selected alternative described in this FONSI/ROD]. An impairment determination is made for all resource impact topics analyzed for the preferred/selected alternative. An impairment determination is not made for visitor experience, socioeconomics, public health and safety, environmental justice, land use, and park operations [*include the topics that appear in your EA*] 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 in the same way that an action can impair park resources and values.

[Begin your impairment determination here. Remember to explain why the actions in your preferred/selected alternative would not result in impairment. See the Interim Guidance for Impairment Determinations for detailed instructions on how to write the impairment determination. Some samples are given below.]

Sample impairment finding from VAFO deer management plan/EIS Record of Decision

The NPS has determined that implementation of the selected alternative will not result in impairment of park resources and values at Valley Forge NHP. In reaching this determination, the plan/EIS was reviewed to reaffirm the park's purpose and significance, resource values, and resource management goals and desired future conditions. Based on a thorough analysis of the environmental impacts described in the plan/EIS, the public comments received, and the application of the provisions of the NPS *Management Policies 2006*, the NPS concluded that the implementation of the selected alternative will not result in impairment of any of the resources and values of Valley Forge NHP. Although the selected alternative entails reducing the number of deer, a deer population will be maintained as a resource of Valley Forge NHP. The target population of 31 to 35 deer per square mile is sustainable in that it will maintain a deer population while reducing deer browsing pressure to a level that will allow for the protection and restoration of native plant communities and regeneration of forest, and preserve the pattern of field and forest that are an important component of the cultural landscape, as described in the park's General Management Plan.

Sample impairment findings from BOHA Georges Island Pier Improvement EA

[Note: These impairment findings were written prior to the issuance of the new interim guidance, so conclusions about impacts and impairment findings were done for all of the alternatives in the EA. Remember that you only have to do an impairment finding for the preferred alternative in your EA and the selected alternative in your FONSI. However, all of these findings have been included to give you more examples of what an impairment determination should look like.]

Findings on Impairment for Essential Fish Habitat**Alternative A**

No construction would take place with Alternative A. Piecemeal replacement of rotting piles would be necessary to keep the pier facility open and operational; therefore, Alternative A would have negligible to minor adverse impacts on EFH.

The no-action alternative would not result in impairment of EFH because ongoing operational and maintenance activities associated with the current pier, including occasional replacement of piles, create minimal disturbance in the water and do not cause the loss of EFH or interfere in the use of EFH by managed fish species.

Alternative B

Alternative B would have short-term, minor, adverse impacts on EFH due to construction, including generation of noise and temporary increase in turbidity during removal and replacement of piles. These impacts would be minimized through the implementation of mitigation measures such as time-of-year construction restriction and the use of a siltation curtain surrounding the immediate work zone in the water. Adult and juvenile fish are highly mobile and

would be expected to vacate the area to avoid these impacts and return to the area once turbidity and noise conditions return to normal.

Though the area of the fixed pier would be reduced compared to the existing pier, the addition of the floating docks in Alternative B would permanently increase shading due to slightly larger (2.5%) combined dock area, which would impact the benthic communities below.

Alternative B would not result in impairment of EFH because increased turbidity and noise would be temporary and would be minimized by the use of appropriate mitigation measures; in addition, the area of permanent shading would be only slightly larger than the existing dock surface area, and the adverse impact may be offset somewhat by the reduction in the number of permanent piles.

Alternative C

Alternative C would have short-term, minor, adverse impacts on EFH due to construction, including generation of noise and temporary increase in turbidity during removal and replacement of piles. These impacts would be minimized through the implementation of mitigation measures such as time-of year construction restriction and the use of a siltation curtain surrounding the immediate work zone in the water. Adult and juvenile fish are highly mobile and would be expected to vacate the area to avoid these impacts and return to the area once turbidity and noise conditions return to normal.

The area of the fixed pier would be reduced compared to the existing pier as part of this project and permanent shading from the combined fixed pier and the floating dock area would also be reduced by 6.6%, improving conditions for benthic communities and having less of an adverse impact on EFH.

Alternative C would not result in impairment of EFH because increased turbidity and noise would be temporary and would be minimized by the use of appropriate mitigation measures; further, this alternative would improve conditions for benthic communities as a result of reducing the number of permanent piles and decreased shading from the smaller total dock surface area.

Alternative D

Alternative D would have short-term, minor, adverse impacts on EFH due to construction, including generation of noise and temporary increase in turbidity during removal and replacement of piles. These impacts would be minimized through the implementation of mitigation measures such as time-of year construction restriction and the use of a siltation curtain surrounding the immediate work zone in the water. Adult and juvenile fish are highly mobile and would be expected to vacate the area to avoid these impacts and return to the area once turbidity and noise conditions return to normal.

Though the area of the fixed pier would be reduced compared to the existing pier as part of this project, the addition of the floating docks in this alternative would permanently increase shading due to a larger (34%) combined dock area, which could affect the benthic communities below.

Alternative D would not result in impairment of EFH because increased turbidity and noise would be temporary and would be minimized by the use of appropriate mitigation measures, and while the increase in permanent shading may affect more of the benthic communities, it would not be to the extent that the habitat becomes unsuitable for managed fish species; in addition, the effects of increased permanent shading may be offset somewhat by the reduction in the number of permanent piles.

Alternative E

Alternative E would have short-term, minor, adverse impacts on EFH due to construction, including generation of noise and temporary increase in turbidity during removal and replacement of piles. These impacts would be minimized through the implementation of mitigation measures such as time-of-year construction restriction and the use of a siltation curtain surrounding the immediate work zone in the water. Adult and juvenile fish are highly mobile and would be expected to vacate the area to avoid these impacts and return to the area once turbidity and noise conditions return to normal.

Though the area of the fixed pier would be reduced compared to the existing pier as part of this project, the addition of the floating docks in this alternative would permanently increase shading due to a larger (38%) combined dock area, which could affect the benthic communities below.

Alternative E would not result in impairment of EFH because increased turbidity and noise would be temporary and would be minimized by the use of appropriate mitigation measures, and while the increase in permanent shading may affect more of the benthic communities, it would not be to the extent that the habitat becomes unsuitable for managed fish species; in addition, the effects of increased permanent shading may be offset somewhat by the reduction in the number of permanent piles.