

CHAPTER 2: LEGAL AUTHORITIES

Congress has provided the NPS with authority to enter into various types of agreements with other federal bureaus; with state, county, and municipal governments; and with private companies, corporations, groups, and individuals. Some examples of legislative authority for entering into these agreements include, but are not limited to, those listed in the following paragraphs. It should also be noted that the enabling legislation for various national park system units provides additional site-specific authorities. Although several authorities may apply to an agreement, only the most appropriate authorities should be cited. Regional solicitors should be consulted, when necessary, on the selection of the appropriate legal authority for each agreement developed. A record of this consultation should be included in the agreement file.

2.1 NPS Authorities for Cooperative Agreements

1. **16 U.S.C. §1g** authorizes the NPS to enter into cooperative agreements that involve the transfer of NPS appropriated funds to state, local and tribal governments, other public entities, educational institutions, and private nonprofit organizations for the public purpose of carrying out National Park Service programs.

This section provides broad authority for NPS to enter into cooperative agreements with most recipients for a public purpose. Although broad, this authority must be read in conjunction with the Federal Grant and Cooperative Agreement Act of 1977 and other authorities that prescribe whether a particular relationship should be a procurement contract or a cooperative agreement. Thus, in making this determination, one must always consider whether the principal purpose of the work is to acquire goods and/or services for NPS's direct benefit in furtherance of its mission or for a public purpose.

This authority does not provide for (a) NPS to transfer other than "appropriated funds"; or (b) NPS to enter into a cooperative agreement with a "for-profit" organization. Other appropriate authorities should be found for those purposes.

2. **16 U.S.C. §1a-2(j)** authorizes the NPS to enter into cooperative agreements with public or private educational institutions, states, and their political subdivisions, for the purpose of developing adequate, coordinated, cooperative research and training programs concerning the resources of the national park system. Pursuant to such agreements, the cooperator may accept from or make available to the NPS technical and support staff, financial assistance for mutually agreed upon research projects, supplies and equipment, facilities, and administrative services relating to cooperative research units as the Secretary deems appropriate (research projects subject to Federal Acquisition Regulation excluded).

3. **16 U.S.C. §1a-2(l)** authorizes the NPS to enter into cooperative management agreements where a unit of the National Park Service is located adjacent to or near a State or local park area, and cooperative management between the National Park Service and a State or local government agency of a portion of either park will allow for more effective and efficient management of the parks. The NPS may not transfer administration responsibilities for any unit of the National Park Service under this authority.

Under a cooperative management agreement, the NPS may acquire from and provide to a State or local government agency, goods and services to be used by the NPS and the State or local governmental agency in the cooperative management of land.

An assignment arranged by the NPS under section 3372 of Title 5, of a Federal, State, or local employee for work in any Federal, State, or local land, or an extension of such an assignment, may be for a period of time up to four years as determined by the NPS and the State or local agency to be mutually beneficial (P.L. 104-333, November 12, 1996.)

4. **16 U.S.C. §1f, Challenge-Cost Share authority**, authorizes the NPS to enter into agreements with cooperators for the purpose of sharing costs or services in carrying out authorized functions and responsibilities of the Secretary with respect to any unit or program of the national park system, any affiliated area, or any designated National Scenic or Historic Trail. This authority allows the agency to negotiate and enter into cooperative agreements with any State or local Government, public or private agency, organization, institution, corporation, individual, or other entity. A cooperative agreement may be utilized if there is substantial involvement in the project on the part of the NPS.

This section principally gives authority for joint-funding arrangements entered into with non-federal partners (“cooperators”), although it also addresses “sharing...services in carrying out authorized functions and responsibilities...”As with **16 U.S.C. §1g**, this authority must also be read in conjunction with the Federal Grant and Cooperative Agreement Act of 1977 and other authorities to ensure that a Challenge Cost-Share agreement is not used when a procurement contract would be most appropriate.

5. **16 U.S.C. §17j-2(e)** authorizes the NPS to expend funds for educational lectures in the vicinity of and with respect to national parks and for the services of employees in cooperation with nonprofit, scientific, and historical societies engaged in educational work in parks.

6. **16 U.S.C. §5933, Cooperative Study Units**, authorizes and directs the Secretary to enter into cooperative agreements with colleges and universities, including but not limited to land grant schools, in partnership with other federal and state agencies, to establish cooperative study units to conduct multi-disciplinary research and develop integrated information products on the resources of the national park system, or the larger region of which parks are a part.
7. **16 U.S.C. §4601-1**, authorizes the Secretary, and by delegation the NPS, to perform various activities regarding outdoor recreation. In particular, §4601-1(d) authorizes the NPS to provide technical assistance and advice to states, political subdivisions, and private interests including nonprofit organizations with respect to outdoor recreation. Please note that technical assistance and advice means just that—not funding. **Subsection (g)** authorizes cooperation with and technical assistance to other federal departments and agencies regarding outdoor recreation.
8. **16 U.S.C. §4601 -1, Subsection (f)(1)** authorizes the NPS to sponsor, engage in, and assist in research relating to outdoor recreation, directly or by contract or cooperative agreements, and make payments for such purposes. **Subsection (f)(2)** authorizes NPS to undertake studies and assemble information concerning outdoor recreation, directly or by contract or cooperative agreement, and to disseminate such information. **Subsection (f)(3)** authorizes cooperation with educational institutions and others to assist in establishing programs and activities to encourage public use and benefits from outdoor recreation (funds may even be advanced if in the public interest).
9. **16 U.S.C. §462(e), Historic Sites Act**, authorizes cooperative agreements with states, municipal subdivisions, corporations, associations, or individuals to protect, preserve, maintain, or operate any historic or archeological building, site, object, or property for public use regardless of whether title thereto is in the United States.
10. **16 U.S.C. §470a(b)(6), National Historic Preservation Act**, authorizes the Secretary to “enter into contracts or cooperative agreements with a State Historic Preservation Officer...authorizing such Officer to assist the Secretary in carrying out [enumerated] responsibilities within that state.” These responsibilities include identifying and preserving historic properties, determining a property’s eligibility for preservation and listing on the National Register, and maintaining historical and archeological databases.

11. **16 U.S.C. §470a(j)(2)(C), National Historic Preservation Act**, authorizes the Secretary to develop and implement a comprehensive preservation education and training program whereby technical or financial assistance, or both, shall be provided to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians.
12. **16 U.S.C. §1246(h)(1), National Trails System Act**, authorizes cooperative agreements with states or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain portions of national trails located within or outside the boundaries of a federally administered area.
13. **16 U.S.C. §1281(e), Wild and Scenic Rivers Act**, authorizes the Secretary, in the administration of any component of the national wild and scenic rivers system, to enter into written cooperative agreements with the governor of a state, the head of any state agency, or the appropriate official of a political subdivision of state, for state or local governmental participation in the administration of the component.
14. **16 U.S.C. §1282 (b)(1), Wild and Scenic Rivers Act**, authorizes the Secretary to “assist, advise, and to cooperate with” states or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic Rivers System and to other rivers.
15. **16 U.S.C. §1723(c), Public Lands Corps**, authorizes the Secretary to enter into contracts and cooperative agreements with any qualified youth or conservation corps to perform appropriate conservation projects referred to in subsection (d) of section 1723. The Secretary may also authorize appropriate conservation projects and other appropriate projects to be carried out on Federal, State, local, or private lands as part of disaster prevention or relief efforts in response to an emergency or major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
16. **16 U.S.C. §3119, Alaska National Interest Lands Conservation Act**, authorizes the Secretary, to enter into cooperative agreements or otherwise cooperate with other federal agencies; the state; Native corporations; other appropriate persons and organizations; and, acting through the Secretary of State, other nations to effectuate the purpose and policies of subsistence management and use of public lands in Alaska.

17. **31 U.S.C. §6505, Intergovernmental Cooperation Act of 1968**, as amended, authorizes the Secretary to provide specialized or technical services on a reimbursement basis upon request from state or local governments. The guidance issued by *Office of Management and Budget Circular Number A-97* specifically provides that training of the type that the federal agency is authorized by law to conduct for federal personnel and others or similar training is a service within the scope of the Act.
18. Other specific program legislation.

2.2 **NPS Authority for Interagency Acquisition Agreements**

An interagency acquisition agreement is used to establish an agreement with another federal agency. Authorities follow:

1. **31 U.S.C. §1535(a), Economy Act**, authorizes the head of any agency, to place an order with another agency for goods or services. (*See Federal Acquisition Regulation, Part 17.5 for specific conditions that must be met.*)
2. **42 U.S.C. §1856a (a), Reciprocal Fire Protection Agreements**, authorizes each agency head, charged with the duty of providing fire protection for any property of the United States to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property, and for other property for which such organization normally provides fire protection. Each such agreements will include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.

2.3 **NPS Authority for Memoranda of Understanding**

A memorandum of understanding is used to document mutually agreed upon policies, procedures, objectives, and/or assistance relationships that do not involve funding. The enabling park legislation or the general management authorities under **16 U.S.C. §§1-3** are the legal authorities for this type of agreement.

2.4 **NPS Authority for Memoranda of Agreement**

A memorandum of agreement is used to document receipt of funds, goods, and/or services by the NPS from a non-federal party. A legal authority must exist to authorize the use of this type of agreement. Authorities follow:

1. **16 U.S.C. §6** authorizes the Secretary, in administration of the NPS to accept patented lands; rights-of-way over patented or other lands, buildings, or other property within the various national parks and national monuments; and moneys donated for the purposes of the national park and monument system.
2. **16 U.S.C. §18f (a)** authorizes the Secretary, to accept donations and bequests of money or other personal property, and hold, use, expend, and administer the same for purposes of management of museum properties.
3. **16 U.S.C. §1b(5)** allows for furnishing, on a reimbursement of appropriation basis, supplies, and the rental of equipment to persons and agencies that in cooperation with, and subject to the approval of, the Secretary of the Interior, render services or perform functions that facilitate or supplement the activities of the Department of the Interior in the administration of the national park system; provided, that reimbursements hereunder may be credited to the appropriation current at the time reimbursements are received.
4. **42 U.S.C. §1856a (a), Reciprocal Fire Protection Agreements**, authorizes each agency head, charged with the duty of providing fire protection for any property of the United States to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. Each such agreement will include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.
5. Other specific program legislation.