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National Park System: Establishing New Units

name redacted

Specialist in Natural Resources Policy

March 26, 2014

Congressional Research Service

7-....

www.crs.gov

RS20158

Summary

The National Park System (System) includes 401 diverse units administered by the National Park Service (NPS) of the Department of the Interior. Units generally are added to the National Park System by acts of Congress, although the President may proclaim national monuments for inclusion in the System on land that is federally managed. An act of Congress creating a Park System unit may explain the unit's purpose; set its boundaries; provide specific directions for land acquisition, planning, uses, and operations; and authorize appropriations for acquisition and development. Today, there are more than 20 different designations (i.e., titles) for units of the National Park System, reflecting the diversity of the areas. There is no statute that sets out and defines all the designations, and Congress has discretion in choosing the type of designation for a unit being established.

Before enacting a law to add a unit, Congress often first enacts a law requiring the NPS to study an area, typically to assess its national significance, suitability and feasibility, and other management options. When Congress directs the NPS to prepare a study, the agency must assess whether an area contains natural or cultural resources that are nationally significant, constitutes one of the most important examples of a type of resource, and is a suitable and feasible addition to the Park System. The agency also is to consider certain factors established in law (e.g., threats to resources) to promote the consistency and professionalism of the studies.

The Secretary of the Interior is required by law to recommend annually to Congress a list of areas for study for potential inclusion in the National Park System. The Secretary also must submit to Congress a list of areas *previously* studied that contain primarily historical resources, and a list of areas with natural resources. Previously studied areas are to be ranked in order of priority for consideration of addition to the Park System. On one occasion (August 28, 2012), the Obama Administration submitted a list of 15 areas for potential study for addition to the Park System and a list of 7 previously studied areas that meet the criteria for inclusion in the Park System and for which supporting data are still accurate and current. The Obama Administration did not submit similar lists in other years, but instead focused on completing authorized studies and other responsibilities, according to the Administration.

The addition of units to the National Park System sometimes has been controversial. Some discourage adding units, asserting that the System is "mature" or "complete," while others assert that the System should evolve and grow to reflect current events, new information, and reinterpretations. A related issue is how to properly maintain existing and new units given limited fiscal and staffing resources. Differences exist on the relative importance of including areas reflecting our natural, cultural, and social history. The adequacy of standards and procedures for ensuring that the most outstanding areas are included in the Park System also has been debated.

It is generally regarded as difficult to meet the criteria and to secure congressional support and funding for expanding the National Park System. Thus, another issue has been whether particular resources are better protected outside the National Park System, and how to secure the best alternative protection. Certain areas that receive technical or financial aid from the NPS, but are neither federally owned nor directly administered by the NPS, include affiliated areas and national heritage areas. Some programs give places honorary recognition. The NPS also supports local and state governments in protecting resources through grants for projects and technical assistance.

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Overview of the System

The National Park System contains 401 units throughout the nation. They are administered by the National Park Service (NPS) of the Department of the Interior (DOI). As of December 31, 2013, the National Park System encompassed 84.5 million acres of land—80.5 million acres federally owned¹ and 4.0 million acres of private and other public land (e.g., state land)² within NPS unit boundaries. Units range in size from less than one acre to more than 13 million acres. Nearly two-thirds of the total acreage is in Alaska.

In 1872, Congress designated Yellowstone as the world's first national park. Subsequently, the nation slowly developed a system of national parks. While some new areas were administered by DOI, others were managed by different agencies. A 1916 law created the NPS within DOI to protect existing and future parks, monuments, and other areas. It charged NPS with promoting and regulating the use of those areas both to conserve them and to provide for their enjoyment by the public. A 1933 executive order furthered the development of a national system by transferring dozens of sites to NPS from other agencies. The General Authorities Act of 1970 made explicit that all areas managed by NPS were part of a single system, and gave all units of the system equal standing with regard to resource protection. Statutes authorizing particular units sometimes provide additional management direction for those units.

Units of the Park System generally are managed to preserve resources in their natural or historical conditions for the benefit of future generations. Thus, hunting, mining, and other consumptive resource uses generally are not allowed. However, in the laws creating units, Congress sometimes has specified that some of those uses are allowed.

Today, there are more than 20 different designations (i.e., titles) for units of the National Park System, reflecting the diversity of the areas. There is no statute that sets out and defines all the designations, and Congress has discretion in choosing the type of designation for a unit being established. While some designations are descriptive and possibly self-explanatory, such as “battlefield,” others have been used in different ways. For instance, the designation “national monument” has been given to a variety of areas, including natural reservations, historic military forts, prehistoric ruins, fossil sites, and the Statue of Liberty. Some park units have unique titles, such as Constitution Gardens, National Mall, Theodore Roosevelt Island, and White House, all within the District of Columbia. Some park units have combinations of classifications, such as the Big South Fork National River and Recreation Area and the Salt River Bay National Historical Park and Ecological Preserve. Some classifications (such as “national park”) are unique to NPS, while others (such as “national recreation area”) also are used by other land management agencies.³

¹ Of the 80.5 million acres of federally owned land, the NPS owns 79.7 million acres and manages another 0.4 million acres in less than full ownership, for instance, through conservation easements or other partial interests. Other federal agencies own the remaining 0.4 million acres.

² Of the 4.0 million acres of nonfederal land within the system, 2.6 million acres are privately owned and 1.4 million acres are publicly owned.

³ For an in-depth discussion of the different types of park units, see CRS Report R41816, *National Park System: What Do the Different Park Titles Signify?*, by (name redacted). A brief definition for each classification, together with a description of each unit of the System, is included in U.S. Department of the Interior, National Park Service, Office of Public Affairs and Harpers Ferry Center, *The National Parks: Index 2009-2011* (Washington, DC: GPO, 2009) at http://www.nps.gov/history/history/online_books/nps/nps/contents.htm. See also the descriptions of different (continued...)

Of the 401 units within the National Park System, there are 59 units called national parks, the so-called “crown jewels” of the Park System. Other commonly used titles include national historic sites (78), national monuments (78), national historical parks (46), national memorials (29), national recreation areas (18), and national preserves (18).⁴

Adding Units by Public Law and Presidential Proclamation

National Park System units are created by act of Congress, except that national monuments also may be added by presidential proclamation.⁵ The Antiquities Act of 1906 (16 U.S.C. §431 et seq.) authorizes the President to create national monuments, on land that is already federally owned or controlled, and that contains historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest.⁶ Presidents have designated 137 monuments since 1906. Congress has subsequently converted many of them, such as the Grand Canyon, to national parks. Most monuments are managed by NPS, with many newer monuments managed by the Bureau of Land Management or other agencies.⁷

An act of Congress creating a Park System unit may explain the unit’s purpose; set its boundaries; provide specific directions for land acquisition, planning, uses, and operations; and authorize appropriations for acquisition and development. Bills to create units generally are within the jurisdiction of the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, with appropriations typically contained in Interior, Environment, and Related Agencies appropriations acts. Congress sometimes has enacted free-standing legislation to add units to the National Park System. Congress also has authorized units as part of omnibus parks and recreation laws containing dozens of recreation-related measures.⁸ Measures sometimes are packaged to facilitate broad evaluation of an issue and to expedite consideration. Legislation creating a new unit may be preceded by legislation to authorize an NPS study of the area, as described below.

Provisions of law, together with NPS policies, govern Congress’s consideration of measures to create units of the National Park System. In 1998, Congress amended existing law pertaining to creating units (P.L. 105-391) to standardize procedures, improve the information about potential

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designations on the NPS website at <http://www.nps.gov/history/history/hisnps/NPSHistory/nomenclature.html>.

⁴ The number of units with each type of designation are on the NPS website at <http://www.nps.gov/news/upload/CLASSLST-401-updated-06-14-13.pdf>.

⁵ The Secretary of the Interior has general but limited authority to make adjustments to the boundaries of existing units of the National Park System. That authority is contained in the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(c)) and is noted in the National Park Service’s *Management Policies 2006*, pp. 31-32, <http://www.nps.gov/policy/MP2006.pdf>.

⁶ Extensions or establishment of monuments in Wyoming require the authorization of Congress (16 U.S.C. 431a), and withdrawals in Alaska exceeding 5,000 acres are subject to congressional approval (16 U.S.C. 3213).

⁷ For more information, see CRS Report R41330, *National Monuments and the Antiquities Act*, by (name redacted) and (name redacted).

⁸ For instance, P.L. 111-11, the Omnibus Public Land Management Act of 2009, authorized the establishment of new park units.

additions, prioritize areas, focus on outstanding areas, and ensure congressional support for area studies.⁹

Recommending Areas for Study

The Secretary of the Interior is required by law to recommend annually to Congress a list of areas for study for potential inclusion in the National Park System. The list is to be submitted at the beginning of each year to the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources. The National Park System Advisory Board, composed of private citizens, advises the Secretary of the Interior on possible additions to the National Park System. In practice, NPS performs the functions assigned to the Secretary.

Under 16 U.S.C. §1a-5, NPS must consider three issues in developing for Congress the list of areas recommended for study: (1) whether an area is nationally significant, and would be a suitable and feasible addition to the National Park System; (2) whether an area represents or includes themes, sites, or resources “not already adequately” represented in the Park System; and (3) requests for studies in the form of public petitions and congressional resolutions (the “popular demand” factor). The NPS also must submit to Congress a list of areas *previously* studied that contain primarily historical resources, and a list of areas with natural resources. Areas are to be ranked in order of priority for addition to the Park System, and supported by current data.

Candidates for study are identified by diverse sources, such as local “grassroots” preservation interests, elected officials, and professional evaluations. Another source has been the Secretary’s annual list for Congress of damaged or threatened areas on the Registry of Natural Landmarks and the National Register of Historic Places. NPS screens candidates, in some cases conducting a brief site visit or a more detailed reconnaissance survey to assess an area.

In the past, NPS has ranked areas that passed the initial screening, and the highest-priority areas were recommended to Congress for study. However, NPS determined that over a 20-year period, only about one in every four or five studies concluded that an area was eligible for inclusion within the Park System.¹⁰ For this reason, and because the George W. Bush Administration generally did not support expanding the Park System, the Bush Administration did not submit the annual lists.¹¹ More recent NPS statistics show that since 2000, about one in three area studies has concluded that an area is eligible for inclusion.¹²

Like the Bush Administration, the Obama Administration had not been submitting lists of areas for potential study or addition to the Park System, to focus instead on completing authorized studies and other current responsibilities, such as facility maintenance.¹³ However, on August 28,

⁹ See 16 U.S.C. §1a-5 for provisions of law.

¹⁰ U.S. Department of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2007*, p. Const-82-83.

¹¹ See, for example, U.S. Department of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2009*, p. Const-75.

¹² National Park Service, Park Planning and Special Studies Division, personal communication, March 18, 2014.

¹³ U.S. Department of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2010*, p. Const-85; and National Park Service, Office of Legislative and Congressional Affairs, personal communication, March 28, 2011.

2012, the Department of the Interior submitted a list of 15 areas for potential study for addition to the Park System.¹⁴ The department also submitted a list of 7 areas that were previously studied that met the criteria for inclusion in the Park System and for which supporting data were still accurate and current.¹⁵ The Obama Administration has not submitted additional lists since August 28, 2012.¹⁶

Preparing Area Studies

Current law does not appear to explicitly require an NPS area study before Congress adds a unit to the Park System, but any such study requires “specific authorization of an Act of Congress” (16 U.S.C. §1a-5).¹⁷ Before 1998, studies were prepared at the initiative of NPS, individual Members of Congress, and other entities, as well as required by authorization and appropriations laws. The 1998 statutory change sought to eliminate these separate sources for initiating studies, on the grounds that in some years funding was insufficient to cover all studies, and ongoing studies sometimes were not completed because funds were earmarked for other studies. However, NPS has standing authority to take certain actions, provided that they cost less than \$25,000. These actions include preliminary activities, such as resource assessments of areas; “reconnaissance surveys” of areas; and updates of previous studies.

After funds are available, NPS must complete a study of an area within three fiscal years. In practice, studies have taken longer to prepare. This is due to the large number of studies authorized by Congress and the extent of available resources.¹⁸ The length of time for completing studies generally ranges from three to six years, depending on the complexity, such as the number of stakeholders and whether any environmental issues may be involved.¹⁹ The cost of preparing a study also depends on its complexity, with the average cost estimated at roughly \$500,000.²⁰

¹⁴ The areas pertained to Aleut relocation and confinement (Alaska); American Latino heritage in the San Luis Valley and Central Sangre de Cristo Mountains (Colorado and New Mexico); Buffalo Soldiers in the National Parks (California and potentially other unspecified states); Chattahoochee River National Recreation Area (Georgia); Galveston Bay (Texas); Goldfield (Nevada); Hudson River Valley (New York); Japanese American relocation camps (Arizona, Arkansas, Colorado, Utah, and Wyoming); Kau Coast (Hawaii); Mobile-Tensaw River delta (Alabama); Norman Studios (Florida); Peleliu (Republic of Palau); reconstruction era in the South (Southern United States); Rota (Commonwealth of the Northern Mariana Islands); and Vermejo Park Ranch (Colorado and New Mexico). This information was obtained from the National Park Service, Office of Legislative and Congressional Affairs, personal communication, October 10, 2012. Related legislation has been introduced in the 113th Congress (H.R. 3131).

¹⁵ The areas pertained to the Blackstone River Valley (Massachusetts and Rhode Island); Castle Nugent Farms (U.S. Virgin Islands); Chesapeake Bay sites (Delaware, Maryland, and Virginia); Delaware coastal region (Delaware); Harriet Tubman sites (Maryland and New York); Manhattan Project sites (New Mexico, Tennessee, and Washington); and Waco Mammoth Site (Texas). This information was obtained from the National Park Service, Office of Legislative and Congressional Affairs, personal communication, October 10, 2012. Related bills to establish some of these areas have been introduced in the 113th Congress. In March 2013, two of these areas—the Delaware coastal region and the Maryland portion of the Harriet Tubman sites—were added to the Park System as national monuments by presidential proclamation (First State National Monument and Harriet Tubman–Underground Railroad National Monument, respectively).

¹⁶ Office of Legislative and Congressional Affairs, personal communication, February 21, 2014.

¹⁷ The NPS has authority to study adjustments to boundaries of established park units.

¹⁸ For instance, as of January 2014, 27 authorized special resource studies had not been completed and transmitted to Congress, according to the NPS. These studies pertained to potential park units, national heritage areas, and other designations.

¹⁹ U.S. Department of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2015*, p. Const-80–Const-81.

²⁰ National Park Service, Park Planning and Special Studies Division, personal communication, March 18, 2014.

Studies are to include public involvement, with at least one public meeting held in the local area, and reasonable efforts to notify affected state and local governments and landowners. Studies also are to comply with the National Environmental Policy Act of 1969 (NEPA), which requires an assessment of the potential impact of the proposed action on the human environment.

Criteria for Studies

When Congress directs the NPS to prepare a study, the agency must consider certain factors established in law to promote the consistency and professionalism of the studies. NPS is directed to assess whether an area contains natural or cultural resources that are nationally significant, whether it constitutes one of the most important examples of a type of resource, and whether it is a suitable and feasible addition to the System.

The NPS has developed criteria for determining national significance, suitability, and feasibility. An area will be regarded as *nationally significant* if it is an outstanding example of a resource; exceptionally illustrates or interprets natural or cultural themes of our country's heritage; provides extraordinary opportunities for public enjoyment or scientific study; and contains a true, accurate, and relatively unspoiled resource.

In evaluating national significance, the NPS considers natural and cultural areas, with cultural areas evaluated under the process for national historic landmarks (36 C.F.R. Part 65). Examples of nationally significant natural areas might include a refuge that is critical for the survival of a species, a rare landform, or an outstanding scenic area. Cultural areas might include districts, sites, structures, or objects of exceptional quality in interpreting our nation's heritage, such as those with distinctive architectural types. Cultural entities generally exclude cemeteries, birth places, graves, religious properties, relocated structures, reconstructed buildings, and properties of significance within the past 50 years. In the past, NPS also evaluated the national significance of recreational areas, but now recreational values are assessed in evaluating natural and cultural areas.

NPS views an area as *suitable* if it portrays a natural or cultural resource insufficiently included in the System, unless a similar area is managed for public use by another agency. An area is *feasible* to add if it is large enough, configured so as to allow long-term protection and public use, and affordable to manage. Other important issues in assessing the feasibility of adding an area to the National Park System include ownership of the land and the cost of acquiring it, access, current and potential land uses, threats to resources, public support, and staff or development requirements. For instance, privately owned land that the owner is unwilling to sell, or that would be expensive to acquire, might not be viewed as feasible.

Under 16 U.S.C. § 1a-5, NPS studies of potential new areas must evaluate a variety of factors, including the rarity and integrity of the resources; resource threats; whether similar resources already are protected; the costs of acquisition, development, and operation; the socioeconomic effects of addition; the interpretive and educational uses; the potential for public use; the extent of public support; and whether the configuration ensures long-term protection and use. Studies also usually discuss boundary possibilities.

Other Management Options

In studying an area, NPS must consider whether protection by means other than NPS management is appropriate. Options include administration by other federal agencies, state or local governments, Native American authorities, and the private sector. Consideration may be given to technical or financial assistance; other designations, including wilderness, national trail, or national historic landmark; and cooperative management between NPS and another agency. NPS generally will not recommend adding an area to the Park System if another arrangement already provides, or could provide for, sufficient protection and public use. The study must identify the best alternative(s) for protecting resources and allowing public enjoyment. Each study sent to Congress must be accompanied by a letter from the Secretary that identifies the preferred management option for the area, to minimize uncertainty about NPS's position.

Issues

The addition of units to the National Park System sometimes has been controversial. Some discourage adding units, asserting that the System is “mature” or “complete,” while others assert that the System should evolve and grow to reflect current events, new information, and reinterpretations. A related issue is how to properly maintain existing and new units given limited fiscal and staffing resources. The George W. Bush Administration generally did not support the creation of new park units and the expansion of existing units, as it sought instead to focus funds on maintaining current units. The Bush Administration supported some expansions on the grounds that they could be accomplished for relatively little cost. Supporters of new units have charged that the older units are the most costly. Also, in a departure from the past, the Bush Administration did not recommend to Congress, as part of its annual budget submissions, that areas be studied for possible inclusion in the Park System. The priority was to complete studies previously authorized by Congress, although the Administration testified in support of authorizing some new studies.

Initially, the Obama Administration also expressed a need to focus attention and resources on the current System, including the maintenance backlog, “rather than continuing the rapid expansion of new NPS responsibilities.”²¹ Further, the Administration has been implementing a plan to complete special resource studies already authorized by Congress, and until 2012 had not submitted to Congress a list of areas for possible inclusion in the Park System, as discussed above.²² However, in some instances the Administration has testified in favor of creating new units of the National Park System, studying additional areas, and expanding existing units.²³

²¹ U.S. Department of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2010*, p. Const-85.

²² U.S. Department of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2012*, p. Const-74; and National Park Service, Office of Legislative and Congressional Affairs, personal communication, October 10, 2012.

²³ For example, with regard to establishment of units, see the testimony on S. 285 of Peggy O'Dell, National Park Service, before the Subcommittee on National Parks of the Senate Committee on Energy and Natural Resources on April 23, 2013. With regard to an area study, see the NPS statement for the record on H.R. 298, submitted to the Subcommittee on Public Lands and Environmental Regulation of the House Committee on Natural Resources on October 3, 2013. With regard to expansion of units, see the testimony on H.R. 885 of Stephanie Toothman, National Park Service, before the Subcommittee on National Parks of the Senate Committee on Energy and Natural Resources on July 31, 2013. NPS testimony during 2013 is available on the agency's website at <http://www.nps.gov/legal/> (continued...)

Differences exist on the relative importance of including areas reflecting U.S. natural, cultural, and social history. The adequacy of standards and procedures for assuring that the most outstanding areas are included in the System also has been debated. Critics contend that the System has been weakened by including inappropriate areas, especially where authoritative information was unavailable, incomplete, or disregarded in favor of political considerations. Others counter that there will always be disagreement over the worth of areas, and that recently added areas have been held to the same high standards as older units. Another issue has been whether particular resources are better protected outside the National Park System, and how to secure the best alternative protection.

Alternatives to Inclusion in the National Park System

It is generally regarded as difficult to meet the criteria and to secure congressional support and funding for expanding the National Park System. While there is often considerable interest in establishing new units, usually no more than a handful of units are created each Congress.

Many areas are preserved outside the National Park System. Some of these are protected with recognition or assistance by the NPS. Certain areas that receive technical or financial aid from the NPS, but are neither federally owned nor directly administered by the NPS, have been classified by the NPS as affiliated areas. Affiliated areas are nationally significant but do not meet the other criteria for inclusion in the Park System. Under NPS policy, they are worthy of special NPS recognition or assistance beyond existing programs, are managed in accordance with standards applicable to park units, and are to receive sustained resource protection as detailed in an agreement between the NPS and the non-federal manager of the area. In the past, the affiliated areas have included properties primarily recognized for cultural or commemorative worth. Affiliated areas have been created by act of Congress and by designation of the Secretary of the Interior. Currently, there are about two dozen affiliated areas.²⁴

National heritage areas, established by Congress, contain land and properties that reflect the history of their people. Typically, they consist mainly of private properties and may include natural, scenic, historic, cultural, or recreation resources. Conservation, interpretation, and other activities are handled by partnerships among federal, state, and local governments and nonprofit organizations, and for each area Congress has recognized a “management entity” to coordinate efforts. The NPS supports these efforts through technical and financial assistance, and such support is not intended to be permanent. Supporters of heritage areas have asserted that they reduce pressure to add new, costly, and possibly inappropriate areas to the National Park System, while opponents have feared that they could be used to extend federal control over non-federal land. Differences also have existed over whether to create a comprehensive heritage program containing priorities and standards for establishing heritage areas.²⁵

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testimony/2013testimony.html.

²⁴ A brief description of each affiliated area is included in Part 3 (Related Areas) of *The National Parks: Index 2009-2011* at http://www.nps.gov/history/history/online_books/nps/nps/part3.htm.

²⁵ For more information on heritage areas, see CRS Report RL33462, *Heritage Areas: Background, Proposals, and Current Issues*, by (name redacted) and (name redacted).

Some programs give places honorary recognition. Cultural resources may be listed by the NPS in the National Register of Historic Places, as meriting preservation and special consideration in planning for federal or federally assisted projects. The Secretary of the Interior may designate natural areas as national natural landmarks, and cultural areas as national historic landmarks. National parks, monuments, and other areas of international worth may, at the request of the United States, be recognized by the United Nations as world heritage sites or biosphere reserves. Congress or the Secretary of the Interior may designate rivers as components of the National Wild and Scenic Rivers System,²⁶ and trails as part of the National Trails System.

The NPS also supports local and state governments in protecting resources. The agency may provide grants for projects (including acquisition and development of recreational facilities) and technical assistance (for conserving rivers, trails, natural areas, and cultural resources). In addition to this range of NPS programs, resources are protected by the private sector, state and local governments, and other federal agencies.

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²⁶ For information on national wild and scenic rivers, including their designation and management, see CRS Report R42614, *The National Wild and Scenic Rivers System: A Brief Overview*, by (name redacted) and (name redacted).

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