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Recreation on Federal Lands

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Recreation on Federal Lands

SUMMARY

The growing and diverse nature of recreation on federal lands has increased the challenge of balancing recreation with other land uses, and balancing different types of recreation. Motorized recreation has been particularly controversial, with issues centering on access and environmental impacts. The 109th Congress is considering legislation and conducting oversight on issues involving recreation on federal lands, including traditional recreational pursuits and newer forms of motorized recreation. The Administration is likely to address these issues through budgetary, regulatory, and other actions. The courts also may continue to intervene. Several prominent issues are covered in this report.

Motorized Recreation in the National Forests and on BLM Land. The use of off-highway vehicles (OHVs) on Forest Service (FS) and Bureau of Land Management (BLM) lands has been particularly controversial. Both agencies decide the extent of allowed OHV use through their planning processes. The FS proposed new regulations (July 15, 2004) governing OHV use that would require designation of areas open for OHV use and prohibit OHV use outside designated areas. The BLM issued a national management strategy (2001) governing motorized OHV use on BLM lands and is addressing related transportation issues through other national strategies. In some cases, OHV use is being addressed jointly through interagency plans.

Personal Watercraft and Snowmobiles. Personal watercraft (PWC) and snowmobile use in National Park Service (NPS) units has fueled debate over the balance between recreation on, and protection of, park lands and waters. Regulatory actions restricting use of these vehicles have been especially controversial. The NPS currently is evaluat-

ing PWC and snowmobile use in several areas. The 109th Congress conducted oversight hearings on snowmobile use and PWC use in the National Park System on April 12, 2005, and May 4, 2005, respectively.

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 (FAA) continue to work to implement 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; the agencies then must develop Air Tour Management Plans at those park units. Additionally, the FAA is developing regulations to provide safety standards for commercial air tours.

The National Trails System. While designation of trails is often popular, issues remain regarding funding, expansion, and quality of trails. The 109th Congress is considering a variety of trail measures, including adding routes to the National Trail System, authorizing studies of routes for possible additions to the system, authorizing land acquisitions from willing sellers, and creating new categories of trails. Legislation has been introduced to create a new category of trails, called National Discovery Trails.

Other Issues. Other federal land recreation issues of interest to the 109th Congress include recreational uses within the National Wildlife Refuge System, recreation at federal water sites (Army Corps of Engineers and Bureau of Reclamation), recreation fees, and Grand Canyon Colorado River management.

MOST RECENT DEVELOPMENTS

- BLM is currently making off-highway vehicle (OHV) designations during the planning process on an area-by-area basis.
- On July 15, 2004, the Forest Service proposed new regulations to require that areas be designated as open or closed to OHV use during the planning process. New planning regulations were finalized on January 5, 2005.
- On May 4, 2005, a House Resources subcommittee held an oversight hearing on PWC use in the National Park System.
- On May 10, 2005, the House Appropriations Committee approved a provision in the FY2006 Interior appropriations bill (H.R. 2361, H.Rept. 109-80) to ensure that a rule allowing snowmobiles in three Yellowstone area parks remains in effect throughout the upcoming 2005-2006 winter season.
- On March 29, 2005, the Federal Aviation Administration issued a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon National Park.
- On May 17, 2005, the Senate passed its version of H.R. 3, authorizing funds for the Recreational Trails Program.

BACKGROUND AND ANALYSIS

Introduction

Four federal agencies administer about 94% of the approximately 672 million acres of federally owned land in the United States: the National Park Service (NPS), the Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) in the Department of the Interior (DOI), and the Forest Service (FS) in the Department of Agriculture. The lands these agencies administer are managed for a variety of purposes relating to the preservation, development, and use of the lands and natural resources. The NPS administers the Park System for the recreational use of parklands and preservation of park resources, a mission that can be contradictory. The FWS manages wildlife refuges primarily for protecting and improving fish and wildlife habitats. The BLM manages public lands and the FS manages national forests for similar multiple uses — grazing, recreation, timber, water, and fish and wildlife. Most forests and public lands also are available for mineral exploration and development. The National Trails System, administered by the FS, NPS, and BLM, often in cooperation with state and local authorities, permits most recreation uses, but motorized vehicles generally are prohibited. This preservation/use dichotomy, while varying among agencies, is a focal point for debate over recreation on federal lands. Increased recreational use, and charges of overuse in some areas, contribute to disagreement on issues of access, regulation, integrity of natural and cultural resources, and motorized versus nonmotorized recreational activities. Recreation debates also arise in areas managed by other federal agencies, such as reservoirs and rivers managed by the Army Corps of Engineers (in the Department of Defense) and the DOI's Bureau of Reclamation, where decisions on water releases may affect recreation.

The growth and development of western states, proximity of many urban areas to public lands, and growing popularity of outdoor recreation have translated into high demand for a

variety of recreational opportunities on federal lands and waters. Agency figures indicate an overall increase in recreational visits to federal lands in recent decades. Recent DOI figures show 67 million visits to 3,300 BLM recreational sites; 277 million recreation visits to 388 NPS units; 39 million visits to 544 FWS wildlife refuges; and 90 million visits to Bureau of Reclamation recreation sites. (See [http://www.doiu.nbc.gov/orientation/tables_all.cfm].) The Forest Service reports 211 million recreation visits to its national forests and grasslands, and the Corps 400 million visits for the most recent year available.

Motorized Recreation

Over the last 40 years, new forms of motorized recreation — snowmobiles, personal watercraft, other off-highway vehicles — and nonmotorized vehicles, such as mountain bikes, have gained in popularity. For instance, there were roughly 7.6 million visitor days of motorized recreation on BLM lands during FY2003. This figure includes off-highway vehicle (OHV) use of all-terrain vehicles, dunebuggies, motorcycles, cars, trucks, and SUVs as well as recreation involving powerboats, personal watercraft, and snowmobiles. These new forms intersect with the many popular traditional forms of recreation. These include water-based activities — fishing, canoeing, kayaking, rafting, etc. — and a variety of land-based pursuits — birdwatching, camping, hiking, hunting, horseback riding, rock climbing, skiing, etc. The use of motorized OHVs on federal lands and waters has been particularly contentious, and lawsuits have challenged OHV management. OHV supporters argue that these vehicles provide outdoor recreation opportunities for the disabled, senior citizens, and others with mobility limitations; visitor access to hard-to-reach natural areas; economic benefits to communities serving riders; and, for snowmobiles, increased access to sites during the winter season. They believe technological advances do and will continue to limit noise and pollution. Critics of OHVs raise environmental concerns, including the potential for damage to land and water ecosystems and wildlife habitat; noise, air, and water pollution; and a diminished experience for recreationists seeking quiet and solitude.

Two executive orders define and generally guide administering OHV use on federal lands. The first (E.O. 11644, Feb. 8, 1972) defines an off-road vehicle, now commonly referred to as an off-highway vehicle, as “any motorized vehicle designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain,” with exceptions for any registered motorboat or authorized or emergency vehicles. It was issued to “establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” The order directed each agency head to develop and issue regulations to carry out this purpose and to provide for the designation of areas and trails on which OHVs may be permitted, and areas in which such vehicles would not be permitted. Agency heads were to monitor the effects of OHV use and amend or rescind designations of areas or other actions taken pursuant to this order as needed to further the policy of the executive order.

A subsequent executive order (E.O. 11989, May 24, 1977) amended the 1972 order to exclude military, emergency, and law enforcement vehicles from the definition of off-road vehicles (to which restrictions would apply). It provided authority to immediately close areas or trails if OHVs were causing or would cause considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or

trails. Areas could remain closed until the manager determined that “the adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.” Also, each agency head was authorized to adopt the policy that areas could be closed to OHV use except for those areas or trails that are specifically designated as open to such use. This meant that only open areas would have to be marked, a lesser burden on the agencies.

Overview of Issues

Federal land managers face a difficult task in managing lands to achieve multiple purposes: to provide recreational opportunities for popular, but often conflicting, motorized and nonmotorized recreational uses; to protect resources for future generations; and to determine which lands should be open for development (e.g., timber harvesting, livestock grazing, and energy development). BLM and FS managers formulate guidance, in some cases, on the nature and extent of land uses, including OHV use, through regulations, national policies, land and resource management plans, and area-specific decisions. The NPS is developing regulatory guidance and planning documents for individual park units.

The 109th Congress is considering legislation and conducting oversight on issues pertaining to recreation on federal lands. Several major issues are covered in this report, particularly motorized recreation on BLM and FS lands; use of personal watercraft and snowmobiles in certain units of the National Park System; overflights of national park units; and expansion of the National Trails System. Other issues are addressed briefly: recreation within the National Wildlife Refuge System; recreation at federal water sites (Corps and Bureau sites); recreation fees; and Colorado River management within Grand Canyon National Park.

While this report focuses on recreation issues on federal lands, it does not comprehensively cover additional issues affecting these lands. For background on federal land management generally, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent. Overview information on numerous natural resource issues focused on resource use and protection is provided in CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*, coordinated by Nicole Carter and Carol Hardy Vincent. For information on NPS issues, see CRS Issue Brief IB10145, *National Park Management*, coordinated by Carol Hardy Vincent. Information on BLM and Forest Service lands is contained in CRS Issue Brief IB10076, *Bureau of Land Management (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent. Information on appropriations for federal land management agencies is included in CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.

Current Issues

Motorized Recreation on BLM Land (by Carol Hardy Vincent)

Background. The proximity of BLM lands to many areas of population growth in the West has contributed to an increase in recreation on some BLM lands. BLM lands are used

for diverse forms of recreation, including hunting, fishing, visiting cultural and natural sites, birdwatching, hiking, picnicking, camping, boating, mountain biking, and off-highway vehicle (OHV) driving. The growing and diverse nature of recreation on BLM lands has increased the challenge of managing recreation and other land uses, and managing different types of recreation. Access to BLM lands for a variety of recreational purposes is viewed as important for fostering public health, public support for land management, and a stable economic base for communities that depend on recreation and tourism. It also has enhanced interest in protecting the ecological integrity of federal lands from environmental harm as a result of recreational use.

Motorized OHV use, including use of dirt bikes and all-terrain vehicles, is a major recreational use of BLM lands. BLM attributes the growing popularity of OHV use on its lands to a stronger public interest in unconfined outdoor recreation; rising disposable income; technological developments making it possible for OHVs to reach remote areas; rapid population growth in areas of the West; and an increasing median age with different recreational interests. The use of OHVs on BLM lands has been controversial. While motorized user groups often have opposed restrictions on OHV use, many environmentalists have been concerned about harm to natural and cultural resources. In some areas, OHV use may conflict with other types of recreation, such as hiking, that seek quiet and solitude on agency lands. There are also differing views on how effectively OHV authorities are being enforced. While BLM employs a variety of means of enforcement, including monitoring, law enforcement, signing and mapping, and emergency closures of routes, enforcement may be impeded in some locations due to their remoteness, insufficient signage, lack of sufficient staff and resources, and other factors.

Administrative Actions. To manage the diverse recreation demands on its lands, in May 2003 BLM issued *The BLM's Priorities for Recreation and Visitor Services*. (See [<http://www.id.blm.gov/publications/data/recvisit.pdf>].) The document provides guidance to BLM managers in taking actions affecting recreation during FY2003-FY2007. It contains three goals: to improve access for recreation; ensure a quality experience; and provide for fair value in recreation — for instance, through collecting appropriate fees for recreational uses. For each goal, it contains a variety of actions to be undertaken. Goal 1 in particular addresses motorized recreation, in the context of actions needed to implement comprehensive travel management on BLM lands.

Guidance on OHV use on BLM lands is provided in law, executive orders, and agency regulations and policies. Under agency regulations (43 C.F.R. 8340), BLM has been designating public lands as open, limited, or closed to OHV use. As of August 2004, the following designations had been made: open, where OHV use is permitted anywhere, 87 million acres; limited, where OHV use is in some way restricted, 124 million acres; and closed, where OHV use is prohibited, 11 million acres. The remaining 42 million acres of BLM land (mostly in Alaska) are not currently designated. BLM makes OHV designations during the planning process, on an area-by-area basis, and such designations often have been contentious and complex. Although the agency is in the midst of a multi-year effort to develop and update land use plans, many plans do not currently address OHV use and other relatively recent issues.

The FY2006 BLM budget justification describes BLM's "most pressing challenge" as "implementing a comprehensive approach to managing travel, OHVs, and public access

across the west” (p. III-123). BLM is addressing transportation on its lands, including OHV use, through the development of three national strategies. First, in an effort to guide OHV use on public lands, in January 2001 BLM issued a *National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands*. (See [<http://www.blm.gov/ohv/>].) The strategy has multiple purposes, including to guide land managers in resolving OHV issues; to promote consistency of OHV decision making; to highlight needed staff and funding for OHV management; to reduce conflicts among land users; to promote responsible OHV use and reduce habitat degradation; and to lead to an update of OHV regulations (which has not occurred to date). Second, in November 2002, BLM released a *National Mountain Bicycling Strategic Action Plan* (see [http://www.blm.gov/mountain_biking/]) to guide land managers in providing opportunities for mountain biking while protecting natural resources. The third strategy, addressing other types of travel on public lands, such as hiking and horseback riding, is in development.

In some cases, the BLM and FS are jointly addressing OHV use on their lands. For instance, the agencies developed an interagency plan governing OHV use on lands in Montana, North Dakota, and South Dakota. (See [<http://www.mt.blm.gov/ea/ohv/>].) Joint management approaches, where federal lands are intermingled, can promote consistency and public understanding of OHV guidance. However, BLM and FS lands are different, and they are governed by separate authorities, making complete consistency on vehicular travel management difficult to achieve.

Legislative Activity. In the 108th Congress, legislation was introduced to authorize an increase in fines for improper use of vehicles that results in damage to BLM lands (as well as FS lands). No further action was taken. Other bills addressed motorized recreation in particular areas.

Motorized Recreation in the National Forests (by Ross Gorte)

Background. The national forests are managed by the USDA Forest Service (FS) for a variety of uses, including many types of recreation — sightseeing, off-highway vehicle use, backpacking, etc. — while preserving the productivity of the lands. Most forms of recreation use, including OHV use, continue to grow.

The various uses and values of the national forests sometimes conflict with one another. For example, timber harvesting and OHV use may affect birdwatching and sightseeing, and can degrade water quality in certain settings. Decisions about what uses are allowed, and when and where, are made in comprehensive land and resource management plans prepared for each unit of the National Forest System, and at the project level. Because of multiple efforts to modify the planning regulations, many plan revisions were delayed. New planning regulations (70 *Fed. Reg.* 1023, Jan. 5, 2005) have recently been finalized, and plan revisions are now expected to proceed. (See [<http://www.fs.fed.us/emc/nfma/index2.html>].)

Administrative Actions. Federal guidance on OHV use in E.O. 11644 and E.O. 11989 was incorporated into FS regulations, at 36 C.F.R. Part 295. Despite this guidance, not all forest plans have identified areas as open or closed to OHVs, and local practices as to OHV use vary. On January 16, 2004, in a speech at the Idaho Environmental Forum, FS Chief Dale Bosworth identified threats to the health of the nation’s forests and grasslands. One is *unmanaged recreation* — the “increasing use of the national forests for outdoor

activities ... , including the use of off-highway vehicles.” In particular, OHV users have created a large number of unauthorized roads and trails, which involved no planning and are often unsafe and damaging to other resources.¹ In response, the FS proposed new regulations (69 *Fed. Reg.* 42391-42395, July 15, 2004) to *require*, as part of travel management within forest planning, identifying a system of roads, trails, and areas designated for motorized vehicle use, including OHVs. The proposed regulations also would prohibit use of OHVs and other motorized vehicles outside the designated system. Decisions governing motorized uses are to be made with public involvement at each of the 110 national forest planning units.

Opinions are divided over the importance and impact of the proposed regulations. Some interest groups assert that the regulations do not go far enough, preferring that all OHV uses be prohibited in the national forests, because OHVs can (and sometimes do) cause extensive damage to the lands and resources protected in national forests. Others counter that the regulations are inappropriate, because they penalize the majority of OHV users that obey the current rules and restrict off-highway uses at a time when other landowners and other federal and state agencies are reducing recreational access to their lands.

Legislative Activity. Legislation in the 108th Congress would have increased fines for vehicle use that damaged FS lands (as well as BLM lands) and would have permanently appropriated collected fines for restoring the damaged lands. No further action was taken. Other bills have contained provisions pertaining to motorized recreation in specific areas.

Personal Watercraft (PWC) (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 C.F.R. §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 raised concerns. Critics of PWC use cite environmental issues, including noise, air, and water pollution; damage to land, plants, and wildlife; and public safety. Supporters of access for PWCs 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 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. The NPS currently is evaluating PWC use in several of its 388 units. That effort began in 2000 when the agency issued a rule prohibiting PWC use in 66 of the 87 units where motorized boats were allowed (65 *Fed. Reg.* 15077, effective April 20, 2000). 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 certain National Recreation Areas (NRAs), such as Lake Mead and Glen Canyon, might choose to continue PWC use because their

¹ U.S. Dept. of Agriculture, Forest Service, *Unmanaged Motorized Recreation*, at [<http://www.fs.fed.us/publications/policy-analysis/unmanaged-recreation-position-paper.pdf>] on Feb. 8, 2005.

establishing legislation emphasized motorized water-based recreation as a primary purpose. An 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, which was to be completed by specified deadlines.

The NPS has been working on such park-specific rules and analyses for the 21 areas. The NPS has lifted PWC bans and authorized their use in seven designated areas: Lake Mead NRA, Assateague National Seashore, Glen Canyon NRA (Lake Powell), Lake Meredith NRA, Amistad NRA, Lake Roosevelt NRA, and Chickasaw NRA. Nine of the areas currently closed to PWCs are working on environmental reviews and special regulations on PWC use. The NPS has proposed rules to allow PWCs in four: Bighorn Canyon NRA (May 5, 2004), Fire Island National Seashore (August 23, 2004), Pictured Rocks National Lakeshore (November 15, 2004), and Gulf Islands National Seashore (March 17, 2005). The agency prohibited PWC use in another 5 of the 21 areas (effective April 22, 2002) that had completed an environmental review process and favored PWC bans: the Cape Cod and Cumberland Island National Seashores, Delaware Water Gap and Whiskeytown NRAs, and Indiana Dunes National Lakeshore. On April 19, 2002, a federal judge denied an injunction sought by PWC users and manufacturers to overturn these bans.

Legislative Activity. In the 109th Congress, on May 4, 2005, the House Resources Committee, Subcommittee on National Parks, conducted an oversight hearing on PWC use in the National Park System. (See [<http://resourcescommittee.house.gov/archives/109/nprpl/050405.htm>].)

Snowmobiles (by Kori Calvert)

Background. Proposals to regulate recreational snowmobile use in NPS units have been controversial, with debate often mirroring the preservation/use conflict inherent in the NPS mission. On April 27, 2000, the NPS announced the strict enforcement of long-standing regulations on snowmobile use, which would have prohibited recreational snowmobiling throughout the Park System. Limited exceptions to this new enforcement policy included Yellowstone and Grand Teton National Parks, park units in Alaska, Voyageurs National Park (MN), and access to private land within or adjacent to a park. By July 2000, the Interior Department had backed away from its strict enforcement stance with a clarification: snowmobiles would not be banned in the 43 park units permitting access prior to the April 2000 announcement, pending formal rulemaking and public comment period. To date, NPS has taken no further action on a general policy for snowmobiles.

Administrative Actions. Since the summer of 2000, regulatory and judicial actions to restrict or allow snowmobile use have centered on Yellowstone and Grand Teton National Parks and the connecting John D. Rockefeller, Jr., Memorial Parkway. The Clinton Administration issued final rules (66 *Fed. Reg.* 7260, Jan. 22, 2001) to incrementally eliminate snowmobile use in these three park units, with limited exceptions, in favor of multi-passenger “snowcoaches” by the 2003-2004 winter season. However, on June 29, 2001, the Bush Administration settled a lawsuit, filed by the International Snowmobile Manufacturers Association (ISMA) and the state of Wyoming, requiring NPS to revisit the snowmobile ban and consider any additional information on “cleaner, quieter” snowmobile technology. The new NPS final rule (68 *Fed. Reg.* 69267, Dec. 11, 2003) reversed the

snowmobile ban in favor of daily entry limits, use of trained guides, snowmobile emission standards, and an “adaptive management strategy” allowing park managers to take remedial action if monitoring indicates unacceptable impacts from air and noise pollution.

Subsequent legal challenges effectively split the 2003-2004 winter season into two sub-seasons, each managed under different rules. First, on December 16, 2003, D.C. District Court Judge Emmet Sullivan reinstated the January 2001 regulation, thereby reducing snowmobile entries by half for the 2003-2004 winter season and phasing them out completely by 2004-2005. (See [http://www.nps.gov/yell/planvisit/winteruse/12_16opinion.pdf].) Second, on February 10, 2004, Judge Clarence Brimmer, Federal District Court for Wyoming, countered with a preliminary restraining order against implementing the Clinton-era rules. Under his order to develop “fair and equitable” temporary rules for the remaining 2004 winter season, NPS issued rules on February 11, 2004, allowing 780 snowmobiles per day in Yellowstone, a 58% increase; and 140 daily for Grand Teton and the Rockefeller Parkway, a 180% increase. Subsequently, on October 14, 2004, Judge Brimmer overturned the 2001 rule. (See [<http://www.ck10.uscourts.gov/wyoming/district/pdf/forms/00cv229b.pdf>].) These conflicting rulings created confusion for park visitors, local communities, and businesses, with many unsure whether they could visit the park in winter and what winter use rules were in effect.

NPS issued a final rule (69 *Fed.Reg.* 65348, Nov. 10, 2004) to implement a temporary winter use management plan for the two parks and connecting parkway through 2006-2007. (See [<http://www.nps.gov/yell/press/04114.htm>].) Effective December 10, 2004, the interim rule allows up to 720 commercially guided Yellowstone snowmobile entries daily during the winter seasons while NPS monitors snowmobile impacts on park resources and develops a new long-range winter use plan and rule. Commercial guides are not required for the 140 daily snowmobile entries to Grand Teton and the Rockefeller Parkway. The plan includes Best Available Technology (BAT) requirements, with limited exceptions, for all snowmobiles to reduce emissions and noise, but no “adaptive management strategy” component. Section 146 of Division E of P.L. 108-447 (enacted Dec. 8, 2004) sought to ensure that the NPS interim final rule allowing snowmobiles in the three park units would be in force throughout the 2004-2005 winter use season ending March 13, 2005. Its purpose was to provide stability for recreational snowmobilers and local businesses by ensuring that any judicial rulings limiting snowmobiles in these parks must be deferred until the 2005-2006 season. The FY2006 Interior appropriations bill (H.R. 2361) contains a similar provision covering the upcoming 2005-2006 winter season. Yellowstone averaged 239 snowmobiles per day during the 2004-2005 winter use season, with peak daily usage at around 420 snowmobiles. Factors contributing to the approximately 18% decline in snowmobile usage include snow and weather conditions, uncertainty about current rules, and resistance to snowmobiling with a guided group.

Meanwhile, dueling judicial proceedings continue, with at least three groups filing lawsuits to block the interim plan. The Fund for Animals et al. claim NPS failed to consider the effects of groomed roads on wildlife, particularly bison; the Park Service announced it had initiated an independent study on road grooming impacts in June 2004, with a comprehensive report anticipated in 2005. The Greater Yellowstone Coalition is seeking a judicial order requiring NPS to use “adaptive management” to address environmental impairment occurring under the interim rule. The Wyoming Lodging and Restaurant Association’s suit, joined by the state of Wyoming, challenges snowmobile restrictions,

including guide requirements and daily entry limits. Further legal developments are anticipated. (For background information on snowmobiles in park units generally, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.)

Legislative Activity. In the 109th Congress, on April 12, 2005, the House Resources Committee, Subcommittee on National Parks, held an oversight hearing on snowmobile use and restrictions in the National Park System and their economic impact on local communities. (See [<http://resourcescommittee.house.gov/archives/109/nprpl/041205.htm>].)

Aircraft Overflights (by Carol Hardy Vincent and Kori Calvert)

Background. The NPS is to provide for the public enjoyment of parklands while protecting resources, while the Federal Aviation Administration (FAA) controls airspace and aircraft overflights. This has created a conflict between resource management and aviation access authorities and their constituencies. Grand Canyon National Park has been the focal point of a conflict between groups seeking to limit overflights of national parks due to concerns about noise and safety, 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 required an NPS study of the effects of all aircraft overflights, which was submitted to Congress in 1994.

The National Parks Air Tour Management Act of 2000 (Title VIII, P.L. 106-181, hereafter “Air Tour Act”) regulates commercial air tours at other park units. 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 “reasonably achievable” requirements for quiet aircraft technology for the Grand Canyon within one year and to designate, by rule, 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, and set 2008 as the date to substantially restore quiet at Grand Canyon. That mandate, and congressional directives, have segued into an ongoing and contentious rulemaking process. Three FAA actions affecting Grand Canyon have been controversial. First, a *limitations rule* capped the annual number of commercial air tour overflights at Grand Canyon (65 *Fed. Reg.* 17708, effective May 4, 2000). The air tour industry has sought exemptions to air tour caps, curfews, and air route restrictions if quiet aircraft technology is used. Second, the *airspace rule* expanded flight-free zones and restrictive routing over the canyon. To address safety concerns, east end Special Flight Rules Area (SFRA) airspace changes have been delayed until February 20, 2006 (68 *Fed. Reg.* 9496). Third, in response to the Air Tour Act, the FAA issued a final rule establishing a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon (70 *Fed. Reg.* 16084, March 29, 2005). The rule identifies which aircraft meet, or do not meet, the standard. In future rulemaking, the FAA will address the establishment of routes or corridors

for commercial air tour operations that use the quiet technology. The goal is to achieve the substantial restoration of natural quiet at Grand Canyon.

Grand Canyon National Park currently is collecting data on the natural ambient sound level. The data will be used, together with air tour reported flight operations data and radar tracking data, to model air tour traffic and aircraft noise at the park. The model will be used to measure success in restoring natural quiet at Grand Canyon.

Other regulatory actions affect commercial air tours at park units. The FAA issued an Air Tour Act final rule (67 *Fed. Reg.* 65661, Oct. 25, 2002) that requires air tour operators to apply for authority to fly over national park and abutting tribal lands. The FAA received applications for operating authority for commercial air tours over 107 of the 388 park units. Application triggers development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where none exists. (See [<http://www.atmp.faa.gov/default.htm>].) The purpose of a plan is to mitigate or prevent any harm by commercial air tours to 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, U.S.C. § 4321-4370f). The FAA and NPS are developing their first ATMPs for nine areas.

Using an air tour safety rule for Hawaii (SFAR 71, continued by 68 *Fed. Reg.* 60832) as a model, on October 22, 2003, the FAA proposed providing safety standards for commercial air tours nationally, including over Grand Canyon and other park units (68 *Fed. Reg.* 60572). The proposed rule seeks to increase the safety of tours by requiring certification of air tour operators and by establishing safety standards, including regarding low-level flights, over-water flights, and visibility limits. Opponents assert that the cost of compliance would make it infeasible for many to continue operating, existing regulations are sufficient to keep tours safe, and the proposed merger of helicopter and airplane traffic increases the chance of collisions. The FAA is assessing public comment on the proposal.

Legislative Activity. P.L. 108-176 directed 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. The FAA issued the final rule on March 29, 2005. The law also established a mediation process for rulemaking disputes. Conferees stated that they were “greatly disappointed with the lack of progress” in managing the noise in parks from air tours, and directed the agencies to develop ATMPs expeditiously and collaboratively and to determine environmental impacts of air tours.

A 108th Congress subcommittee hearing addressed implementation of the Air Tour Act. Witnesses stated that the FAA and NPS have finalized a Memorandum of Understanding guiding cooperative efforts. The agencies are developing an implementation plan covering the prioritization of park units, preparation of environmental documents, and the role of agency personnel. Ongoing issues include methods to establish sound levels and assess potential impacts on park units, guidelines for determining quiet technology, the accuracy of data on flights provided by air tour operators, the issuance of interim operating authority to new tour operators, funding and timing for completing ATMPs, and the relationship and roles of the agencies.

The National Trails System (by Sandra L. Johnson)

Background. The National Trails System Act (P.L. 90-543), authorizing the National Trails System (NTS), became law on October 2, 1968. (See [<http://www.nps.gov/nts/>].) The federal portion of the trails system consists of 24 national trails (8 scenic trails and 16 historic trails, both of which must be designated by Congress) covering almost 50,000 miles, more than 900 recreation trails, and 2 connecting and side trails. More than 35 years since the trails system began, issues remain regarding funding and the quality and quantity of trails.

Administrative Actions. Since 2001, the Bush Administration has designated 91 National Recreation Trails, totaling more than 3,022 miles. These designations do not require an act of Congress and are part of an ongoing effort to promote community partnerships and to foster innovative ways to encourage physical fitness.

Legislative Activity. Many trail projects became eligible to receive federal highway program funds with the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L. 102-240), reauthorized as the Transportation Equity Act for the 21st Century (TEA-21, P.L. 105-178). The Recreational Trails Program (RTP), originally a six-year program authorized under ISTEA and reauthorized under TEA-21, provides funds to states to develop and maintain recreational trails and trail-related facilities for motorized and nonmotorized recreational trail uses. TEA-21 was to expire on September 30, 2003. However, the 108th Congress enacted several extensions to continue funding for highway programs; the most recent extension (P.L. 108-310) provides funding through May 31, 2005. On May 25, 2005, the House passed H.R. 2566 to provide a 30-day renewal of the provisions contained in P.L. 108-310 and extend funding until June 30, 2005. The Senate passed H.R. 2566 on May 26, 2005. On March 10, 2005, the House voted 417-9 to pass the Transportation Equity Act: A Legacy for Users (H.R. 3, TEA-LU). TEA-LU would fund the Recreational Trails Program at \$53 million for FY2004, \$70 million for FY2005, \$80 million for FY2006, \$90 million for FY2007, \$100 million for FY2008, and \$110 million for FY2009. The Senate voted 89-11 to pass an amended version of H.R. 3 on May 17, 2005. The Senate-passed H.R. 3 would fund the RTP at \$270,772,120, consisting of \$54,154,242 for each of FY2005-FY2009. The Senate agreed to a conference and appointed its conferees on May 26, 2005.

S. 54, which is on the Senate calendar, would require the Secretary of the Interior to update the feasibility and suitability studies of adding new routes to the Oregon, Mormon, California, and Pony Express National Historic Trails. Several of the routes and cutoffs proposed for study are already a part of one or another of these designated trails. Designation of new routes to the system requires subsequent legislation.

On February 9, 2005, H.R. 690 was introduced to amend the National Systems Trails Act by adding National Discovery Trails as a new category of long-distance trails, and by designating the American Discovery Trail (ADT) as the nation's first coast-to-coast National Discovery Trail. The ADT would connect several national scenic, historic, and recreation trails, as well as many other local and regional trails.

Measures introduced in the 109th Congress to designate, study, or extend specific components of the National Trails System are shown in the following table. The table

includes bills that could involve management by the NPS or other agencies. Bills related to the system more generally are listed in the “Legislation” section.

Bill Number	Type	Title	Status
H.R. 690	Desig.	National Discovery Trails Act	Introduced
H.R. 1250 S. 588	Study	Arizona Trail Feasibility Study Act	Introduced
H.R. 2053 S. 958	Desig.	Star-Spangled Banner National Historic Trail	Introduced
H.R. 1796	Study	Mississippi River Trail Study Act	Introduced
S. 54	Study Extend	Amends the National Trails System Act to require the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails, and for other purposes	Senate Calendar
S. 336	Study	Captain John Smith Chesapeake National Historic Watertrail	Hearing held

Other Issues

The 109th Congress may evaluate several other recreation issues affecting federal land through legislation or oversight. These include recreation within the National Wildlife Refuge System; recreation at federal water sites (Bureau of Reclamation and Army Corps of Engineers), either site-specific or in general; recreation fees; and Grand Canyon Colorado River management.

Recreation in the National Wildlife Refuge System. (by M. Lynne Corn) The National Wildlife Refuge System (NWRS) is dedicated primarily to conserving animals and plants. Other uses — hunting, fishing, recreation, timber harvest, grazing, etc. — are permitted only to the extent that they are compatible with the purposes for which the individual refuges were created. Some have characterized the NWRS as intermediate in protection between the BLM and FS lands on the one hand and NPS lands on the other, but this is not entirely accurate. For example, some refuges (especially island refuges for nesting seabirds) may be closed to the public — more restrictive than for an NPS area, given the NPS mandate to provide for public enjoyment of park resources. The NWRS resembles the FS or BLM lands in allowing some commercial uses, but in certain cases, uses (e.g., public access) can be substantially more restricted than for NPS lands.

Recreational conflicts within the National Wildlife Refuge System were more frequent before the 1997 enactment of the National Wildlife Refuge System Improvement Act (P.L.105-57; 16 U.S.C. 668dd). A key provision of this law designates “compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the refuge system.” It also requires that public priority uses must “receive enhanced consideration over other general public uses in planning and management within the System.” At the same time, the law continued the statutory policy that activities that are not wildlife-dependent (e.g.,

grazing, growing hay, etc.) may be permitted, provided they are wildlife-compatible. Final regulations for determining compatibility were published on October 18, 2000 (65 *Fed. Reg.* 62457). Some interest groups argued that the regulations did not allow for sufficient public access for some forms of recreation, such as use of off-road vehicles or personal watercraft. Others felt that the regulations struck a proper balance among user groups. The controversy was a minor one, and enactment of the law marked the beginning of a period of minimal controversy over recreation issues within the NWRS.

Recreation at Federal Water Sites. (by Nicole Carter and Kyna Powers) In addition to land-based recreation, the nation's waters provide a variety of recreational opportunities. Much of the recreation on federally owned or managed waters and adjacent lands occurs at U.S. Army Corps of Engineers (in the Department of Defense) and Bureau of Reclamation (in DOI) sites, primarily at federal reservoirs. These agencies' 4,300 recreation areas attract nearly 500 million visits per year (400 million at Corps-managed areas; 90 million at Bureau sites). While these federal reservoirs often are operated primarily for irrigation, navigation, hydropower, and/or flood control, they also provide recreation and other benefits. Reservoir operations can be contentious because decisions on water releases represent tradeoffs among the multiple reservoir and river uses and among different types of recreation, such as birdwatching, boating, fishing, hunting, sightseeing, swimming, and whitewater activities.

Although there is no central water recreation issue, the 109th Congress may consider questions related to the maintenance of recreational facilities under constraints on recreational spending, relative priority of multiple reservoir uses, and policies for recreational development and land use at Corps and Bureau projects. Congress also may oversee the Bureau's implementation of a recreation fee authority and may consider changes to the Bureau's limited authority to manage for recreation. Discussions on the timing of water releases at the Bureau's Glen Canyon Dam for water supply and recreation in the Grand Canyon are likely to continue. (See "Grand Canyon Colorado River Management," below.)

The President's FY2006 budget request proposes a Corps recreation initiative consisting of two primary elements. First, the Administration is proposing that the Corps have authority to collect entrance fees, similar to other agencies providing recreational services; the Corps currently collects some user fees, but not admission fees. When fully implemented, collections for entrance fees and existing user fees would likely total, on average, \$41 million. The Administration proposes that the Corps retain, and spend on modernization of recreation facilities, the collections above \$37 million. The Corps currently collects through existing user fees \$34 million, on average. Second, the Administration is proposing a program for the Corps to conduct a limited number of demonstration projects to modernize facilities through partnerships with local communities and private entities.

S. 728, the Water Resources Development Act of 2005, includes three general recreation-related provisions in §2004. First, similar to the Administration's proposal, that section requires that the Corps carry out a recreation user fee program, including admission fees. Fees collected under §2004 would appear to be available directly to the Corps for resource protection, research, interpretation, and related maintenance. This contrasts to the deposit of the Corps' current user fee collections into general Treasury accounts. Second, §2004 allows the Corps to enter into a contract with public or private entities to provide visitor services for its recreational areas. This is similar to the Administration's

demonstration proposal for facility modernization in that public or private partners are acceptable; however, S. 728 is for visitor services. Third, §2004 requires the Corps to collect fees for new leases on Corps properties that cover, at a minimum, the cost of administering the lease; many Corps leases are for park and recreational purposes.

Recreation Fees. (by Carol Hardy Vincent) The 108th Congress established a new recreation fee program for the four major federal land management agencies (NPS, BLM, FWS, and FS) as well as the Bureau of Reclamation. Provisions of P.L. 108-447 (Division J, Title VIII) provide guidance on establishing entrance, standard, expanded, and special recreation permit fees. They outline criteria for establishing fees, and prohibit charging fees for certain activities or services. The law provides for public input in setting fees, including establishing Recreation Resource Advisory Committees to make fee recommendations. It authorizes the creation of an interagency national recreation pass and of regional multi-entity passes. Each agency can spend the revenue collected without further appropriation. In general, not less than 80% of the fees are to be spent at the collecting site, but that amount can be reduced to not less than 60%. The balance of the collections is available to be used agency-wide. The collections can be used for specified purposes, such as repair, maintenance, and facility enhancement. The agencies are to report to Congress on the program every three years, and the program is to terminate 10 years after enactment.

DOI and the Department of Agriculture are implementing the new law. They are developing long-term fee guidance and the America the Beautiful Pass, which will cover entrance and standard fees for the five agencies. During the transition to the new program, the agencies have agreed that existing passes will be honored, no new fee areas will be created, and existing fees will be evaluated against the criteria and prohibitions set out in the new law. The 109th Congress is overseeing agency efforts to establish, collect, and spend recreation fees under the new program. On February 17, 2005, a Senate subcommittee held a hearing on NPS implementation of the program, with a focus on the development of the America the Beautiful Pass.

The new recreation fee program supersedes the Recreational Fee Demonstration Program ("Fee Demo"), which had begun in 1996 as a three-year trial but was extended several times. The Administration had supported a permanent recreation fee program, and Fee Demo because it generated substantial revenue and allowed discretion in determining fee locations, setting fees, and using the revenues. However, the program was controversial. Critics have been concerned that recreation fees discriminate against those less able to pay; are a double tax on the recreating public; are charged for access to unimproved lands; and, together with other agency fees, confuse the public. The new program, authorized on December 8, 2004 (P.L. 108-447), sought to eliminate some of these concerns.

Grand Canyon Colorado River Management. (by David Whiteman) The NPS has regulated recreational use of the Colorado River inside Grand Canyon National Park since the 1970s, particularly with respect to rafting trips, in order to protect river resources and ensure a high-quality visitor experience. This is an example of how growing population pressures and new recreational pastimes that push deeper into pristine backcountry areas of national parks have increased the resource management challenges affecting many popular parks. Decades of conflict have ensued over motorized boating on the Colorado River and the use of helicopters to ferry commercial boating passengers in and out of the canyon. These activities have been opposed by environmental groups favoring the preservation of

wilderness-like values in the river corridor. Commercial outfitters for river trips favor access for motorized boating on the grounds that this long-standing use does not harm resources.

On October 1, 2004, the NPS released the draft of a new Colorado River Management Plan (<http://www.nps.gov/grca/crmp/>) that will govern recreational river use for 10 or more years. Currently, Colorado River recreational use is divided between two user groups: professionally outfitted commercial concessioners and non-commercial, self-guided private boaters. The proposed management plan would alter the existing ratio of river access between the two groups, reallocating more access to the self-outfitted sector. On January 25, 2005, the two principal user groups announced joint compromise recommendations that would allot more access for non-commercial outfitters; extend the commercial outfitter season six additional weeks to spread out use; and continue the use of motors, mostly for commercial outfitters. (See <http://www.gcra.org/pdf/joint%20recommendations%20-%20final.pdf>.) Environmental groups generally oppose the river users reported agreement.

Public comment on the draft plan ended February 1, 2005, and was considerable. The NPS is analyzing nearly 20,000 comments, a process expected to take several months, and determining whether to adopt any elements from the user groups' compromise in its Final Environmental Impact Statement (FEIS). The NPS currently anticipates a late summer/early fall 2005 FEIS release date.

LEGISLATION

H.R. 3 (Young, Don); S. 732 (Inhofe)

Would authorize funds for federal-aid highways, highway safety programs, and transit programs, and the Recreational Trails Program. The House voted 417-9 to pass H.R. 3 on March 10, 2005. The Senate passed an amended version, 89-11, on May 17, 2005.

H.R. 1261 (Ryun)

Amends the National Trails System Act to improve the efficiency and fairness of acquiring railroad rights-of-way for interim use as public trails by applying the procedures applicable to other federal real estate acquisitions. Introduced March 10, 2005; referred to Committee on Resources.

S. 974 (Sarbanes); H.R. 2332 (Beauprez)

Amends the National Trails System Act to clarify federal authority related to land acquisition from willing sellers for the majority of the trails in the system. Introduced April 28, 2005; referred to Senate Committee on Energy and Natural Resources. H.R. 2332 introduced on May 12, 2005; referred to Committee on Resources.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress, Senate Committee on Energy and Natural Resources, *National Trails System Act Amendment*, S.Rept. 109-44, 109th Cong., 1st sess., March 30, 2005, Wash., DC, 2005.

—— Subcommittee on National Parks, *Land Acquisition From Willing Sellers; Trail of the Ancients; Study of Four National Historic Trails; and Willing Sellers for the Majority of the Trails in the System*, S.Hrg. 108-47, 108th Cong., 1st sess., May 6, 2003, Wash., DC, 2003.

—— *National Parks Air Tour Management Act*, S.Rept. 108-731, 108th Cong., 2nd sess., July 22, 2004, Wash., DC, 2005.

FOR ADDITIONAL READING

CRS Report RL32852, *Energy and Water Development: FY2006 Appropriations*, coordinated by Carl Behrens.

CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.

CRS Issue Brief IB10120, *Army Corps of Engineers Civil Works Program: Issues for Congress*, by Nicole T. Carter and Pervaze A. Sheikh.

CRS Issue Brief IB10076, *Bureau of Land Management (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent.

CRS Issue Brief IB10145, *National Park Management*, coordinated by Carol Hardy Vincent.

CRS Report RS20866, *The Civil Works Program of the Army Corps of Engineers: A Primer*, by Nicole T. Carter and Betsy A. Cody.

CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent.

CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*, coordinated by Nicole Carter and Carol Hardy Vincent.

CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.

CRS Issue Brief IB10019, *Western Water Resource Issues*, by Betsy A. Cody and Pervaze A. Sheikh.