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National Park Management and Recreation

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National Park Management and Recreation

SUMMARY

The 108th Congress is considering legislation and conducting oversight on many National Park Service (NPS) related issues. The Administration also continues to address park and recreation issues through budgetary, regulatory, and other actions. Several key issues are covered in this report.

Maintenance Backlog. There is debate over the funding level to meet the physical maintenance obligations of the land management agencies and whether to provide new funds or use funds from existing programs for them. Attention has focused on the NPS's multi-billion dollar maintenance backlog. President Bush set out to eliminate that backlog by FY2006. Congress included money for some maintenance backlog needs in the FY2003 Interior appropriations law and FY2004 appropriations bills.

Personal Watercraft and Snowmobiles. Motorized recreation, notably the use of personal watercraft (PWC) and snowmobiles in NPS units, has fueled debate over the balance between recreation on, and protection of, park lands. Regulatory actions that restrict use of these vehicles are particularly controversial. The NPS currently is evaluating PWC use in some areas. A February 2003 NPS plan allows snowmobile recreation to continue in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway.

Aircraft Overflights. Grand Canyon National Park is at the center of a conflict over whether to limit air tours over national parks to reduce noise. The NPS and the Federal Aviation Administration continue to work on implementing a 1987 law that sought to reduce noise at Grand Canyon as well as a 2000

law that regulates overflights at other park units. Recent regulations require air tour operators to seek authority to fly over park units, and the agencies then must develop Air Tour Management Plans at park units.

Recreational Fee Demonstration Program. The "Fee Demo" Program was created to allow the NPS and other land management agencies to test the feasibility of supplemental self-financing through new fees. The Bush Administration supports making the program permanent, and Congress is considering related legislation as well as legislation to extend the program. P.L. 107-63 extended the program through FY2004 for fee collection and FY2007 for expenditures and gave agencies discretion to establish any number of fee projects, among other changes.

The National Trails System. While designation of trails is often popular, issues remain regarding funding, expansion, and quality of trails. Congress is considering bills to amend the National Trails System Act to provide authority to acquire land from willing sellers for certain trails; to authorize studies of routes for possible additions to the System; and to add routes to the System.

Heritage Areas. Congress has designated 23 National Heritage Areas whereby the NPS, through partnerships, supports state and local conservation of natural, scenic, historic, cultural, and recreational resources. The NPS provides technical and limited financial assistance to these areas, which remain in non-federal ownership. A number of legislative initiatives are pending to study, designate, and fund heritage areas as well as to establish consistent criteria and a process for designating and managing these areas.



MOST RECENT DEVELOPMENTS

On July 8, 2003, the National Parks Subcommittee of the Senate Committee on Energy and Natural Resources held a hearing to address the maintenance backlog of the National Park Service. The NPS has issued regulations to permit personal watercraft (PWC) use at Lake Mead National Recreation Area and Assateague Island National Seashore. Glen Canyon National Recreation Area released a record of decision on June 30, 2003, to allow PWC use at Lake Powell. An additional 13 areas remain closed to PWCs. All of them are pursuing a rulemaking process to eventually permit their use. Also, the NPS overturned a snowmobile ban in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway; the March 2003 Record of Decision establishes daily snowmobile entry limits, requires trained guides, requires reservations for non-commercially guided groups, and implements best available technology standards for noise and emissions. Two lawsuits have been filed to overturn this decision and restore the phase-out. A conference report on H.R. 2115, filed July 25, 2003, directs the Secretary of Transportation to issue a final rule, no later than January 2005, establishing standards for quiet technology that are “reasonably achievable” at Grand Canyon National Park. H.R. 2691, as passed by the House, would extend the Recreational Fee Demonstration Program. On July 17, 2003, the Senate passed S. 651 to authorize land acquisition from willing sellers for specified trails. In addition, 32 bills are pending to study or designate new heritage areas, and another measure would establish a policy structure and consistent designation criteria.

BACKGROUND AND ANALYSIS

Introduction

The National Park System [<http://www.nps.gov/legacy/>] is perhaps the federal land category best known to the public. The National Park Service (NPS) in the Department of the Interior (DOI) manages 388 units, including 56 units formally entitled “national parks” and a host of other designations. The System has more than 84 million acres.¹ The NPS had an appropriation of approximately \$2.25 billion in FY2003, employs about 21,000 permanent and seasonal employees, and uses an additional 90,000 volunteers. An estimated 276 million people visited park units in 2002. While high, this figure is a decline from the 1999 peak of about 287 million visitors. The decrease is attributed to a downturn in the economy as well as security concerns following the September 11, 2001 terrorist attacks on the United States. Security concerns led to a drop in international tourism and closure of NPS icons, such as the White House and the Statue of Liberty, which usually draw large numbers of visitors.

The NPS statutory mission is multi-faceted: to conserve, preserve, protect, and interpret the natural, cultural, and historic resources of the Nation for the public and to provide for their use and enjoyment by the public. The mission’s dichotomy of use and preservation can sometimes be inherently contradictory. In general, activities which harvest or remove

¹ This figure includes an estimated 79 million acres of federal land, 1 million acres of other public land, and 4 million acres of private land. NPS policy is to acquire these non-federal “in-holdings” from willing sellers or to create special agreements to encourage land owners to sell.

resources from units of the System are not allowed. The NPS also supports the preservation of natural and historic places and promotes outdoor recreation outside the System through grant and technical assistance programs. The emphasis is on cooperation and partnerships with state, municipal, and local governments as well as foundations, corporations, and other private parties to protect National Park System units and to advance NPS programs. Attention centers on how to balance the recreational use of parklands with the preservation of park resources, and on determining appropriate levels and sources of funding to maintain NPS facilities and to manage NPS programs.

History

The establishment of several national parks preceded the 1916 creation of the National Park Service (NPS) as the park system management agency. Congress established the Nation's first national park — Yellowstone National Park — in 1872. The park was created in the then-territories of Montana and Wyoming “for the benefit and enjoyment of the people,” and placed “under the exclusive control of the Secretary of the Interior” (16 U.S.C. §§21-22). In the 1890s and early 1900s, Congress created several other national parks mostly from western public domain lands, including Sequoia, Yosemite, Mount Rainier, Crater Lake, and Glacier. In addition to the desire to preserve nature, there was interest in promoting tourism. Western railroads, often recipients of vast public land grants, were advocates of many of the early parks and built grand hotels in them to support their business.

At the same time, there were efforts to protect the sites and structures of early Native American cultures along with other special sites. In 1906, Congress enacted the Antiquities Act to authorize the President to proclaim national monuments on federal lands that contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” (16 U.S.C. §431). Most national monuments are managed by the NPS. (For more information, see CRS Report RS20902, *National Monument Issues*.)

There was no system of national parks and monuments until 1916, when President Wilson signed a law creating the NPS to manage and protect the national parks and many of the monuments then in existence and those yet to be established. That “Organic Act” provided that the NPS “shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations ... to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” (16 U.S.C. §1). A major step in developing a national system of parks occurred in 1933, when President Franklin D. Roosevelt transferred 63 national monuments and historic military sites from the USDA Forest Service and the War Department to the NPS.

Overview of Issues

The 108th Congress is considering legislation or conducting oversight on many NPS-related issues. Several major issues are covered in this report: funding for the maintenance backlog of the NPS and other agencies, regulation of personal watercraft, use of snowmobiles, overflights of aircraft, extension of the Recreational Fee Demonstration Program, expansion of the National Trails System, and designation of heritage areas. While in some cases these issues are relevant to other federal lands and agencies, this report does not comprehensively cover issues primarily affecting other lands/agencies. For background

on federal land management generally, see CRS Report RL30867, *Federal Land Management Agencies: Background on Federal Land and Resource Management*. Information on BLM and Forest Service lands is contained in CRS IB10076, *Public (BLM) Lands and National Forests*. Information on appropriations for the NPS is included in CRS Report RL31806, *Appropriations for FY2004: Interior and Related Agencies*.

NPS-related issues not described in this brief include protection from outside threats, funding of the Land and Water Conservation Fund (LWCF), the creation of new park units, and funding for anti-terrorism activities. First, while parks historically were “buffered” from much human impact by their remote locations and adjoining wild lands, the situation has changed. How to protect park resources from outside threats such as detrimental land uses, growing populations, contaminated water, and tourist attractions, while at the same time recognizing the benefits of growth, development, and tourism to surrounding communities, presents difficult issues for Congress. Second, the LWCF is the principal federal source of money for the NPS (and other agencies) to acquire new recreation lands. Policy issues include the size of the fund, need for an annual appropriation, and the congressional role in choosing lands to acquire. (For more information, see CRS Report RS21503, *Land and Water Conservation Fund: Current Status and Issues*.) Third, how national park units are created and what qualities make a potential area eligible to be an NPS unit are of continuing interest. (For more information, see CRS Report RS20158, *National Park System: Establishing New Units*.) Fourth, the NPS manages high profile natural and commemorative sites, including many of the monuments in Washington, DC, and is thus undertaking new security initiatives in response to the terrorist attacks of September 11, 2001. Congress determines the level of funding for anti-terrorist activities in appropriations laws.

Current Issues

Maintenance Backlog (by Carol Hardy Vincent and David Whiteman)

Background. The four federal land management agencies — the National Park Service, Bureau of Land Management (BLM), and Fish and Wildlife Service (FWS) in the Department of the Interior and the Forest Service (FS) in the Department of Agriculture — have extensive physical maintenance obligations involving buildings, roads, trails, recreation sites, and other infrastructure. There is debate over the levels of funds appropriate to maintain this infrastructure, whether to appropriate new funds or to use funds from existing programs, and the best balance between maintaining the existing infrastructure and acquiring new assets. The agencies, particularly the NPS and FS, assert considerable unmet maintenance needs, often called “deferred maintenance” or the “maintenance backlog” — essentially maintenance that could not be done when scheduled or planned. The estimate of deferred maintenance for the four agencies is \$13.8 billion. The FS and the NPS together account for nearly 90% of the backlog, with the FS having the largest estimated share (\$6.5 billion) and the NPS having the second largest (\$5.4 billion). The FWS share is \$1.5 billion, and the BLM backlog is the lowest (\$0.4 billion). The backlogs have been attributed to decades of funding shortfalls. The agencies assert that deferred maintenance of facilities accelerates their rate of deterioration, increases their repair costs, and decreases their value.

Attention has centered on the NPS maintenance backlog. Concern about deteriorating NPS facilities led to increased overall NPS appropriations for each year from FY1996 to

FY2002 and to new funding sources for the backlog. The Clinton Administration's FY2000 budget proposal first highlighted an Interior Department-wide campaign to identify priorities in maintenance needs over a 5-year period. For each year since, the NPS has submitted a Five Year Maintenance and Capital Improvement Plan identifying deferred maintenance projects by priority. An Interior Department Inspector General report (December 2001) recommended establishing a single maintenance budget funded through one appropriation for the entire department. In addition, many state park systems also have significant backlogs of maintenance and construction projects, and some states expect the problem to worsen due to cuts as a result of overall state budget shortfalls.

Administrative Actions. The Bush Administration set out to eliminate the NPS backlog over 5 years. In FY2002, the President requested \$4.9 billion over 5 years (FY2002 — FY2006) to eliminate that backlog through a combination of transportation fund money, appropriated funds, and revenues from recreation fees. For deferred maintenance the President requested \$440 million yearly. Because the President's FY2004 budget combines funding for all NPS construction and regular and deferred maintenance (\$706 million), it is unclear what amount is requested for deferred maintenance. The FY2004 combined request is a \$58 million increase (9%) over FY2003 (\$648 million) and a \$24 million (3.5%) increase over FY2002 (\$682 million). Neither the House-passed (H.R. 2691), nor Senate Appropriations Committee-reported (S. 1391), appropriations bill identifies the portion of funds for reducing backlogged maintenance.

On July 2, 2003, the National Park Service issued a report addressing the "significant progress" the Department has made in addressing the maintenance backlog of the National Park Service and other park issues [www.nps.gov/accomporeport2003/]. The report states that the President "will fulfill his commitment to address the \$4.9 billion maintenance backlog" of the National Park System and has spent \$2.9 billion towards that goal. That figure includes money requested for FY2004. The National Parks Conservation Association, among others, disagrees that the Administration is on track to eliminate the backlog. The Association asserts that national parks "suffer from" an annual shortfall in operational funding of about 32%. It also asserts that the Administration has supported little new money to address park maintenance, and "has mostly manipulated existing accounts to support its claim to be on track to eliminate the backlog." (See: [www.npca.org/flash.html].)

The agencies are undertaking to define and quantify their maintenance needs. These efforts include improvement or development of computerized systems for tracking maintenance projects; prioritizing maintenance projects, with emphasis on critical health and safety and resource protection; and collecting comprehensive data on the condition of facilities, to more definitively identify maintenance needs. Without such data, the precise extent and nature of deferred maintenance might not be fully known, potentially hampering federal efforts to overcome the backlog.

Legislative Activity. On July 8, 2003, the National Parks Subcommittee of the Senate Committee on Energy and Natural Resources held a hearing to address the maintenance backlog of the National Park Service. The hearing covered the Park Service's effort to assess the condition of all facilities, estimate costs of repairing facilities and total deferred maintenance, and determine maintenance priorities. The Park Service has acknowledged that until the effort is completed—by FY2006—it will not have the data to accurately estimate its maintenance backlog and assess the agency's success in eliminating

it. Witnesses from the private sector testified that the backlog results from a lack of adequate funding for annual maintenance and that substantial additional funds are needed so that the backlog does not continue to grow. One witness asserted that there is also a large backlog in natural resource protection projects, such as elimination of invasive species.

On March 31, 2003, legislation was introduced to amend the Land and Water Conservation Fund to make the fund available to the Park Service and the other land management agencies for maintenance. The bill, H.R. 1517, requires that within 5 years these agencies reduce their backlogged maintenance by at least 20%. Additional reductions in backlogged maintenance are to be made during subsequent five year periods. The measure also requires the agencies to submit to Congress, every 5 years, reports on the progress made in reducing backlogged maintenance and on the priorities for construction and maintenance in order to reduce their backlogs.

Personal Watercraft (by Kori Calvert)

Background. PWCs are high-speed, very shallow draft, and highly maneuverable watercraft “operated by a person or persons sitting, standing, or kneeling on the vessel rather than within the confines of the hull” (36 CFR §1.4). Often used to perform stunt-like maneuvers, PWCs include watercraft known by their brand and generic names as jet ski, sea doo, surf jet, water sled, wavejammer, wetjet, waverunner, and wet bike. While PWCs represent a small segment of the recreational boat market, the number of PWC accidents has been an issue. Critics of motorized recreation cite environmental concerns, including noise, air, and water pollution; damage to land, plants, and wildlife; and public safety. Supporters of motorized access argue that technological advances will enable manufacturers to produce cleaner, more efficient machines, and point to the economic benefits to communities serving users. PWC users also assert that in park units that allow motorized boating generally, PWCs also should be allowed. Recent controversies have focused on regulatory actions that would restrict recreational use or “access” of these vehicles, often in specific park units.

Administrative Actions. In an effort to manage PWC use, the NPS issued a rule (effective April 20, 2000) prohibiting PWC use from 66 of the 87 units where motorized boats were allowed (65 *Fed. Reg.* 15077). The rule allowed PWC use to continue until April 22, 2002, at the remaining 21 areas while the NPS evaluated whether to permanently authorize PWC use and develop special regulations. The rule recognized that PWC use might continue in certain National Recreation Areas (NRAs), such as Lake Mead and Glen Canyon, where the establishing legislation emphasized motorized water-based recreation as a primary purpose. The April, 2001 negotiated settlement of a lawsuit by Bluewater Network and Earth Island Institute over the PWC rule prohibited PWCs from the 21 areas unless the Park Service initiated park-specific rules and environmental analyses. PWCs could continue to operate during the rulemaking process, with a completion deadline of April 22, 2002, for 13 units and September 15, 2002, for 8 NRAs.

Of the 13 units with April 22, 2002 deadlines, the NPS prohibited PWC use in 5 units (effective April 22, 2002) that had completed an environmental review process and favored PWC bans: Cape Cod National Seashore, Delaware Water Gap NRA, Indiana Dunes National Lakeshore, Cumberland Island National Seashore, and Whiskeytown NRA. On April 19, 2002, a federal judge denied an injunction sought by PWC users and manufacturers to overturn these bans. The other 8 units closed to PWCs on April 22, 2002, and will remain

closed until the environmental assessment and rulemaking process is completed. The 8 NRAs with the September 15, 2002 deadline were to close temporarily then if the public review process was not completed. However, on September 6, 2002, an agreement was filed in federal court that extended PWC use at these 8 NRAs through November 6, 2002, when the recreational boating season ended. The Lake Mead PWC ban subsequently was postponed until April 10, 2003.

Final Lake Mead rules issued April 9, 2003 (68 *Fed. Reg.* 17292) authorize PWC use in 95% of the area's waters. Assateague National Seashore is reopening two small areas to PWC users (68 *Fed.Reg.* 32371), effective June 30, 2003. A May 2003 negotiated lawsuit settlement between NPS and a coalition of small business owners and recreational access groups lifted the PWC ban at Glen Canyon National Recreation Area's Lake Powell through September 30, 2003. NPS has completed the final environmental impact statement for that unit (68 *Fed.Reg.* 26645) and released a record of decision on June 30, 2003 [<http://www.nps.gov/glca/plan.htm>], [68 *Fed. Reg.* 43544]. The agency anticipates completing final rules this summer. PWCs continue to be banned in 13 other areas. All of these areas are working on environmental reviews and special regulations to allow PWC use. NPS does not expect the rulemaking process to be completed for most areas in time for the 2003 boating season.

Legislative Activity. Legislation (H.R. 1831) to extend the grace period for PWC use in Glen Canyon National Recreation Area was introduced April 12, 2003. No action has been taken.

Snowmobiles (by Kori Calvert)

Background. On April 26, 2000, the NPS announced the strict enforcement of existing, long-standing regulations on snowmobile use which would have substantially reduced snowmobile use in those 42 national parks units that allowed recreational snowmobiling. Exceptions included Yellowstone and Grand Teton National Parks, park units in Alaska, Voyageurs National Park in Minnesota, and access to private land within or adjacent to a park. The snowmobile prohibition was both praised and reviled in the press and prompted several congressional hearings. By July 2000 the Interior Department had backed away from its strict enforcement stance — rather, there would be no snowmobile ban in park units pending formal rulemaking, which to date has not occurred for parks generally.

Administrative Actions. Regulatory action to restrict or allow snowmobile use has centered on Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway. The Clinton Administration issued rules on snowmobile use in these areas (66 *Fed. Reg.* 7260, Jan. 22, 2001) that would phase out snowmobile use beginning with the start of the 2003/2004 winter season, with limited exceptions, and phase in a replacement of snowmobiles with multi-passenger “snow coaches.” The Bush Administration announced in April 2001 that it would allow the rule to stand. The NPS delayed implementation until the end of the 2003-2004 winter use season (67 *Fed. Reg.* 69473, Nov. 18, 2002). Four environmental groups filed a lawsuit on December 3, 2002, to restore the snowmobile phase-out schedule under the Clinton rules.

Concurrently, the Administration continued to negotiate settlement of a lawsuit by the International Snowmobile Manufacturers Association and others to overturn the ban in these

three areas and re-open the rulemaking process. The June 29, 2001 settlement agreement required NPS to prepare a supplemental environmental impact statement (66 *Fed. Reg.* 39197, July 27, 2001) on snowmobile use in these areas by early 2002, and to decide whether to keep or modify the ban by November 2002. The deadline for the record of decision was extended to March 15, 2003.

The NPS announced release of its final supplemental environmental impact statement on February 20, 2003 (68 *Fed. Reg.* 8616, Feb. 24, 2003). The NPS winter use plan outlined a controversial preferred alternative that allows continued snowmobile use within specific phased-in parameters. These include daily limits on snowmobile numbers; use of cleaner, 4-stroke engines; commercially-guided access for up to 80% of all snowmobiles; NPS-certified guides and a reservation system for the remaining 20% non-commercial entries; development of snowcoach technology for winter transit; and monitoring of long- and short-term effects of noise and pollution on park resources.

A Record of Decision (ROD) (see [<http://www.nps.gov/grte/winteruse/winteruse.htm>]) announced on March 25, 2003 finalized the snowmobile management plan with a few modifications, increasing daily entry limits to 1,140 from 1,100. Plan proponents characterize it as an attempt to achieve equilibrium between motorized and non-motorized recreational activities as it neither calls for a total snowmobile ban nor provides for unlimited numbers of snowmobilers. Opponents, however, note that the final winter use plan also identifies the alternative implementing the Clinton Administration snowcoaches-only policy in the 2005-2006 winter season as the “environmentally preferred alternative.” On August 27, 2003, NPS issued proposed regulations (68 *Fed. Reg.* 51526) to implement the ROD. Outlining an “adaptive management strategy,” the rule allows park managers to take remedial action if park resource monitoring indicates unacceptable impacts from air and noise pollution. Actions could include adjustments to Best Available Technology requirements or daily entry limits, road closures, or timed entries.

Environmental groups filed 2 federal court challenges to the NPS final decision on March 25, 2003, seeking to overturn it and to halt winter road grooming until its impact on bison and other wildlife is determined. Yellowstone announced its 2003-2004 winter season snowmobile reservation system on July 10, 2003 [<http://www.nps.gov/yell/press/0348.htm>].

In related developments, on September 13, 2002, the U.S. Environmental Protection Agency (EPA) issued final regulations limiting air emissions from nonroad recreational vehicles (67 *Fed. Reg.* 68241). They require snowmobile manufacturers to reduce hydrocarbon and carbon monoxide emissions about 50% below current levels by 2012. Two environmental groups filed a lawsuit against EPA on January 7, 2003, claiming the standards do not meet Clean Air Act requirements. (For additional information, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*.)

Legislative Activity. On a tie vote (210-210) on July 17, 2003, the House failed to approve an FY2004 Interior Appropriations amendment that essentially would have halted snowmobile use at Yellowstone and Grand Teton National Parks and John D. Rockefeller Memorial Parkway, as stipulated in the Clinton Administration rule. The Yellowstone Protection Act (H.R. 1130), introduced March 6, 2003, requires implementation of the Clinton Administration final rulemaking to phase out snowmobiles in Yellowstone and

Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway. An identical bill (S. 965) was introduced May 1, 2003.

Aircraft Overflights (by Kori Calvert and Carol Hardy Vincent)

Background. Minimizing noise to protect the natural condition is an important element of the NPS mission to preserve natural resources and enhance visitor enjoyment. The Federal Aviation Administration (FAA) controls airspace and the aircraft overflights that may jeopardize a park unit's natural quiet, impair visitor enjoyment, and raise safety concerns. This creates a conflict between resource protection and aviation access authorities and their constituencies.

Grand Canyon National Park has been the focal point of the conflict between groups seeking to limit overflights and air tour operators whose economic stability, with ripple effects on local businesses, may depend on providing overflights. The National Parks Overflights Act of 1987 (P.L. 100-91) directed NPS to recommend a flight control plan for Grand Canyon that would provide a "substantial restoration of the natural quiet" and prohibited flights below the Canyon's rim. It also mandated an NPS study on the effects of all aircraft overflights, which was submitted to Congress in 1994. An October 3, 2002 Senate hearing explored why the Act has not been fully implemented.

The National Parks Air Tour Management Act of 2000 (Title VIII, P.L. 106-181) regulates commercial air tours at most other park units (exceptions include parks and tribal lands in Alaska). It requires the FAA and NPS to create management plans for air tours at individual park units and within a half mile of their boundaries. Each plan could prohibit or limit air tours, such as by route and altitude restrictions. The Act also requires the FAA to establish quiet aircraft technology standards for the Grand Canyon within one year and to designate Grand Canyon routes or corridors for aircraft and helicopters using quiet technology. Quiet aircraft would not be subject to existing caps on Canyon overflights.

Administrative Actions. President Clinton directed the Secretary of Transportation to develop regulations to address the impacts of transportation, including overflights, on national parks (61 *Fed. Reg.* 18229, April 22, 1996). The President also set 2008 as the date to substantially restore natural quiet at Grand Canyon National Park. That mandate, and congressional directives, have segued into an ongoing and contentious rulemaking process. Controversial regulations include two FAA rules affecting Grand Canyon. The first one, a "limitations rule" that caps the annual number of commercial air tour overflights at Grand Canyon, took effect on May 4, 2000. An August, 2002 appeals court decision on the limitations rule directed the FAA to use NPS "natural quiet" standards and to consider commercial flight-generated noise impacts in developing air tour overflight regulations. This stricter standard is viewed as likely to lead to increased quiet at Grand Canyon. The Court simultaneously rejected a challenge by the air tour industry that the limitations rule is unlawful. The air tour industry seeks exemptions to air tour caps, as well as curfews and air route restrictions, if quiet aircraft technology is used.

The second rule, the "airspace rule," imposes increased flight-free zones and restrictive routing over the Canyon (65 *Fed. Reg.* 17736 and 17708, April 4, 2000). New routes and airspace restrictions for the Canyon's west end Special Flight Rules Area (SFRA) took effect April 19, 2001. To address air tour operators' safety concerns, east end SFRA airspace

changes were delayed until February 20, 2003 (66 *Fed. Reg.* 63294). On February 27, 2003, the FAA issued a final rule (68 *Fed. Reg.* 9496) staying the east end changes until February 20, 2006, to resolve issues surrounding routes.

A third FAA action relates to Grand Canyon. On March 24, 2003, the FAA published a supplemental notice of proposed rulemaking (68 *Fed. Reg.* 14276) to establish a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon National Park. In defining quiet technology, the FAA proposes to use a noise efficiency approach, whereby larger aircraft with more seats for passengers are allowed to make proportionately more noise. Aircraft used for air tours would be categorized according to noise efficiency. The goal of the proposal is to help the NPS achieve its mandate (under P.L. 100-91) to provide for the substantial restoration of natural quiet at Grand Canyon, and to determine the role of quiet technology in that regard. Further, the proposal seeks to comply with an FAA mandate (under P.L. 106-181) to designate reasonably achievable requirements for aircraft to be considered as using quiet aircraft technology. The rule was open for public comment through June 23, 2003.

Other regulatory actions affect commercial air tours at park units generally. The FAA issued a National Parks Air Tour Management Act final rule (67 *Fed. Reg.* 65661, October 25, 2002,) to complete the definition of “commercial air tour operation.” The rule requires air tour operators to apply for authority, by January 23, 2003, to fly over national park and abutting tribal lands. This application process triggers the development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where none exists [<http://www.atmp.faa.gov/default.htm>]. The purpose of the plans is to mitigate or prevent any adverse impacts of commercial air tours on natural and cultural resources, visitor experiences, and tribal lands. Development of an ATMP requires an environmental analysis under the National Environmental Policy Act of 1969 (NEPA). After applying for operating authority, current air tour operators receive interim permission to continue commercial air tours until the ATMP for the relevant park is completed. The agencies have decided to first develop ATMPs for Haleakala National Park and Hawaii Volcanoes National Park, with the order of other locations to be determined later. About 50 of the nearly 400 NPS units have commercial air tours that would be subject to the new rules.

Finally, the FAA issued a notice of proposed rulemaking on August 8, 2003, that would continue indefinitely existing safety requirements (in Special Federal Aviation Regulation No. 71) for air tours conducted in Hawaii. The regulation initially was issued in 1994 to address safety concerns and air tour accidents in Hawaii. It generally requires a minimum altitude for air tours in Hawaii of 1,500 feet. Air tour operators in Hawaii do not support that minimum altitude and had petitioned the FAA for a reduction to 300 feet to give pilots more discretion. In continuing the 1,500 feet minimum, the FAA noted the success of the rule in reducing air tour accidents in Hawaii and an agency practice of granting operators deviations from the altitude requirement on a case-by-case basis.

Legislative Activity. H.R. 2115, as passed by the House, sought to prohibit the Administrator of the FAA from restricting commercial operations in the Dragon and Zuni Point corridors of Grand Canyon during certain times. The provision, supported by the air tour industry, would have altered the current curfew to give air tour operators more hours to fly visitors over the Grand Canyon. Some environmentalists and park officials opposed the provision as reducing the amount of quiet in the park. Congress deleted the provision in

conference. Conferees instead included bill language directing the Secretary of Transportation to issue a final rule, no later than January 2005, establishing standards for quiet technology that are “reasonably achievable” at Grand Canyon National Park. They also established a mediation process for rulemaking disputes. In adopting this provision, conferees stated that they are “greatly disappointed with the lack of progress” the NPS and FAA have made in managing the impacts on national parks of noise from air tours. They directed the agencies to expeditiously and collaboratively develop ATMPs and determine environmental impacts of air tours.

Recreational Fee Demonstration Program (by Carol Hardy Vincent)

Background. Congress is considering whether to extend, amend, or make permanent the Recreational Fee Demonstration Program (“Fee Demo,” 16 U.S.C. §460l - 6a note). The program allows the four major federal land management agencies — NPS, Bureau of Land Management, Fish and Wildlife Service, and Forest Service — to test the feasibility of recovering some of the costs of operating recreation sites. Each agency can establish any number of fee projects and spend the revenue collected without further appropriation; at least 80% of the funds are to be retained at the collecting site. The NPS typically collects far more revenues than the other three agencies combined, with NPS revenues estimated at \$125 million for FY2003. The agencies may spend the money on the repair and maintenance backlog; interpretation; signs; habitat and facility enhancement; resource preservation; maintenance and operation, including the costs of fee collection; and law enforcement. Originally a 3-year trial authorized in FY1996, the program has been extended through FY2004 for fee collection with the revenue available to be spent through FY2007.

The agencies generally favor Fee Demo because it generates substantial revenue and allows discretion in determining fee locations, setting fees, and using the revenues. Critics counter that the fees discriminate against those less able to pay, are a double tax on the recreating public, and, together with other agency fees, confuse the public. The Forest Service’s Fee Demo Program has received most of these criticisms.

Administrative Actions. The Bush Administration supports making the Fee Demo Program permanent, and the FY2004 budget states that the Administration will propose legislation providing permanent fee authority. The Interagency Recreation Fee Leadership Council, which facilitates coordination and consistency among the agencies on recreation fees, has developed 7 guiding principles for a permanent fee program [<http://www.doi.gov/oc/2002/s2473.htm>]. Last Congress the Administration testified in support of establishing an interagency program, a new fee structure to replace entrance and use fees, a single interagency national pass, and site-specific and regional multi-entity passes. The Administration also supports using a large portion of the NPS collections to address the agency’s deferred maintenance backlog. In the past, approximately 60% of NPS Fee Demo funds have been allocated to the maintenance backlog, including new construction which may result from deferred maintenance. The NPS has asserted that more analysis is needed to determine whether to shift the current 80/20% split in funds to increase monies for the agency’s deferred maintenance needs.

Legislative Activity. S. 1107 would establish a permanent recreation fee program for the National Park Service only. The Secretary of the Interior is to establish fees based on an analysis of factors including benefits and services to the visitor and comparable fees

charged elsewhere. The results of the analysis are to be transmitted to Congress, and no new fees or changes in fees shall take place without at least 12 months notice in the Federal Register. The Secretary may allow discounted or free admission or use. The bill seeks to coordinate fees collected under the Park Service's recreation fee program with fees collected for other purposes, such as the National Park Passport and state agency annual passes. In general, 80% of fees are to be returned to the collecting site, but not less than 90% of fees can be retained by areas with revenue sharing agreements with states. The Secretary determines how the Park Service uses the balance of the collections, and no more than 15% of revenues can be used to administer the program. The Secretary is to report to Congress every three years on the implementation of the program.

The Fee Demo Program would be extended for 2 years under an appropriations bill (H.R. 2691) that passed the House. The bill would extend the program through September 2006 for fee collection and September 2009 for fee expenditures to allow the authorizing committees more time to consider whether to create a permanent program, according to the Appropriations Committee. The House defeated an amendment to limit the extension to National Park units. Also, a GAO report (November 2001) found that agencies in the program could increase innovation in setting and collecting fees, improve program coordination and consistency, and establish performance measures for program managers. The agencies continue to make administrative changes to address concerns with the program.

The National Trails System (by Sandra L. Johnson)

Background. On October 2, 1968, the National Trails System Act (P.L. 90-543), authorizing the National Trails System (NTS), became law [<http://www.nps.gov/nts/>]. With the addition of the newly designated Old Spanish National Historic Trail, the federal portion of the trails system consists of 23 national trails (8 scenic trails and 15 historic trails) covering almost 40,000 miles, more than 800 recreation trails, and 2 connecting and side trails. More than three decades since the trails system began, issues remain regarding funding, quality, and quantity of trails.

Administrative Actions. On June 5, 2003, the Director of the National Park Service, announced the designation by Interior Secretary Gale Norton of 23 National Recreation Trails (NRTs) in 12 states. Also, Ann Veneman, Secretary of Agriculture, designated 4 non-motorized NRTs on USDA lands. According to Veneman "these designations contribute to President Bush's Healthier US initiative by providing opportunities for the public to exercise in the great outdoors." Each of the 27 newly designated NRTs will receive a certificate of designation and National Recreation Trail markers.

On January 18, 2003, Secretary Norton addressed the official Commencement of the Lewis and Clark Bicentennial at Monticello in Charlottesville, VA. Twenty-one agencies signed a memorandum of understanding to collaborate on the commemoration of the Bicentennial. The federal interagency touring exhibition, named the *Corps of Discovery II: 200 Years to the Future*, launched the three-year (2003-2006) national celebration which will extend from Virginia to the Oregon coast. The National Park Service, under the authority of the Lewis and Clark National Historic Trail, provides design, transportation, support staff, and funding. The Bicentennial was funded at \$12.1 million for FY2003, and \$11.8 million is requested for FY2004.

Legislative Activity. The Senate Energy and Natural Resources Subcommittee on National Parks held a hearing on May 6, 2003 on four national trails bills (S. 324, S. 634, S. 635, and S. 651). S. 324 and S. 651 would amend the NTS Act to clarify federal authority to acquire land from willing sellers for certain trails. S. 324 would give acquisition authority to the Ice Age and the North Country NSTs. S. 651, as passed by the Senate on July 17, 2003, would limit land acquisitions along the Oregon, Mormon Pioneer, Lewis and Clark, Iditarod, Nez Perce National Historic Trails, and Continental Divide National Scenic Trail to an average of not more than one-quarter mile on either side of the trail. The bill would provide federal land managers the authority to acquire land beyond the one-quarter width for the North Country, Ice Age, and Potomac Heritage National Scenic Trails.

On June 16, 2003, the Senate passed S. 635, to direct the Secretary of the Interior to update the feasibility and suitability studies of four trails: the California National Historic Trail, Oregon National Historic Trail, Pony Express National Historic Trail, and Mormon Pioneer National Historic Trail. S. 634, authorizing a study of the feasibility of designating the Trail of the Ancients, was not supported at the hearing by the National Park Service, since “the roads proposed for this trail are highways built by the States to connect the various sites...” The area will be studied for possible designation as a National Heritage Area instead of a trail. Some of the testimony addressed the impact on private property rights and development, including oil and gas drilling, of possible federal restrictions on activities within view of a designated trail.

The several bills introduced in the 108th Congress to designate or study specific trails are shown in the following table. Two additional bills (S. 324 and S. 651) to clarify federal authority for acquiring land for trails are listed in the “Legislation” section below.

| Bill Number | Type | Title | Status |
|---------------------------|----------------|--|--|
| H.R. 461/H.R. 2327/S. 642 | Extend | Lewis and Clark NHT Amendments Act of 2003 | Introduced |
| H.R. 897 | Study | Mississippi River Trail Study Act | Introduced |
| H.R. 1051/ S. 635 | Study Study | Pioneer National Historic Trails Studies Act Pioneer National Historic Trails Studies Act | Introduced Passed Senate; Referred to House Comm. |
| H.R. 1520 | Study | Forks of the Ohio NST Study Act of 2003 | Introduced |
| S. 634 | Study | NHT Study of the Trail of the Ancients | Hearing Held |

Heritage Areas (by David Whiteman)

Background. Over the last two decades, Congress has designated 23 National Heritage Areas to recognize and assist areas and protect resources that may not qualify for inclusion in the National Park System. Heritage Areas are collaborative partnerships between the NPS, states, and local communities to conserve, commemorate, and promote distinctive regional landscapes and resources. They have been supported as promoting tourism and community revitalization. Heritage lands remain in state, local government, or

private ownership. Property-rights advocates fear that the NPS could exert federal control over non-federal lands by influencing zoning and land use planning in ways that could impede development.

Congress considers measures to study whether to establish heritage areas and bills to designate new heritage areas. Congress also determines which areas will receive funding and specifies the amount of funds. Heritage areas do not receive permanent funding, but are encouraged to become self-sufficient. The Park Service seeks to limit each area to \$1 million per year, not to exceed \$10 million overall. There is no statute establishing criteria for heritage areas or providing standards for their funding and management, prompting criticism that the process could result in the designation of inappropriate areas or in long-term managerial and financial obligations by the Park Service. There is also a growing concern about the proliferation of bills to create heritage areas. Pending legislation would nearly double their number, increasing the administrative and financial obligations of the NPS. Some of the pending measures would create heritage “corridors,” “routes,” and “partnerships,” which are considered by the NPS to be heritage areas.

There is also growth in the formation of state heritage programs that are not connected with the federal program; 8 states now have heritage programs of their own. A recent White House initiative; “Preserve America,”(E.O. 13287, March 3, 2003) encourages federal government agencies to seek “...partnerships with State and local governments, Indian tribes, and the private sector to promote the preservation of the unique cultural heritage of communities and of the Nation ...” Also, the Alliance of National Heritage Areas (ANHA) [<http://www.nationalheritageareas.com>], a collaboration of the 23 congressionally-designated National Heritage Areas, provides training to practitioners of heritage development, operates a resources center for heritage areas, and promotes heritage tourism.

Administrative Actions. The NPS has formed an administrative entity, the Heritage Partnership Program, to advise and assist heritage areas. The agency assists communities in attaining the heritage area designation, and provides a variety of types of assistance to areas once designated — administrative, budget, policy, technical, and public information. It provides limited financial assistance. Further, at congressional request, the NPS prepares studies as to the suitability of designating heritage areas.

Legislative Activity. H.R. 1427 would establish criteria and mechanisms for designating heritage areas, management standards, and funding support limits. Similar legislation was considered in the 107th Congress, but was not enacted. In recent Congresses, NPS representatives have testified in favor of developing legislation to provide criteria and standards for the establishment, management, and financial assistance of heritage areas. Current bills to designate or study specific areas are shown in table format below.

Congress appropriated \$13 million in FY2002 for heritage area studies and management plans, and \$14.3 million for FY2003. While the Administration sought to reduce funding to \$7.7 million for FY2004, an appropriations bill passed by the House (H.R. 2691) would provide \$13.9 million and the companion bill reported by the Senate Committee on Appropriations (S. 1391) would provide \$13.6 million. The House appropriations bill also would establish the Blue Ridge National Heritage Area in North Carolina.

| Bill Number | State | Type | Title | Status |
|-------------------------------|-------|--------|--|-------------------------|
| H.R. 280/S. 180 | OH/IN | Desig. | National Aviation Heritage Area Act | Introduced |
| H.R. 505/S. 211 | NM | Desig. | Northern Rio Grande National Heritage Area Act | Introduced |
| H.R. 524/S. 230 | NJ | Desig. | Crossroads of the American Revolution Nat. Heritage Act | Introduced |
| H.R. 567/S.472 | VA | Study | Northern Neck National Heritage Area Study Act | Introduced |
| H.R. 744/S. 276 | SC | Study | Southern Campaign of the Revolution Heritage Area Study Act | Introduced |
| H.R. 907 | CA | Study | Highway 49, "Golden Chain Highway" National Heritage Corridor Study Act | Introduced |
| H.R. 1069/S. 577 | MA/NH | Desig. | Freedom's Way National Heritage Area Act | Introduced |
| H.R. 1594 | VI | Study | St. Croix National Heritage Area Study Act | Introduced |
| H.R. 1618 | GA | Desig. | Arabia Mountain National Heritage Area Act | Introduced |
| H.R. 1759/S. 941 H.R. 2691 | NC | Desig. | Blue Ridge National Heritage Area Act | Introduced H. Passed |
| H.R. 1798/S. 1056 | CT/MA | Desig. | Upper Housatonic Valley Nat. Heritage Area Act | Introduced |
| H.R. 1862/S. 912 | PA | Desig. | Oil Region National Heritage Area Act | Introduced |
| H.R. 2278/S. 1330 | AK | Desig. | Kenai Mountains-Turnagain Arm Nat. Heritage Corridor Act/Heritage Area Act | Introduced |
| H.R. 2689/S. 1137 | MS | Desig. | Mississippi Gulf Coast National Heritage Area Act | Introduced |
| H.R. 2925 | NC | Study | Northeastern N. Carolina Heritage Area Study Act | Introduced |
| S. 323 | LA | Desig. | Atchafalaya National Heritage Area Act | Introduced |
| S. 840 | NV/UT | Desig. | Great Basin National Heritage Route Act | Introduced |
| S. 916 | UT | Desig. | National Mormon Pioneer Heritage Area Act | Introduced |
| S. 1105 | MO | Study | French Colonial Heritage Nat. Hist. Site Study Act | Introduced |
| S. 1118 | VT/NY | Desig. | Champlain Valley Nat. Heritage Partnership Act | Introduced |

LEGISLATION

H.R. 1130 (Holt); S. 965 (Reid)

Requires implementation of the final rule to phase out snowmobile use in Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway. H.R. 1130 introduced March 6, 2003; referred to Committee on Resources. S. 965 introduced May 1, 2003; referred to Committee on Energy and Natural Resources.

H.R. 1427 (Hefley)

The National Heritage Areas Policy Act establishes criteria and mechanisms for designating national heritage areas. Introduced March 25, 2003; referred to Committee on Resources.

H.R. 1517 (Graves)

Amends the Land and Water Conservation Fund to limit the use of funds to maintenance needs of the land management agencies and to require those agencies to reduce backlogged maintenance by certain amounts within 5-year intervals. Introduced March 31, 2003; referred to Committee on Resources and Committee on Agriculture.

H.R. 1831 (Renzi)

Extends the grace period for personal watercraft use in Glen Canyon National Recreation Area until October 31, 2003. Introduced April 12, 2003; referred to Committee on Resources.

H.R. 2115 (Young, Don)

Contains a provision directing the Secretary of Transportation to issue a final rule, no later than January 2005, establishing standards for quiet technology that are “reasonably achievable” at Grand Canyon National Park. July 25, 2003, conference report filed.

S. 324 (Levin)

Amends the National Trails System Act to clarify federal authority for acquiring land from willing sellers for two NSTs. Introduced Feb. 6, 2003; referred to Committee on Energy and Natural Resources. May 6, 2003, Subcommittee hearing held.

S. 651 (Allard)

The National Trails System Willing Seller Act amends the National Trails System Act to clarify federal authority for acquiring land from willing sellers for four NSTs and five NHTs. July 17, 2003, passed Senate. July 18, 2003, referred to House Resources.

S. 917 (Murkowski)

Requires that tax revenues from fuel purchased for snowmachine use be used for winter motorized access trails. Introduced April 11, 2003; referred to Committee on Environment and Public Works.

S. 1107 (Thomas)

Establishes a permanent recreation fee program for the National Park Service. Introduced May 22, 2003; referred to Committee on Energy and Natural Resources.

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