



Motorized Recreation on National Park Service Lands

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Summary

In managing its lands, the National Park Service (NPS) seeks to balance a dual statutory mission of preserving natural resources while providing for their enjoyment by the public. Motorized recreation on NPS lands sometimes brings the two parts of this mission into conflict. Off-highway vehicles (OHVs) have been particularly controversial, with calls for greater recreational access intersecting with concerns about environmental impacts and disturbance of quieter pursuits. NPS's laws, regulations, and policies generally emphasize the conservation of park resources in conservation/use conflicts, and NPS has fewer lands open to OHV use than do other federal land management agencies such as the Bureau of Land Management and the Forest Service. The 113th Congress may address motorized recreation in the National Park System, either through broad measures (such as those concerning recreational access to federal lands) or through specific measures affecting motorized recreation at particular NPS units.

ATVs and Oversand Vehicles. Only 12 of the 398 park units are open to public recreational use of all-terrain vehicles (ATVs), four-wheel drive vehicles, and/or dune, sand, and swamp buggies. The extent of unauthorized use of such vehicles is in dispute. Several units are developing pilot education and deterrence programs to address unauthorized use. Legislative measures in the 112th Congress sought to regulate OHV use at one NPS site, Cape Hatteras National Seashore.

Snowmobiles. Regulatory and judicial actions to allow or restrict snowmobile use have focused primarily on three Yellowstone-area park units. Winter use plans developed by NPS to establish numerical limits on snowmobile and snowcoach entries have been the subject of repeated, and often conflicting, court challenges. Most recently, NPS has issued a draft plan and supplemental environmental impact statement intended to govern snowmobile use at Yellowstone for the 2014-2015 winter season and beyond. The plan would allow up to 110 "transportation events" per day (defined as the use of either a multipassenger snowcoach or a group of snowmobiles).

Aircraft Overflights. Grand Canyon National Park is at the center of a conflict over whether or how to limit air tours over national park units to reduce noise. NPS and the Federal Aviation Administration (FAA) continue to work to implement a 1987 law (P.L. 100-91) that sought to reduce noise at Grand Canyon, and a 2000 law (P.L. 106-181) that regulates overflights at other park units. P.L. 112-141, enacted in 2012, contains provisions on air tour management at Grand Canyon, including some less-stringent standards for natural quiet than NPS had recommended in planning efforts. P.L. 112-95 contains provisions to expedite and streamline agency planning actions for commercial air tours over parks generally.

Personal Watercraft (PWC). Since 2003, NPS has completed regulations to open designated PWC areas at 13 units. In July 2010, a federal judge ordered NPS to re-examine environmental assessments justifying PWC use at two of those units but did not overturn existing regulations.

Mountain Bicycles. This mechanized though nonmotorized activity also raises issues of the sufficiency of access to park lands as well as potential resource damage and disturbance of quieter recreational pursuits. Currently, more than 40 NPS units allow mountain biking on dirt trails and/or dirt roads. Mountain biking advocates have worked with NPS to explore opportunities to increase this activity in park units. In July 2012, NPS finalized a rule that eases the process for park superintendents to open trails to bicycles.

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Introduction

The National Park Service (NPS) administers the National Park System for both recreational use and preservation of park resources, a mission that can be contradictory.¹ Increased recreation on NPS lands has fueled disagreements over this dual mission and over the optimum extent of motorized versus nonmotorized recreational activities.

The National Park System, with 398 units covering 84.4 million acres of land, received more than 286 million recreational visits in 2012, an increase of 2.55% over 2011.² Use of off-highway vehicles (OHVs) in the parks—including all-terrain vehicles (ATVs), snowmobiles, personal watercraft, and others—along with recreational activities such as mountain biking, snow biking, heli-skiing, and aircraft tours, have evolved and gained in popularity. These newer forms intersect with more traditional, nonmotorized forms of recreation, including land-based activities such as hiking, camping, hunting, birdwatching, horseback riding, and rock climbing, and water-based pursuits such as fishing, canoeing, kayaking, and rafting.

OHV use in the parks has been particularly contentious, although NPS has fewer lands open to OHVs than do other federal land management agencies such as the Bureau of Land Management (BLM) and the Forest Service (FS).³ OHV supporters contend that the vehicles allow visitors access to hard-to-reach natural areas; bring economic benefits to communities serving riders;⁴ provide outdoor recreation opportunities for the disabled, senior citizens, and others with mobility limitations; and, with snowmobiles, allow increased access to sites during winter. They assert that technological advances will continue to limit noise and pollution.

By contrast, opponents of OHVs in the National Park System assert that these vehicles damage the environment and cultural artifacts, pose safety concerns, and conflict with other forms of recreation. NPS staffing levels, they contend, are inadequate to effectively monitor motorized use and its impact on park resources. Opponents also cite the availability of other federal lands, such as BLM and FS lands, where OHV use may be permitted. Among environmental concerns raised by OHV critics are potential damage to wildlife habitat and land and water ecosystems; the impact of dust on winter snow melts and water supply; noise, air, and water pollution; and a

¹ The NPS “Organic Act” of 1916 directs the Park Service to manage its lands so as “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).

² NPS visitor use statistics are available on the NPS website at <https://irma.nps.gov/Stats/>. For 2012 statistics through December, see “YTD Report.” Also see “NPS Visitation Increases Slightly; Lots of Variations,” *Federal Parks & Recreation*, vol. 30, no. 20, October 19, 2012. For comparison, a decade ago, in 2003, the National Park System received approximately 266 million recreational visits.

³ A 2009 Government Accountability Office (GAO) report estimated that OHV use impacts less than 10% of park system lands, significantly less than for BLM and FS. GAO, *Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles*, GAO-09-509, June 2009, p. 12, at <http://www.gao.gov/new.items/d09509.pdf>; hereinafter referred to as GAO 2009. For information on motorized recreation on BLM and FS lands, see CRS Report R42920, *Motorized Recreation on Bureau of Land Management and Forest Service Lands*, by Carol Hardy Vincent and Katie Hoover.

⁴ For example, the Outdoor Industry Association reports that U.S. consumers spend over \$66 billion annually on off-roading activities (on federal and nonfederal lands combined), and that businesses serving off-road recreationists support over 680,000 jobs. Outdoor Industry Association, *The Outdoor Recreation Economy*, 2012, p. 17, available at <http://atfiles.org/files/pdf/Outdoor-Recreation-Economy-OIA2012.pdf>. Also see Western Governors Association et al., *A Snapshot of the Economic Impact of Outdoor Recreation*, June 2012, at http://www.westgov.org/component/joomdoc/doc_details/1599-a-snapshot-of-the-impact-of-outdoor-recreation.

diminished experience for recreationists seeking quiet and solitude and/or hunting and fishing opportunities. Critics also point to the beneficial economic impact of nonmotorized recreation on local communities.⁵

The 113th Congress may address motorized recreation in the National Park System, either through broad measures, such as those concerning recreational access to federal lands, or through specific measures affecting certain types of motorized recreation or particular NPS units. In the 112th Congress, H.R. 6086 would have required federal land management agencies to report on the availability of motorized and nonmotorized access to federal lands for hunting, fishing, and other recreation. With respect to the National Park System in particular, P.L. 112-141 and P.L. 112-95 contained provisions affecting air tours over national park units. H.R. 4094 and S. 2372 would have changed regulations for OHVs at Cape Hatteras National Seashore. See the activity-specific sections below for further discussion.

Authorities Governing Motorized Recreation on NPS Lands

Executive Orders

Two executive orders define and generally guide OHV use on federal lands. The first (E.O. 11644, February 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 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. Agencies were to monitor the effects of OHV use and amend or rescind area designations or other actions taken pursuant to the 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 damage to the soil, vegetation, wildlife, wildlife

⁵ The Outdoor Industry Association report cited in footnote 4 also provides data on the economic benefits of nonmotorized recreation (on both federal and nonfederal lands), including camping (consumer spending of over \$143 billion annually, supporting over 1.3 million jobs), wildlife viewing (consumer spending of over \$33 billion annually, supporting over 289,000 jobs), and fishing (consumer spending of over \$35 billion annually, supporting over 307,000 jobs), among others. Another study found an overall contribution to the economy of over \$730 billion annually from “human-powered” types of recreation such as hunting, fishing, wildlife viewing, hiking, camping, skiing, paddle sports, and bicycling (Southwick Associates, *The Economics Associated with Outdoor Recreation, Natural Resources Conservation and Historic Preservation in the United States*, October 10, 2011, at <http://www.nfwf.org/Content/ContentFolders/NationalFishandWildlifeFoundation/HomePage/ConservationSpotlights/TheEconomicValueofOutdoorRecreation.pdf>).

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 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.

Other NPS Authorities

While the executive orders apply to federal lands generally, other authorities concerning OHVs are specific to the National Park System. In particular, NPS regulations generally limit OHV use in the park system to four types of NPS units—national recreation areas, national seashores, national lakeshores, and national preserves.⁶ The regulations also require special rulemaking, with environmental impact analysis and public comment, to designate routes and areas for OHVs in these park units. NPS’s management policies provide additional guidance, stating that OHV use “may be allowed only in locations where there will be no adverse impacts on the area’s natural, cultural, scenic, and esthetic values, and in consideration of other existing or proposed recreational uses.”⁷ In general, the management policies emphasize the conservation of park resources in conservation/use conflicts.⁸

Although the executive orders cited earlier include oversnow vehicles in the definition of OHVs, the NPS regulations that permit OHV use only at certain types of park units do not apply to snowmobiles.⁹ Instead, snowmobile use in the National Park System is governed by separate regulations that limit such vehicles to designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons.¹⁰ The regulations prohibit snowmobiles except “when their use is consistent with the park’s natural, cultural, scenic and aesthetic values, safety considerations, [and] park management objectives, and will not disturb wildlife or damage park resources.” NPS management policies further emphasize that snowmobile use can be authorized only where it will not result in unacceptable impacts.¹¹

The enabling legislation for individual NPS units may establish specific activities as an appropriate use (e.g., water-oriented recreation, snowmobiling for subsistence or recreational purposes, or OHV travel to reach hunting or fishing areas). Additional unit-level direction for designated routes (such as temporary route closures) may be included in a park’s general management plan and/or determined by the park superintendent.¹²

⁶ 36 C.F.R. §4.10(b). For a discussion of the various unit designations in the National Park System, see CRS Report R41816, *National Park System: What Do the Different Park Titles Signify?*, by Laura B. Comay.

⁷ National Park Service, *Management Policies 2006*, §8.2.3.1, p. 104, at <http://www.nps.gov/policy/mp2006.pdf>.

⁸ *Ibid.*, §1.4.3.

⁹ Personal communication with Kyle Earnest, NPS Congressional and Legislative Affairs Office, December 6, 2012.

¹⁰ 36 C.F.R. §2.18.

¹¹ National Park Service, *Management Policies 2006*, §8.2.3.2, p. 104, at <http://www.nps.gov/policy/mp2006.pdf>.

¹² 36 C.F.R. §1.5.

ATVs and Oversand Vehicles¹³

Excluding Alaska, 12 NPS units allow off-road use of ATVs, four-wheel drive vehicles, and/or dune, sand, and swamp buggies by the general public.¹⁴ Environmental groups have alleged that these vehicles damage wildlife habitat and disturb nonmotorized activities, both in the units that permit their use and in other areas where, they claim, unauthorized use occurs. Users of the vehicles, by contrast, have sought more routes and areas for off-road recreation and increased motorized access to hunting and fishing sites. They assert that NPS restrictions harm communities surrounding parks, which depend on business generated by OHV users.

NPS is in the process of issuing special regulations to designate routes and areas for off-road use in those units that permit ATVs and oversand vehicles. Nine of the 12 park units have special regulations in place: Big Cypress National Preserve; Gateway and Lake Meredith National Recreation Areas (NRAs); and Assateague, Cape Cod, Cape Hatteras, Fire Island, Gulf Islands, and Padre Island National Seashores.¹⁵ Three additional units are open to public use while NPS conducts environmental studies and develops special regulations: Glen Canyon¹⁶ and Curecanti¹⁷ NRAs, and Cape Lookout National Seashore.¹⁸ Also, Lake Meredith NRA and Big Cypress National Preserve are developing regulations to change the current boundaries for OHV riders.¹⁹ Other areas that once allowed public off-road use of ATVs and oversand vehicles are now closed to such use, including Little River Canyon National Preserve and Big South Fork National River and Recreation Area.²⁰

¹³ This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and Kristina Alexander, CRS Legislative Attorney.

¹⁴ Personal communication with Kyle Earnest, NPS Office of Legislative and Congressional Affairs, December 3, 2012; also special regulations and superintendent's compendia for individual park units. Some additional units permit use of ATVs and oversand vehicles by inholders, Native Americans, or others for specific limited purposes under a variety of authorizations. (An inholder is an owner of land within the boundaries of an NPS unit.)

¹⁵ Padre Island National Seashore has about 65 miles of authorized beach driving, but ATVs and dune buggies are not authorized in these areas. Drivers are instead required to have vehicles equipped with four-wheel drive. Personal communication with Kyle Earnest, NPS Office of Legislative and Congressional Affairs, December 6, 2012.

¹⁶ 72 *Fed. Reg.* 50393 (August 31, 2007), "Notice of Intent to Prepare an Environmental Impact Statement for an Off-Road Vehicle Management Plan, Glen Canyon National Recreation Area, Arizona and Utah." See the NPS Planning, Environment and Public Comment website at <http://parkplanning.nps.gov/projectHome.cfm?projectID=19520> for details. The public alternatives scoping period concluded November 30, 2010.

¹⁷ Updated information on Curecanti's Motorized Vehicle Access Plan and Environmental Assessment is available at <http://parkplanning.nps.gov/projectHome.cfm?projectID=19945>. The EA public comment period opened November 17, 2010, and closed January 15, 2011. A finding of no significant impact (FONSI) for the chosen plan (Alternative C in park planning documents) was issued on July 10, 2012.

¹⁸ 72 *Fed. Reg.* 44178 (August 7, 2007), "Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Cape Lookout National Seashore, NC." For further information, see <http://parkplanning.nps.gov/projectHome.cfm?projectID=15978>.

¹⁹ For Lake Meredith NRA, see 73 *Fed. Reg.* 33111 (June 11, 2008), "Notice of Intent to Prepare an Environmental Impact Statement (EIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Lake Meredith National Recreation Area, Texas." For additional information, see <http://parkplanning.nps.gov/projectHome.cfm?projectID=20192>. For Big Cypress National Preserve, see <http://parkplanning.nps.gov/projectHome.cfm?parkID=352&projectID=11164>; and see discussion below under "Site-Specific Conflicts."

²⁰ OHV use at Little River Canyon ceased in 2010. For additional information, see <http://www.nps.gov/liri/parkmgmt/index.htm>. Big South Fork is closed to recreational OHV riders and currently has no designated trails for them. However, designated multiple-use trails are open to ATV use by licensed hunters while actively hunting deer or wild boar. See <http://www.nps.gov/biso/parknews/gmpimplementation.htm>.

Some of NPS's regulatory actions respond to a 2005 lawsuit by the environmental organizations Friends of the Earth, the Wildlands Center for Preventing Roads, and the National Parks Conservation Association.²¹ The groups alleged that ATVs and other off-highway vehicles constituted a "serious threat" to NPS resources that the agency failed to address. The parties settled in 2008.²² NPS is still addressing some requirements of the settlement, such as the requirement that the agency develop environmental impact statements and special rules governing OHV use at Glen Canyon NRA and Cape Lookout National Seashore. (Both units have completed public scoping and are developing draft alternative OHV management plans and environmental assessments.) Also in response to the settlement agreement, NPS is encouraging education via the websites of units permitting OHV use.

Unauthorized ATV Use in the National Park System

As use of ATVs and other off-highway vehicles on federal lands has grown in recent decades, unauthorized use has also been reported in some areas, including NPS units. The extent of unauthorized OHV use in the National Park System is unclear. A 1999 survey from Bluewater Network found 40 park units with unauthorized use,²³ but a 2004 NPS survey found unauthorized use in "several parks" and generally "less than significant" resource damage.²⁴

NPS has addressed unauthorized OHV use through public outreach, education, and enforcement activities such as officer training and increased fines and penalties.²⁵ The agency also encourages units with illegal OHV use to pursue enforcement actions. However, some believe NPS budgetary and staff constraints limit enforcement effectiveness.²⁶

Site-Specific Conflicts

NPS's regulation of ATVs and oversand vehicles has sparked protest, including legal action, by both OHV supporters and opponents. Recent controversy has centered on actions at Florida's Big Cypress National Preserve and North Carolina's Cape Hatteras National Seashore.

²¹ Friends of the Earth v. U.S. Department of the Interior, No. 1:05-CV-2302 (D.D.C. Nov. 11, 2005) (*complaint*); see https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-63 and https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-64.

²² Friends of the Earth v. U.S. Department of the Interior, No. 1:05-CV-2302 (D.D.C. May 1, 2008) (*notice of settlement*).

²³ Bluewater Network, *Off-the-Track: America's National Parks under Siege*, 1999. Bluewater surveyed 108 park units for unauthorized use of ATVs, four-wheel drive vehicles (jeeps, SUVs, etc.), and dune, sand, and swamp buggies.

²⁴ Letter from Steve P. Martin, NPS Deputy Director of Operations, to Bluewater Network Executive Director Russell Long, May 3, 2005. No more recent estimates are available. In a 2009 GAO report (GAO, *Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles*, GAO-09-509, June 2009, at <http://www.gao.gov/new.items/d09509.pdf>), some park superintendents reported an increase in unauthorized use of ATVs and oversand vehicles at their units, but the responses were not quantified.

²⁵ Some of these activities also stem from the settlement of the Friends of the Earth v. Department of the Interior lawsuit cited in footnote 22. The settlement required NPS to implement a pilot public education and deterrence program at 10 units between 2008 and 2011 to address unauthorized OHV use. For example, NPS produced and distributed a brochure on off-road driving, available at <http://www.nps.gov/aboutus/loader.cfm?csModule=security/getfile&PageID=431411>.

²⁶ About half of the NPS officials surveyed in GAO's 2009 report identified staffing and financial resources as a "great challenge" in managing both authorized and unauthorized OHV use. See GAO, *Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles*, GAO-09-509, June 2009, pp. 37-38, at <http://www.gao.gov/new.items/d09509.pdf>.

Big Cypress National Preserve

There is ongoing disagreement over OHV trail designation at Big Cypress National Preserve. Conservation groups cite potential harm by ATVs and similar off-highway vehicles to the endangered Florida panther, the endangered red-cockaded woodpecker, and the threatened eastern indigo snake, and to their habitat and prey. Hunters and sportsmen's groups, concerned about access to areas for hunting, have opposed limitations on OHV use in the preserve. The preserve's enabling act authorizes motorized vehicles and hunting, fishing, and trapping, but also authorizes NPS to limit those activities to "assure [the area's] natural and ecological integrity."²⁷

Recent conflict has centered on the preserve's "addition lands," some 147,000 acres added to the site in 1988.²⁸ The NPS management plan for the addition lands establishes 130 miles of OHV trails and allows up to 650 off-road permits annually; it also proposes 47,067 acres for wilderness designation.²⁹ Hunters and sportsmen's groups oppose the plan's limitations on OHV use, including the proposed wilderness acreage and approximately 50,000 additional acres to be zoned "primitive backcountry." Both designations would ban OHVs from these lands. In contrast, conservationists oppose the 130 miles of new OHV trails, asserting that OHV use is "fragmenting the landscape" and causing air, water, and soil pollution.³⁰ Conservation groups filed lawsuits against NPS challenging the addition lands management plan in October and November 2011.³¹

OHV use is also at issue in the original preserve. In July 2012, the U.S. District Court for the Middle District of Florida held that NPS violated the National Environmental Policy Act³² and the Endangered Species Act when it reopened OHV routes in the preserve's Bear Island area.³³ The ruling closes approximately 25 miles of off-highway trails that had been opened in the area.³⁴

Separately, in 2011 NPS banned "dispersed" OHV access (outside of designated trails) in Big Cypress National Preserve. All use of ATVs and other off-highway vehicles within the original preserve must be only on designated primary and secondary trails.³⁵ Preserve Superintendent

²⁷ P.L. 93-440, §4.

²⁸ P.L. 100-301. Hunting, fishing, and trapping are also expressly authorized in the addition (§3(b)).

²⁹ See NPS's 2011 record of decision on the general management plan for the addition lands at <http://parkplanning.nps.gov/document.cfm?parkID=352&projectID=11164&documentID=38924>. See also the management plan at <http://www.nps.gov/bicy/parkmgmt/addition-lands-gmp.htm>; and the announcement of the final environmental impact statement (EIS) for the plan at 75 *Fed. Reg.* 71730 (November 24, 2010).

³⁰ See, for example, Public Employees for Environmental Responsibility, "Big Cypress ORV Plan Triggers Lawsuit Threat," press release, March 9, 2011, at <http://www.peer.org/news/news-releases/2011/03/09/big-cypress-orv-plan-triggers-lawsuit-threat/>. Also see letters on the NPS project site at <http://parkplanning.nps.gov/documentsList.cfm?parkID=352&projectID=11164>.

³¹ *National Parks Conservation Association v. U.S. Department of the Interior*, No. 2:11-cv-00578 (M.D. Fla. Oct. 10, 2011) (*complaint*). Safari Club International joined as an intervening defendant. The actions were consolidated before the District Court for the Middle District of Florida.

³² 42 U.S.C. §4332.

³³ *Defenders of Wildlife v. Salazar*, No. 2:08-cv-237, 2012 WL 2812309 (M.D. Fla. July 10, 2012).

³⁴ See David Fleshler, "Judge Shuts Some Big Cypress Trails to Swamp Buggies," *South Florida Sun-Sentinel*, July 11, 2012, at http://articles.sun-sentinel.com/2012-07-11/news/fl-vehicles-lawsuit-20120710_1_swamp-buggies-hunters-and-environmentalists-big-cypress-sportsmen-s-alliance; and Wildlands CPR, "Big Cypress National Preserve Protected from Off Road Vehicle Abuse," press release, July 11, 2012, at <http://www.wildlandscpr.org/blog/big-cypress-national-preserve-protected-road-vehicle-abuse>. The full opinion is available at <http://www.wildlandscpr.org/files/131%20-%20Opinion%20granting%20P%27s%20MFSJ.pdf>.

³⁵ See "Designated Trail Implementation" at <http://www.nps.gov/bicy/planyourvisit/designated-trail-> (continued...)

Pedro Ramos called the designated trail network “a big and positive step” in achieving resource protection while providing traditional access for sportsmen. However, the Big Cypress Sportsmen’s Alliance as well as environmental groups have criticized the designated trail network for providing too little or too much OHV access to preserve lands.³⁶

Cape Hatteras National Seashore

At Cape Hatteras National Seashore, concern has arisen over harm by beach buggies and other oversand vehicles³⁷ to endangered species such as the piping plover and three species of sea turtles. OHV users, fishermen, and local business have opposed vehicle restrictions as harmful to the local economy. The balance of preservation and use at the seashore is further weighted by its enabling act, which provides that the area shall be a “recreational area for the benefit and enjoyment of the people,” but also states that the “area shall be permanently reserved as a primitive wilderness,” except for those portions “especially adaptable for recreational uses.”³⁸

In January 2012, after public scoping and environmental review, NPS published special regulations for the use of motorized vehicles at the seashore.³⁹ The regulations designate 28 of the 67 seashore miles as year-round OHV routes, with 13 additional miles to be OHV-accessible seasonally, but the remaining 26 miles are designated as vehicle-free areas. To further protect wildlife, the regulations provide for night-driving restrictions during sea turtle nesting season. They also establish vehicle standards and require a fee-based weekly or seasonal OHV permit.

The 2012 regulations contrast with NPS’s 2007 interim OHV management plan for the seashore, which had allowed greater access for motorized vehicles.⁴⁰ The interim plan was the subject of a lawsuit by environmental groups against NPS, alleging that the plan failed to provide adequate protection for seashore resources, including rare turtle, avian, and plant species.⁴¹ The parties entered a consent decree agreeing that NPS would draft a management plan by December 31, 2010, resolving some of the resource protection issues. The final plan was challenged by an OHV group as representing a “foreordained” restriction on OHV use.⁴²

(...continued)

implementation.htm; and “Preserve Goes to Designated Trail Use Only for ORVs,” July 13, 2011, at <http://www.nps.gov/bicy/parknews/preserve-goes-to-designated-trail-use-only-for-orvs.htm>.

³⁶ See “National Park Service: Off-Road Vehicles Must Stay on Trails in Big Cypress,” *Naples Daily News*, July 13, 2011, at <http://m.naplesnews.com/news/2011/jul/13/national-park-service—road-vehicles-must-stay-tra/>.

³⁷ The seashore allows oversand vehicles but does not permit the use of ATVs or utility vehicles (UTVs). See National Park Service, “Cape Hatteras, Frequently Asked Questions: Off-Road Vehicle Use,” February 10, 2012, at <http://www.nps.gov/caha/planyourvisit/upload/02-10-12-FAQ-Site-Bulletin-for-CAHA-ORV-regulation.pdf>.

³⁸ 50 Stat. 670 (1937).

³⁹ 77 *Fed. Reg.* 3123.

⁴⁰ See National Park Service, “Cape Hatteras National Seashore: Interim Protected Species Management Strategy,” at <http://parkplanning.nps.gov/projectHome.cfm?parkID=358&projectID=13331>.

⁴¹ *Defenders of Wildlife v. National Park Service*, No. 2:07-CV-45 (E.D.N.C. 2008).

⁴² *Cape Hatteras Access Preservation Alliance v. Salazar*, No. 1:12-cv-00219 (D.D.C. February 9, 2012) (*complaint*). Additionally, OHV groups and North Carolina counties sued the Fish and Wildlife Service (FWS), arguing that critical habitat designation for the piping plover would limit OHV use on the seashore. The court held that FWS had complied with the law. *Cape Hatteras Access Preservation Alliance v. U.S. Dept. of Interior*, 731 F. Supp. 2d 15 (D.D.C. 2010).

Legislative Activity

In spring 2012, Members of Congress from the North Carolina delegation introduced H.R. 4094 and S. 2372, to overturn the 2012 regulations at Cape Hatteras and reinstate the 2007 interim management plan. In hearings on the bills, OHV advocates contended that the 2012 regulations reduce visitor access to local stores, hotels, and restaurants and are unnecessary for wildlife protection. Opponents of the bills asserted that OHV restrictions have already helped the seashore's endangered species and have not reduced visitation to the site.⁴³ H.R. 4094 was reported by the House Committee on Natural Resources on June 15, 2012, but was not enacted.

No broad legislation was introduced in the 112th Congress on the use of ATVs, beach buggies, and similar off-highway land vehicles in the National Park System. No bills on the use of these vehicles have been introduced in the 113th Congress as of January 2013.

Snowmobiles⁴⁴

Proposals to regulate recreational snowmobile use in NPS units have been controversial, with debate often mirroring the preservation/use conflict within the NPS mission. User groups contend that snowmobile use is necessary to access park sites in winter and helps support local communities and industry. Opponents are concerned about emissions, noise pollution, and wildlife damage from snowmobiles on parklands.

In 2000, NPS announced the enforcement of long-standing regulations that would have banned snowmobile use throughout almost all of the National Park System; later it modified its enforcement stance to allow snowmobile use to continue in the 43 park units that had permitted it prior to the announcement. To date, NPS has taken no further action on a general policy for snowmobiles.⁴⁵ However, NPS's management policies state that, outside Alaska, special regulations are required to designate snowmobile and oversnow vehicle routes after park planning determines such use to be appropriate.⁴⁶ Designated routes are limited to those used by motorboats and motorized vehicles in other seasons.

Site-Specific Conflict: Yellowstone National Park

Since 2000, regulatory and judicial actions to restrict or allow snowmobile use have been park-specific, centering on Yellowstone National Park and units near it, including the John D. Rockefeller, Jr. Memorial Parkway and Grand Teton National Park. The Clinton Administration issued final rules in 2001 to incrementally eliminate snowmobile use in these parks (with limited

⁴³ See U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, *Access Denied: Turning Away Visitors to National Parks*, hearing on H.R. 4094, 112th Cong., 2nd sess., April 27, 2012; and U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, hearing on S. 2372, 112th Cong., 2nd sess., June 27, 2012.

⁴⁴ This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and Kristina Alexander, CRS Legislative Attorney.

⁴⁵ For background information on snowmobile use in NPS units and its effects on the environment, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.

⁴⁶ National Park Service, *Management Policies 2006*, §8.2.3.2, at <http://www.nps.gov/policy/mp2006.pdf>.

exceptions) and substitute the use of multi-passenger “snowcoaches.”⁴⁷ The George W. Bush Administration took a different approach, replacing the Clinton rules with regulations in December 2003 that eliminated the snowmobile ban in favor of daily entry limits, use of trained guides, snowmobile emission standards, and monitoring by park managers for impacts from air and noise pollution.⁴⁸ The Clinton plan would not have allowed any snowmobiles at Yellowstone; the Bush plan would have allowed 950 per day. Both plans, as well as most subsequent revisions, were vacated by different federal courts.⁴⁹ Conflicting rulings in subsequent legal challenges created confusion for park visitors, local communities, and businesses, with many unsure what winter use rules were in effect at Yellowstone.⁵⁰

Recent regulations by the Obama Administration have allowed snowmobile use to continue, although at lower levels than in previous years. For the 2012-2013 winter season, Yellowstone is operating under winter use rules promulgated in November 2009,⁵¹ allowing daily entry to 318 commercially guided, best available technology (BAT)⁵² snowmobiles and 78 commercially

⁴⁷ 66 *Fed. Reg.* 7260 (January 22, 2001). The rules were part of the settlement of a May 1997 lawsuit, in which the Fund for Animals sued NPS for its policy regarding snowmobiles in Yellowstone and Grand Teton national parks. See *Fund for Animals v. Babbitt*, No. 1:97-cv-01126 (D.D.C. May 20, 1997) (*complaint*); and *Fund for Animals v. Babbitt*, No. 1:97-cv-01126 (D.D.C. September 23, 1997) (*settlement agreement*). NPS regulations at 36 C.F.R. §7.13 define a snowcoach as “a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.”

⁴⁸ 68 *Fed. Reg.* 69267 (December 11, 2003). The 2003 rules, which allowed 1,140 snowmobiles in all three parks combined, followed a lawsuit settlement between the Administration, the International Snowmobile Manufacturers Association, and the State of Wyoming, requiring NPS to revisit the snowmobile ban and consider any additional information on “cleaner, quieter” snowmobile technology.

⁴⁹ The 2003 plan was vacated by the District Court for the District of Columbia. *Fund for Animals v. Norton*, 294 F. Supp. 2d 92 (D.D.C. 2003). The D.C. court put the 2001 plan (as modified by a November 2002 plan) in place. However, the District Court for the District of Wyoming ruled the 2001 plan, which would ban all snowmobiles, violated the National Environmental Policy Act, describing it as “the product of a prejudged, political decision to ban snowmobiles from all the National Parks.” *International Snowmobile Mfrs. Ass’n v. Norton*, 340 F. Supp. 2d 1249, 1264 (D. Wyo. 2004).

⁵⁰ A 2004 final rule (69 *Fed. Reg.* 65348, November 10, 2004, available at <http://www.nps.gov/yell/planvisit/winteruse/fedregfinalrule11-10.pdf>) implemented a temporary winter use plan through 2006-2007, while NPS conducted planning and environmental analysis. A subsequent 2007 record of decision (November 20, 2007, at http://www.nps.gov/yell/planyourvisit/upload/rod_final.pdf) and final rule (72 *Fed. Reg.* 70781, December 13, 2007, at <http://www.nps.gov/yell/parkmgmt/upload/finalrule13Dec2007.pdf>) allowed a maximum of 540 snowmobiles and 83 snowcoaches per day. However, on September 15, 2008, the U.S. District Court for the District of Columbia vacated the 2007 final rule, finding that “[i]n contravention of the Organic Act, the Plan clearly elevates use over conservation of park resources and values.” *Greater Yellowstone Coalition v. Kempthorne*, No. 1:07-cv-02111, 577 F.Supp.2d 183, 210 (D.D.C. 2008). In November 2008, the Wyoming court ordered that the 2004 temporary plan be reinstated, allowing 720 snowmobiles daily into Yellowstone. *State of Wyoming v. Kempthorne*, No. 07-CV-319 (D.Wyo. November 7, 2008) (*order implementing temporary remedy*). The parties to the case before the District Court for the District of Columbia instead agreed that the proposed interim rule issued by NPS on November 5, 2008, would prevail for the 2008 season, authorizing a daily maximum of 318 snowmobiles and 78 snowcoaches (73 *Fed. Reg.* 65784). *Greater Yellowstone Coalition v. Kempthorne*, No. 1:07-cv-02111 (D.D.C. November 12, 2008) (“The Greater Yellowstone Coalition plaintiffs expect that the Park Service’s transitional plan will be finalized prior to the opening of Yellowstone’s winter season on December 15, 2008”). Instead, NPS issued a final rule complying with the Wyoming court on December 9, 2008, allowing up to 720 snowmobiles and 78 snowcoaches daily (73 *Fed. Reg.* 74606). That rule applied for only the 2008 season. On November 20, 2009, final regulations were issued allowing daily entry to 318 snowmobiles and 78 snowcoaches (74 *Fed. Reg.* 60159).

⁵¹ The 2009 rules were published at 74 *Fed. Reg.* 60159 (November 20, 2009). They were extended through subsequent winter seasons, most recently the 2012-2013 season (77 *Fed. Reg.* 74027, December 12, 2012).

⁵² For more on “best available technology” for snowmobiles, see CRS Report RL31149, *Snowmobiles: Environmental* (continued...)

guided snowcoaches. This contrasts with earlier years when up to 720 snowmobiles and 78 snowcoaches had been allowed.⁵³ (Although the 2003 plan would have allowed 950 snowmobiles per day in Yellowstone, it never went into effect.) At the same time, NPS has issued a draft plan and supplemental environmental impact statement intended to govern snowmobile use in the park for the 2014-2015 winter season onward.⁵⁴

The draft plan's preferred alternative would allow up to 110 "transportation events" per day, defined as the use of one snowcoach or one group of an average of seven snowmobiles. Most of the vehicles would be commercially guided,⁵⁵ and tour operators could decide how to allocate the "events" among snowmobiles and snowcoaches. BAT requirements for the vehicles would remain in place, and would be replaced by new standards in the 2017-2018 winter season.

Snowmobile user groups have supported the NPS preferred alternative in the draft plan, noting that it would likely allow more snow vehicles per day than current regulations.⁵⁶ The governor of Wyoming also praised the plan's flexibility and its deference to "market-driven" decisions.⁵⁷ Environmentalists have generally disapproved of the plan's preferred alternative, contending that the permitted snow vehicle use would damage the park's wildlife, air quality, and soundscape.⁵⁸ Conservation groups have also challenged claims by snowmobile advocates that vehicle technology is evolving to produce a "cleaner, quieter" experience for park visitors. They point to a recent NPS report finding some new snowmobile models to have higher emissions than the same companies' earlier models.⁵⁹

Actual snowmobile use in Yellowstone diminished over the past decade while the winter use rules evolved. During the years when 720 snowmobiles were permitted per day, the average daily use was 266 snowmobiles, with the average use on the year's peak day being 493 snowmobiles. Since the allowed limit changed to 318 snowmobiles, the average daily use has dropped to 191 snowmobiles, with the average peak day dropping to 279. Factors other than the NPS regulations also contribute to fluctuations in snowmobile usage, including yearly snowfall, gas prices, and the state of the economy.⁶⁰

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Standards and Access to National Parks, by James E. McCarthy.

⁵³ See, for example, 69 *Fed. Reg.* 65348, November 10, 2004.

⁵⁴ 77 *Fed. Reg.* 38824-38825, June 29, 2012. Subsequent regulations at 77 *Fed. Reg.* 53908 extended the period for public comment on the plan through October 4, 2012.

⁵⁵ Under current rules, all snowmobiles and snowcoaches must be commercially guided. The draft plan, in contrast, allows up to four "transportation events" of up to five snowmobiles each to be noncommercially guided.

⁵⁶ See, for example, remarks of the BlueRibbon Coalition in "Yellowstone Releases Draft Snowmobile Plan," *Greenwire*, June 29, 2012, at <http://www.eenews.net/Greenwire/2012/06/29/13>.

⁵⁷ "Wyo. Backs Yellowstone Snowmobile Plan," *Greenwire*, August 23, 2012, at <http://www.eenews.net/Greenwire/2012/08/23/10>.

⁵⁸ See, for example, National Parks Conservation Association, "Latest Plan for Yellowstone a Step Backwards," at http://www.npca.org/protecting-our-parks/air-land-water/motorized-access/yellowstone_winter.html.

⁵⁹ National Park Service, *Yellowstone Over-snow Vehicle Emission Tests 2012: Preliminary Report*, June 7, 2012, at http://www.nps.gov/yell/parkmgmt/upload/pem_of_snowcoaches-snowmobiles_3-2012.pdf.

⁶⁰ Figures from National Park Service, *Yellowstone National Park: Draft Winter Use Plan/Supplemental Environmental Impact Statement*, Summer 2012, Chapter 3, p. 137, at <http://parkplanning.nps.gov/document.cfm?parkID=111&projectID=40806&documentID=48306>. The 720-snowmobile limit was in effect for winter 2004-2005 through winter 2008-2009. The 318-snowmobile limit has been in effect since winter 2009-2010. Through all these years, the daily snowcoach limit has been 78 (except in winter 2011-2012, when it dropped to 76). Actual daily average snowcoach use (continued...)

Legislative Activity

No legislation pertaining to snowmobiles in NPS units was introduced in the 112th Congress, and none has been introduced in the 113th Congress as of January 2013. Some earlier Congresses included language on snowmobiles in Yellowstone in appropriations bills, generally to ensure that judicial rulings could not deny snowmobiles entry during a specified winter use season.

Aircraft Overflights⁶¹

NPS is to provide for the public enjoyment of parklands while protecting resources, including natural quiet, 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 may depend on providing overflights, with ripple effects on local businesses. The National Parks Overflights Act of 1987 (P.L. 100-91) prohibited flights below the canyon's rim and directed NPS to recommend a flight control plan for Grand Canyon that would provide a "substantial restoration of the natural quiet." It required an NPS study of the effects of all aircraft overflights, which was submitted to Congress in 1994.⁶²

Aircraft overflights are also a concern for other park units. The National Parks Air Tour Management Act of 2000 (P.L. 106-181, Title VIII, hereinafter "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 Air Tour Act also requires FAA to establish "reasonably achievable" requirements for quiet aircraft technology for Grand Canyon within one year of enactment 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.

Site-Specific Conflict: Grand Canyon National Park

Several actions have been taken to achieve the substantial restoration of natural quiet at Grand Canyon in furtherance of P.L. 100-91, enacted some 25 years ago. First, an FAA *limitations rule* capped the annual number of commercial air tour overflights at Grand Canyon.⁶³ Second, the *airspace rule* expanded flight-free zones and restrictive routing over the canyon.⁶⁴ Third, the FAA issued a final rule establishing a standard for quiet technology for certain aircraft in commercial

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rose from 26 in winter 2004-2005 to 35 in winter 2011-2012, while the peak-day use hovered between 55 and 63.

⁶¹ This section was prepared by Carol Hardy-Vincent, CRS Specialist in Natural Resources Policy.

⁶² U.S. Department of the Interior, National Park Service, *Report to Congress: Report on Effects of Aircraft Overflights on the National Park System*, listed under the topic heading "Documents" at http://www.nps.gov/grca/naturescience/airoverflights_documents.htm.

⁶³ 65 *Fed. Reg.* 17708 (April 4, 2000), effective May 4, 2000.

⁶⁴ 71 *Fed. Reg.* 9439 (February 24, 2006).

air tour operations over Grand Canyon.⁶⁵ The rule identifies which aircraft meet the standard. Fourth, data on natural ambient sound levels were collected by NPS and are being used, together with air tour reported flight operations data and radar tracking data, to model air tour traffic and aircraft noise at Grand Canyon. The model is being used to measure success in restoring natural quiet, and the noise impact of various alternatives.

On February 4, 2011, NPS published a notice of availability of a draft environmental impact statement (DEIS) on options that could be taken to restore natural quiet at Grand Canyon.⁶⁶ The agency had anticipated issuing a final environmental impact statement in the summer of 2012, but postponed that action in light of the enactment on July 6, 2012, of P.L. 112-141, which contains provisions pertaining to the determination and restoration of natural quiet at the park. Those provisions generally have been viewed as potentially resulting in curtailment of NPS planning actions to impose stricter noise standards. NPS is continuing to assess the provisions to determine how they will affect its planning effort. (For additional information on P.L. 112-141, see “Legislative Activity,” below.)

In the DEIS, the “substantial restoration of natural quiet” was defined as being achieved when reduction of noise from aircraft at or below 17,999 feet resulted in at least 50% of the park having natural quiet for 75% to 100% of the day. NPS regards 50% as the minimum restoration goal. The DEIS presented four alternatives, including the status quo, with a goal of restoring natural quiet while allowing for a viable air tour industry. According to NPS, among other provisions, the preferred alternative would

- restore natural quiet in 67% of the park during the peak season 10 years after implementation (up from 53% under 2011 management),
- allow for 65,000 annual air tour operations (an increase over actual use of approximately 57,000, but a decrease from the current annual allocation of 93,971),
- limit daily air tours to 364 (up 50 from the peak day of 316 in 2005, but currently with no daily cap),
- move most non-air tour operations outside the park,
- establish higher flight altitudes near the North Rim,
- provide incentives for quiet technology aircraft and require full conversion to quiet technology over 10 years,
- provide an hour of quiet before sunset and after sunrise, and
- raise flight-free zone ceilings to 17,999 feet (up from 14,499 generally; 7,999 at Sanup zone).⁶⁷

⁶⁵ 70 *Fed. Reg.* 16084 (March 29, 2005).

⁶⁶ 76 *Fed. Reg.* 6496 (February 4, 2011). The DEIS is on the NPS website at <http://parkplanning.nps.gov/documentsList.cfm?parkID=65&projectID=28052>.

⁶⁷ This summary is derived from the text of the DEIS, as well as other NPS documents such as a press release of February 2, 2011, at <http://parkplanning.nps.gov/document.cfm?parkID=65&projectID=28052&documentID=40021>.

Legislative Activity

The 112th Congress enacted broad transportation legislation, P.L. 112-141, which contains provisions on air tour management at Grand Canyon National Park. Some provisions set out standards to be used by NPS in restoring natural quiet at the park. Another states that the “substantial restoration of natural quiet” would be considered achieved if 50% of the park is free of sound from commercial air tours for at least 75% of each day. This standard is viewed as essentially maintaining the status quo, while the NPS preferred alternative had sought to expand substantial restoration of natural quiet to 67% of the park. Advocates of the legislation sought to set standards for air tours as an alternative to the planning efforts underway by NPS, which they viewed as too restrictive and likely to have adverse effects on the air tour industry.⁶⁸ Opponents of the legislation expressed concern that it would limit NPS’s ability to protect Grand Canyon resources and visitors from noise.

Like the NPS preferred alternative, the law requires conversion to quiet aircraft technology and incentives for conversion to quiet aircraft. However, the provisions and approaches of NPS and the law are not identical. For instance, the law requires all commercial air tour aircraft operating in the park to convert to quiet aircraft technology within 15 years of enactment, while the NPS preferred alternative provided for conversion to quiet technology over 10 years.

Air Tour Management Plans

Other regulatory actions have affected commercial air tours at park units generally, particularly in furtherance of the Air Tour Act. The Air Tour Act final rule⁶⁹ requires air tour operators to apply for authority to fly over national parks and abutting tribal lands. FAA received applications for commercial air tours over more than 100 of the 398 park units, and has granted interim operating authority to all applicants. Application triggers development of an Air Tour Management Plan (ATMP) by FAA and NPS for each unit where none exists.⁷⁰ 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 review under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §§4321-4370f). The FAA and NPS are developing ATMPs at more than a dozen areas,⁷¹ but none have been completed to date. Development of ATMPs has been proceeding much more slowly than had been expected.⁷²

⁶⁸ See “Congressman Gosar Introduces Legislation to Protect the Grand Canyon Tourism Industry,” press release of March 19, 2012, on the website of Representative Gosar at <http://gosar.house.gov/press-release/congressman-gosar-introduces-legislation-protect-grand-canyon-tourism-economy>.

⁶⁹ 67 *Fed. Reg.* 65661 (October 25, 2002).

⁷⁰ FAA provides information on the National Parks Air Tour Management Program via its website at http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/.

⁷¹ FAA identified 13 park units for which the agencies are developing ATMPs, but some ATMPs will cover multiple park units. For instance, the ATMP for the Golden Gate National Recreation Area will include the Fort Point National Historic Site, Muir Woods National Monument, and San Francisco Maritime National Historical Park. See 76 *Fed. Reg.* 62495 (October 7, 2011).

⁷² A January 2006 Government Accountability Office (GAO) report addressed the impact of the delay in implementation of the Air Tour Act. The report concluded that the delay has had little effect on park units, but has limited the ability of tour operators to make major business decisions. The agency identified four issues for Congress and the agencies to address to improve implementation, relating to the lack of flexibility for determining which parks need plans, an absence of NPS funding for plan development, limited ability to verify and enforce the number of air tours, and inadequate FAA guidance on the act’s safety requirements. See U.S. Government Accountability Office, (continued...)

The agencies have been determining the ambient sound levels at park units for which ATMPs are being developed, as a baseline for measuring noise sources and impacts. In general, acoustic data are being collected for comparison during the two seasons with the most and least overflights—summer and winter. In park units with year-round overflights, sound data generally are being collected in all seasons. Data usually are obtained during at least a 25-day period, at various locations throughout a park. Both the sound pressure level (i.e., intensity) and the frequency (i.e., pitch) are recorded.⁷³

Some park units are also developing soundscape management plans to manage sound, in part caused by overflights and other aircraft, as well as other human-caused noises such as from cars, buses, machines, and voices. For instance, Zion National Park (UT) issued a Soundscape Management Plan to address the increase in sources and intensity of noises in recent decades that could adversely impact visitor enjoyment and the health of ecosystems. The plan seeks in part to identify sources of sound, develop soundscape standards and ensure that standards are being met, eliminate or mitigate sounds incompatible with park purposes, and restore degraded soundscapes.⁷⁴

Legislative Activity

Separate from the transportation legislation enacted in P.L. 112-141, the 112th Congress also enacted broad aviation legislation with provisions affecting commercial air tours over park units generally. The provisions, contained in P.L. 112-95, seek to expedite and streamline agency actions, in part because of the slow progress in completing ATMPs. They provide that, in lieu of an ATMP, the NPS director and FAA administrator may enter into a voluntary agreement with a commercial air tour operator that would govern commercial air tours over a park unit. Before implementing a voluntary agreement, the agencies must provide for an opportunity for public review and consult with Indian tribes on affected tribal lands; agreements may be implemented “without further administrative or environmental process” beyond that described in the law.⁷⁵ Voluntary agreements may contain provisions to establish conditions for the conduct of commercial air tours, ensure compliance, provide for fees for commercial air tours, and provide incentives for the adoption of quiet aircraft technology by commercial tour operators. Park units with 50 or fewer annual air tour flights are exempt from the requirement for an ATMP or voluntary agreement. However, the NPS director can withdraw an exemption in order to protect park resources and values or visitor use and enjoyment.

The law also allows agencies to modify interim operating authority, which could provide for additional authority because interim conditions have prevailed for longer than had been anticipated. It also establishes reporting requirements for commercial air tour operators on the number of air tours over each national park unit.

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National Parks Air Tour Management Act: More Flexibility and Better Enforcement Needed, GAO-06-263, (Washington, DC: GPO, January 2006). The report, together with information on agency actions on GAO’s recommendations, is available on the GAO website at <http://www.gao.gov/products/GAO-06-263>.

⁷³ For more information on sound management in NPS units, see the NPS website at http://www.nps.gov/zion/parkmgmt/upload/ZNP-Soundscape-Plan_Sep_2010.pdf.

⁷⁴ The plan is available on the website of the NPS at http://www.nps.gov/zion/parkmgmt/upload/ZNP-Soundscape-Plan_Sep_2010.pdf.

⁷⁵ P.L. 112-95, Title V, Sec. 501(c).

P.L. 112-95 did not include certain provisions that were contained in the Senate-passed version of the legislation, such as provisions that would have allowed an air tour operator to transfer operating authority for commercial air tours to another air tour operator, required the Secretary of the Interior to assess a fee on commercial air tour operators sufficient to pay the costs of developing ATMPs, and rescinded the operating authority of a commercial air tour operator that does not pay the fee or file reports required by the law.

Another provision of P.L. 112-95 pertains only to Crater Lake National Park. It allows the NPS director to deny an application to begin commercial air tours at the park before the establishment of an air tour management plan. Subsequently, P.L. 112-141 extended the provision to Great Smoky Mountains National Park, and to applications to expand operations at both park units.

Personal Watercraft (PWC)⁷⁶

Personal watercraft (PWC) are high-speed, very shallow-draft,⁷⁷ 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, PWC include watercraft known by brand and generic names such as Jet Ski[®], Sea-Doo[®], Surf-jet[®], water sled, wet jet, Wavejammer, Wetbike, and WaveRunner[®]. PWC represent a small segment of the recreational boat market—the National Marine Manufacturers Association (NMMA) estimated that 1.24 million PWC were in use in 2011, about 8% of 16.35 million recreational boats.⁷⁸ However, the number of PWC accidents has raised concerns. There were 764 PWC injuries and 44 deaths reported for 2011, constituting 19% of reported accidents among all recreational boats.⁷⁹ In addition to safety issues, critics of PWC use cite environmental concerns, including noise, air, and water pollution, as well as damage to land, plants, and wildlife. Supporters of access for PWC contend that technological advances enable manufacturers to produce cleaner, more efficient machines, and they point to economic benefits generated by the industry. Recent controversies have focused on regulatory actions that would restrict recreational use of or access for these vehicles, often in specific park units.

Administrative Actions

NPS has evaluated PWC use in units where motorized boats are allowed, and has issued park-specific regulations, partly in response to a lawsuit settlement that prohibited PWC in park units until these steps were taken.⁸⁰ For 13 units, the agency has authorized PWC use in designated

⁷⁶ This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and Kristina Alexander, CRS Legislative Attorney.

⁷⁷ A shallow-draft vessel is one in which the keel (the bottom of the hull) is not far below the waterline.

⁷⁸ See http://nmma.net/assets/cabinets/Cabinet445/2011_abstract_preview.pdf, Table 1.3, “Recreational Boats in Use by Type,” from the NMMA 2011 *Recreational Boating Statistical Abstract*.

⁷⁹ See U.S. Department of Homeland Security and U.S. Coast Guard, *Recreational Boating Statistics 2011*, at <http://www.uscgboating.org/assets/1/Publications/2011BoatingStatisticsreport.pdf>, Executive Summary (p. 6), and Table 1 (p. 7), “Vessel Types with the Top Casualty Numbers.”

⁸⁰ In 2000, NPS issued a rule (65 *Fed. Reg.* 15077) prohibiting PWC use in 66 of the 87 units that allowed motorized boats. The rule allowed PWC use to continue at the remaining 21 units while NPS developed regulations, but a 2001 negotiated settlement of a lawsuit by Bluewater Network and Earth Island Institute over the PWC rule prohibited PWC from the 21 areas unless the NPS initiated park-specific rules and environmental assessments. *Bluewater Network v.* (continued...)

areas: Lake Mead, Glen Canyon, Lake Meredith, Lake Roosevelt, Amistad, Chickasaw, Bighorn Canyon, and Curecanti National Recreation Areas; Assateague, Fire Island, Gulf Islands, and Cape Lookout National Seashores; and Pictured Rocks National Lakeshore. One unit, Big Thicket National Preserve, is closed to PWC pending completion of environmental assessments and rulemaking.⁸¹

In May 2008, a coalition of environmental groups filed a lawsuit in the U.S. District Court for the District of Columbia seeking reinstatement of PWC bans at two units: Gulf Islands National Seashore and Pictured Rocks National Lakeshore.⁸² In July 2010, the court held that NPS violated the National Environmental Policy Act by not fully considering PWC impacts on wildlife, water quality, air quality, noise, and visitor experiences at these park units.⁸³ The court ordered NPS to re-evaluate environmental assessments justifying PWC use, but did not vacate or overturn the current rules allowing them.

Legislative Activity

No general legislation affecting PWC use was introduced in the 112th Congress, and none has been introduced in the 113th Congress as of January 2013.

Mountain Bicycles⁸⁴

Mountain biking advocates, such as the International Mountain Biking Association (IMBA), actively support opening additional trails in the National Park System to mountain bikers. Other groups have expressed concern that increasing the number of trails for mountain bikes could cause resource damage, such as erosion, and diminish the enjoyment of visitors on foot or horseback.

General NPS Rule

On July 6, 2012, NPS finalized a rule broadly addressing mountain bicycles within NPS units.⁸⁵ The final rule revises previous regulations and park management policies that required special regulations to designate bicycle trails other than those on park roads, in parking lots, and within developed areas such as campgrounds.⁸⁶ The intent is to provide “park superintendents with a

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Stanton, No. 1:00-CV-2093 (D.D.C. April 12, 2001) (*stipulated settlement agreement*). In 2002, NPS prohibited PWC use in 5 of the 21 areas that completed an environmental review process: Cape Cod and Cumberland Island National Seashores, Delaware Water Gap and Whiskeytown NRAs, and Indiana Dunes National Seashore. Two units, Padre Island National Seashore and Gateway NRA, took no action, thereby continuing the PWC ban, and one (Big Thicket National Preserve) is in the rulemaking process. The agency has authorized some PWC use in the 13 remaining areas.

⁸¹ Big Thicket is developing a draft general management plan and EIS. Additional information is available at <http://parkplanning.nps.gov/projectHome.cfm?parkID=32&projectID=23065>.

⁸² *Bluewater Network v. Kempthorne*, No. 1:08-cv-841 (D.D.C. 2008) (*complaint*). See http://www.nationalparkstraveler.com/files/Jet_Ski_Lawsuit.pdf for a copy of the complaint.

⁸³ *Bluewater Network v. Kempthorne*, No. 1:08-cv-841, 721 F. Supp. 2d 7 (D.D.C. 2010).

⁸⁴ This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy.

⁸⁵ 77 *Fed. Reg.* 39927 (July 6, 2012).

⁸⁶ The previous regulations are at 36 C.F.R. §4.30. For the management policies, see National Park Service, (continued...)

more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate in the park unit they manage.” It authorizes park superintendents to open existing hiking and horse trails for biking without promulgating special regulations, although it continues to require input from the public and environmental assessments in conjunction with park-specific trail decisions. Special regulations continue to be required for any bicycle trails involving new construction outside developed areas.

Site-Specific Actions

Currently, more than 40 NPS units allow mountain biking on dirt trails and/or dirt roads.⁸⁷ The IMBA and NPS renewed a five-year partnership agreement (through 2015) to explore additional opportunities for mountain biking in park units. Several park units are contemplating or moving forward on bicycle-applicable rules and/or multi-use trails.

For example, on September 12, 2012, NPS finalized a rule authorizing bicycle use on four trails at Mammoth Cave National Park that are outside developed areas of the park and are not park roads.⁸⁸ The rule implements elements of the park’s Comprehensive Trail Management Plan.⁸⁹ On October 4, 2011, NPS issued a final rule designating specified multi-use pathways—generally near existing park roads—as routes for bicycle use at Grand Teton National Park. Improving opportunities for non-motorized recreation activities such as bicycling was a major focus of the transportation planning process Grand Teton initiated in 2001.⁹⁰ In December 2010, NPS released an assessment of constructing a new multi-use trail for hiking and mountain biking in undeveloped backcountry at Big Bend National Park.⁹¹ NPS signed a finding of no significant impact on the environment for this project in February 2012.

Legislative Activity

No legislation on the use of mountain bicycles in the National Park System was introduced in the 112th Congress, and none has been introduced in the 113th Congress as of January 2013.

Conclusion

Motorized recreation on NPS lands sometimes brings into conflict the two parts of the NPS mission: to conserve public land while at the same time providing for its enjoyment by the public. In NPS units that permit ATVs; dune, sand, or swamp buggies; snowmobiles; aircraft overflights; personal watercraft; and/or mountain bikes, the desire for access to these recreational opportunities has clashed with concerns about resource damage and disturbance of non-motorized

(...continued)

Management Policies 2006, §9.2.2.5, at <http://www.nps.gov/policy/mp2006.pdf>.

⁸⁷ For a list of units that allow mountain biking, see the IMBA website at <http://www.imba.com/nps-trails-roads>.

⁸⁸ *77 Fed. Reg.* 56117 (September 12, 2012).

⁸⁹ See <http://parkplanning.nps.gov/document.cfm?parkID=392&projectID=17179&documentID=21776>.

⁹⁰ *76 Fed. Reg.* 61266 (October 4, 2011). For information on Grand Teton’s transportation planning, see <http://parkplanning.nps.gov/projectHome.cfm?projectID=10940>.

⁹¹ See NPS documentation at <http://parkplanning.nps.gov/projectHome.cfm?projectID=14611>.

pursuits. Adding to the conflict are economic considerations, with some asserting that restrictions on motorized recreation harm local industries that serve vehicle users, while others contend that growth in motorized recreation damages valuable natural resources that also draw visitors to the parks and support gateway communities. NPS's laws, regulations, and policies generally emphasize the conservation of park resources in conservation/use conflicts, and NPS has fewer lands open to off-highway vehicles than do other federal land management agencies such as the Bureau of Land Management and the Forest Service.

NPS is currently evaluating off-highway vehicle use in a number of park units and issuing park-specific regulations. Many such regulations have already been completed. They have sometimes been controversial, engendering lawsuits by both OHV supporters and opponents. Congress has introduced legislation to address some park regulations, such as H.R. 4094 and S. 2372 in the 112th Congress, which would have overturned OHV regulations issued in 2012 for Cape Hatteras National Seashore.

The 113th Congress may conduct oversight or consider legislation on motorized recreation in the National Park System. For example, Congress may consider whether broad legislation is needed to address motorized access to some or all federal lands, or to address the impacts of motorized travel on natural resources. Congress could also conduct oversight hearings to evaluate NPS management of motorized recreation.⁹² In addition, Congress may introduce specific legislation that addresses motorized recreation at individual park units.

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⁹² In the 112th Congress, a June 22, 2011, hearing by the House Natural Resources Committee, Subcommittee on National Parks, Forests, and Public Lands, on "Opportunities for Outdoor Recreation on Public Lands" addressed motorized recreation on BLM and FS lands rather than those of the National Park Service. For more information, see <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=246553>; and CRS Report R42920, *Motorized Recreation on Bureau of Land Management and Forest Service Lands*, by Carol Hardy Vincent and Katie Hoover.