

# CRS Issue Brief for Congress

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## **National Park Management and Recreation**

**Updated August 27, 2004**

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## National Park Management and Recreation

### SUMMARY

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

**Maintenance Backlog.** There is debate over the funding level to meet the physical maintenance obligations of the land management agencies and whether to provide new funds or use funds from existing programs for them. Attention has focused on the NPS's multibillion-dollar maintenance backlog, which the Bush Administration claims to be making "significant progress" towards eliminating. Congress includes money for some backlog needs in Interior appropriations laws, and is considering the needs of agencies for FY2005.

**Personal Watercraft and Snowmobiles.** Motorized recreation, notably the use of personal watercraft (PWC) and snowmobiles in NPS units, has fueled debate over the balance between recreation on, and protection of, park lands. Regulatory actions that restrict use of these vehicles are particularly controversial. The NPS currently is evaluating PWC use in some areas. NPS issued a plan to allow snowmobiles in three Yellowstone area parks for up to three years.

**Aircraft Overflights.** Grand Canyon National Park is at the center of a conflict over whether to limit air tours over national parks to reduce noise. The NPS and the Federal Aviation Administration continue to work on

implementing a 1987 law that sought to reduce noise at Grand Canyon as well as a 2000 law that regulates overflights at other park units. Recent regulations require air tour operators to seek authority to fly over park units, and the agencies then must develop Air Tour Management Plans at park units. Also, the Federal Aviation Administration is developing regulations to provide safety standards for commercial air tours, including over park units.

**Recreational Fee Demonstration Program.** The "Fee Demo" Program was created to allow the NPS and other land management agencies to test the feasibility of supplemental self-financing through new fees. The Bush Administration supports making the program permanent, and Congress is considering related legislation for the NPS only as well as for several federal agencies. P.L. 108-108 extended the program through December 2005 for fee collection and FY2008 for expenditures.

**The National Trails System.** While designation of trails is often popular, issues remain regarding funding, expansion, and quality of trails. Congress is considering bills to amend the National Trails System Act to provide authority to acquire land from willing sellers for certain trails; to authorize studies of routes for possible additions to the system; and to add routes to the system. Congress also is considering legislation to reauthorize the Recreational Trails Program. Further, legislation has been introduced to create a new category of trails, called National Discovery Trails.



## **MOST RECENT DEVELOPMENTS**

- A subcommittee hearing was held on March 25, 2004 on H.R. 1517, to amend the Land and Water Conservation Fund to make the fund available for maintenance of the land management agencies.
- Ten NPS areas that are closed to personal watercraft are pursuing a rulemaking process to permit PWC use. Separate final rules now authorize PWC use at six NPS areas.
- On August 19, 2004, the NPS issued a Temporary Winter Use Plans Environmental Assessment allowing snowmobiles access to Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway for up to three years.
- On July 22, 2004, a Senate subcommittee held a hearing on implementation of the National Parks Air Tour Management Act of 2000.
- On May 19, 2004, the Senate passed S. 1107 to establish a permanent Recreational Fee Demonstration Program for the National Park Service.
- H.R. 4865 was introduced on July 20, 2004 to authorize the creation of National Discovery Trails and to establish the American Discovery Trail.

## **BACKGROUND AND ANALYSIS**

### **Introduction**

The National Park System (see [<http://www.nps.gov/legacy/>]) is perhaps the federal land category best known to the public. The National Park Service (NPS) in the Department of the Interior (DOI) manages 388 units, including 56 units formally entitled “national parks” and a host of other designations. The system has more than 84 million acres.<sup>1</sup> The NPS had an appropriation of approximately \$2.26 billion in FY2004, employs about 21,000 permanent and seasonal employees, and uses an additional 90,000 volunteers. An estimated 266 million people visited park units in 2003.

The NPS statutory mission is multifaceted: to conserve, preserve, protect, and interpret the natural, cultural, and historic resources of the nation for the public and to provide for their use and enjoyment by the public. The mission’s dichotomy of use and preservation can sometimes be inherently contradictory. In general, activities which harvest or remove resources from units of the system are not allowed. The NPS also supports the preservation of natural and historic places and promotes outdoor recreation outside the system through grant and technical assistance programs. Attention centers on how to balance the recreational use of parklands with the preservation of park resources, and on determining appropriate levels and sources of funding to maintain NPS facilities and to manage NPS programs.

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

## History

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

There also were efforts to protect the sites and structures of early Native American cultures and other special sites. The Antiquities Act of 1906 authorized the President to proclaim national monuments on federal lands that contain “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” (16 U.S.C. §431). Most national monuments are managed by the NPS. (For more information, see CRS Report RS20902, *National Monument Issues*, by Carol Hardy Vincent.)

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

## Overview of Issues

The 108<sup>th</sup> Congress is considering legislation or conducting oversight on many NPS-related issues. Several major issues are covered in this report: funding for the maintenance backlog of the NPS and other agencies, regulation of personal watercraft, use of snowmobiles, overflights of aircraft, extension of the Recreational Fee Demonstration Program, and expansion of the National Trails System. While in some cases these issues are relevant to other federal lands and agencies, this report does not comprehensively cover issues primarily affecting other lands/agencies. For background on federal land management generally, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent. Information on BLM and Forest Service lands is contained in CRS Issue Brief IB10076, *Bureau of Land Management (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent. Information on appropriations for the NPS is included in CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren.

NPS-related issues not covered in this brief include funding of the Land and Water Conservation Fund (LWCF), creating new park units, and designating heritage areas. First, the LWCF is the principal federal source of money for the NPS (and other agencies) to acquire new recreation lands. Issues include the size of the fund, need for an annual appropriation, and Congress's role in choosing lands to acquire. (For more information, see CRS Report RS21503, *Land and Water Conservation Fund: Current Status and Issues*, by Jeffrey A. Zinn.) Second, how national park units are created and what qualities make an area eligible to be an NPS unit are of continuing interest. (For more information, see CRS Report RS20158, *National Park System: Establishing New Units*, by Carol Hardy Vincent.) Third, legislation is pending to study, designate, and fund particular National Heritage Areas (NHAs) as well as to establish a process and criteria for designating and managing NHAs. (For more information, see CRS Issue Brief IB10126, *Heritage Areas: Background, Proposals, and Current Issues*, by Carol Hardy Vincent and David Whiteman.)

## Current Issues

### Maintenance Backlog (by Carol Hardy Vincent)

**Background.** The four federal land management agencies — the NPS, Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and Forest Service (FS) — have extensive physical maintenance of buildings, roads, trails, recreation sites, and other infrastructure. There is debate over the levels of funds to maintain this infrastructure, whether to use funds from other programs, and how to balance the maintenance of the existing infrastructure with the acquisition of new assets. Congress continues to focus on the agencies' "deferred maintenance," often called the "maintenance backlog" — essentially maintenance that could not be done when scheduled or planned. The estimate of deferred maintenance for the four agencies for FY2003 ranges from \$11.68 billion to \$16.47 billion, for an average of \$14.08 billion, according to agency documents. The FS and the NPS together account for most of the backlog, with the FS estimated at \$6.79 billion and the NPS at between \$3.54 billion and \$7.59 billion, for an NPS average of \$5.57 billion. The FWS share is estimated between \$1.01 billion and \$1.36 billion, with the BLM between \$0.34 billion and \$0.73 billion. The backlogs have been attributed to decades of funding shortfalls. The agencies assert that deferred maintenance of facilities accelerates their rate of deterioration, increases their repair costs, and decreases their value.

Attention has centered on the NPS maintenance backlog. Since FY2000, the NPS (and other DOI agencies) has submitted annually a maintenance and capital improvement plan identifying deferred maintenance projects by priority over a five-year period. Also, an Interior Department Inspector General report (December 2001) recommended establishing a single maintenance budget funded through one appropriation for the entire department.

**Administrative Actions.** In FY2002, the Bush Administration proposed to eliminate the NPS backlog (estimated at \$4.9 billion in 2002) over five years, through a combination of transportation fund money, appropriated funds, and revenues from recreation fees. On July 2, 2003, the NPS issued a report and accompanying press release describing the "significant progress" made in addressing the NPS maintenance backlog (see [<http://www.nps.gov/accompreport2003/>]). Further, the Director of the NPS asserted that the agency is

“on track to exceed the President’s goal of investing \$4.9 billion,” with \$3.9 billion proposed to date toward that goal (including money requested for FY2005).<sup>2</sup> By contrast, the National Parks Conservation Association (among others) contends that the Administration is not on track to eliminate the backlog, and that national parks have an annual funding shortfall of about 32%. The association also asserts that the Administration has supported little new money to address park maintenance, and has “mostly manipulated” accounts to appear to be on track to eliminate the backlog.

It is uncertain if the NPS backlog has decreased, increased, or remained the same over the past five years. For instance, while estimates of the NPS backlog increased from an average of \$4.25 billion in FY1999 to \$5.57 billion in FY2003, it is unclear what portion of the change is due to the addition of maintenance work that was not done on time or the availability of more precise estimates of the backlog. Further, it is unclear how much money has been provided for backlogged maintenance over this time period. Annual presidential budget requests and appropriations laws do not typically specify the portion of funds for backlogged maintenance, but instead combine funding for all NPS construction, facility operation, and regular and deferred maintenance. According to DOI, the appropriation for NPS deferred maintenance increased from \$223.0 million in FY1999 to \$311.2 million in FY2003, with a peak of \$363.2 million in FY2002. The President has requested an FY2005 appropriation of \$332.5 million for NPS deferred maintenance. The House-passed Interior appropriations bill (H.R. 4568) does not specify the amount of funds for deferred maintenance needs of the NPS.

The agencies are defining and quantifying their maintenance needs. Efforts include developing computerized systems for tracking and prioritizing maintenance projects and collecting comprehensive data on the condition of facilities. Without such data, the extent and nature of deferred maintenance might not be fully known, potentially hampering efforts to overcome the backlog.

**Legislative Activity.** On July 8, 2003, the National Parks Subcommittee of the Senate Committee on Energy and Natural Resources held a hearing on the NPS maintenance backlog. The hearing covered efforts to assess the condition of all facilities, estimate costs of repairing facilities, and determine maintenance priorities. The Park Service has acknowledged that until the effort is completed — by FY2006 — it will not have the data to accurately estimate its maintenance backlog and assess the agency’s success in eliminating it. To date, the NPS has completed facility condition assessments on all but four parks. Witnesses from the private sector testified that the backlog results from a lack of adequate funding for annual maintenance and that substantial additional funds are needed so that the backlog does not continue to grow.

A March 25, 2004, subcommittee hearing focused on H.R. 1517, which seeks to amend the Land and Water Conservation Fund to make the fund available to the Park Service and the other land management agencies for maintenance. The bill requires that within five years these agencies reduce their backlogged maintenance by at least 20%. Additional reductions

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<sup>2</sup> Testimony of Fran P. Mainella, National Park Service, Department of the Interior, House Committee on Resources, Subcommittee on National Parks, Recreation, and Public Lands, Feb. 26, 2004, H. Hrg. 108-86, p. 13.

in backlogged maintenance are to be made during subsequent five year periods. The measure also requires the agencies to report to Congress, every five years, on progress in reducing the backlog and priorities for construction and maintenance.

## **Personal Watercraft** (by Kori Calvert)

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

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

The NPS has been working on such park-specific rules and analyses for the 21 areas. For 6 of them, the NPS lifted PWC bans and authorized their use in designated areas: Lake Mead NRA, Assateague National Seashore, Glen Canyon NRA’s Lake Powell, Lake Meredith NRA, Amistad NRA, and Lake Roosevelt NRA. Ten of the areas are working on environmental reviews and special regulations to allow PWC use. The NPS has proposed rules to re-open 3 of them: Chickasaw NRA (March 25, 2004), Bighorn Canyon NRA (May 5, 2004), and Fire Island National Seashore (August 23, 2004). The agency prohibited PWC use in another 5 of the 21 areas (effective April 22, 2002) that had completed an environmental review process and favored PWC bans: the Cape Cod and Cumberland Island National Seashores, Delaware Water Gap and Whiskeytown NRAs, and Indiana Dunes National Lakeshore. On April 19, 2002, a federal judge denied an injunction sought by PWC users and manufacturers to overturn these bans.

**Legislative Activity.** H.R. 1831, introduced April 12, 2003, would extend the grace period for PWC use in Glen Canyon NRA, and H.R. 3621 would extend the grace period for PWC use in Lake Roosevelt NRA. No action has been taken.



## **Snowmobiles** (by Kori Calvert)

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

**Administrative Actions.** Regulatory action to restrict or allow snowmobile use has centered on Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway. The Clinton Administration issued rules on snowmobile use in these areas (66 *Fed. Reg.* 7260, Jan. 22, 2001) to incrementally eliminate snowmobile use, with limited exceptions, in favor of multi-passenger “snow coaches” by the 2003/2004 winter season. The Bush Administration announced in April 2001 that it would allow the rule to stand. A subsequent lawsuit settlement agreement (June 29, 2001) required NPS to prepare a supplemental environmental impact statement (SEIS; 66 *Fed. Reg.* 39197, July 27, 2001) on snowmobile use in these areas and to decide whether to keep or modify the ban. The resulting SEIS outlined a controversial preferred alternative to allow continued snowmobile use within specific phased-in parameters (68 *Fed. Reg.* 8616, Feb. 24, 2003). These included daily limits on snowmobile numbers; use of cleaner, 4-stroke engines; commercially-guided access for up to 80% of all snowmobiles; NPS-certified guides and a reservation system for the remaining 20% non-commercial entries; development of snowcoach technology for winter transit; and monitoring of effects of noise and pollution on park resources.

The Record of Decision (ROD) ([\[http://www.nps.gov/grte/winteruse/FinalROD.pdf\]](http://www.nps.gov/grte/winteruse/FinalROD.pdf)) announced on March 25, 2003 and a final rule issued December 11, 2003 (68 *Fed. Reg.* 69267) reversed the snowmobile ban. The rule establishes daily snowmobile entry limits in each of the three areas. It outlines an “adaptive management strategy” to allow park managers to take remedial action if park resource monitoring indicates unacceptable impacts from air and noise pollution. Actions could include adjustments to Best Available Technology (BAT) requirements or daily entry limits, road closures, or timed entries. Plan proponents characterize the ROD as an attempt to achieve equilibrium between motorized and non-motorized recreation, while opponents note that the plan identifies the Clinton Administration snowcoaches-only policy as the “environmentally preferred alternative.”

Conservation organizations challenged the proposed regulations. On December 16, 2003, the day before Yellowstone’s winter season opened, D.C. District Court Judge Emmet Sullivan struck down the Bush Administration final rule (see [\[http://www.nps.gov/yell/planvisit/winteruse/index.htm\]](http://www.nps.gov/yell/planvisit/winteruse/index.htm)). His decision restored the Clinton Administration snowmobile ban, effective with the 2004-2005 winter season, and reduced snowmobile entries for the 2003-2004 winter season by about 50 percent from historic levels. The D.C. District Court (December 29, 2003) and the D.C. Circuit Court of Appeals (January 13, 2004) denied motions to stay Judge Sullivan’s decision. The judge’s opinion also required NPS to re-examine the impact of trail grooming on bison and other wildlife, and to respond

to a 1999 rulemaking petition by Bluewater Network to ban snowmobiling in the entire National Park System by February 17, 2004.

Both the International Snowmobile Manufacturers Association (ISMA) and the state of Wyoming petitioned the Federal District Court for Wyoming to overturn the Clinton Administration rules. On February 10, 2004, Judge Clarence Brimmer issued a temporary injunction against implementing the Clinton-era plan (see [[http://www.nps.gov/grte/winteruse/winteruse\\_021104.htm](http://www.nps.gov/grte/winteruse/winteruse_021104.htm)]). He ordered the Park Service to issue temporary snowmobile rules for the remaining 2004 winter season ending March 14, 2004. NPS issued these rules on February 11, allowing 780 snowmobiles to enter Yellowstone daily, a 287 machine increase; and 140 snowmobiles to enter Grand Teton and Rockefeller Parkway, a 90 machine increase. On February 17, 2004, the Park Service denied the 1999 rulemaking petition to ban snowmobiling throughout the National Park System.

On March 10, 2004, with only days remaining in the snowmobile winter season, the 10<sup>th</sup> Circuit Court in Denver denied an appeal of Judge Brimmer's decision, determining that the appellants did not make an "adequate showing of irreparable harm." NPS announced its decision to initiate a temporary winter use management plan for the three parks on June 2, 2004 (see [<http://www.nps.gov/yell/press/0448.htm>]). NPS asked the Wyoming federal court to stay its case until new rules are published. Meanwhile, on June 30, 2004, Judge Sullivan ordered the Park Service to issue its new snowmobile rules at least 30 days before trail grooming for the winter season begins.

The NPS released its Temporary Winter Use Plans Environmental Assessment on August 19, 2004 (see [<http://www.nps.gov/yell/planvisit/winteruse/index.htm>]). It highlights a preferred alternative (Alternative 4) to allow up to 720 commercially guided Yellowstone snowmobile entries daily during the winter seasons for up to three years. Commercial guides would not be required for the 140 daily snowmobile entries to Grand Teton and the Rockefeller Parkway. The plan includes BAT requirements for all snowmobiles, with minor exceptions. A proposed rule to implement the interim winter use plan is anticipated by early September. (For additional information, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.)

**Legislative Activity.** Voting 224-198, on June 17, 2004, the House rejected an amendment to the FY2005 Interior Appropriations bill (H.R. 4568) to reinstate the phaseout of snowmobiles at the Yellowstone area parks. House and Senate bills (H.R. 1130 and S. 965), entitled *The Yellowstone Protection Act*, require implementation of the Clinton Administration final rulemaking to phase out snowmobiles in Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway. No action has been taken on these bills.

During the first session of the 108<sup>th</sup> Congress, the House considered but did not adopt floor amendments related to snowmobile use in parks. On a tie vote (210-210) on July 17, 2003, the House failed to approve an FY2004 Interior Appropriations (H.R. 2691) amendment that essentially would have halted snowmobile use at Yellowstone and Grand Teton National Parks and John D. Rockefeller Memorial Parkway, as stipulated in the Clinton Administration rule. A House amendment intending to provide funds for the NPS to purchase snow coaches was offered on September 4, 2003, to the FY2004 Transportation, Treasury appropriations bill (H.R. 2989) but was subsequently withdrawn.

## **Aircraft Overflights** (by Carol Hardy Vincent and Kori Calvert)

**Background.** Grand Canyon National Park has been the focal point of a conflict between groups seeking to limit overflights of national parks and air tour operators whose economic stability, with ripple effects on local businesses, may depend on providing overflights. The National Parks Overflights Act of 1987 (P.L. 100-91) directed NPS to recommend a flight control plan for Grand Canyon that would provide a “substantial restoration of the natural quiet” and prohibited flights below the Canyon’s rim. An October 3, 2002 Senate hearing explored why the act has not been fully implemented.

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

**Administrative Actions.** President Clinton directed the Secretary of Transportation to develop regulations to address the impacts of transportation, including overflights, on national parks (61 *Fed. Reg.* 18229, April 22, 1996), and set 2008 as the date to substantially restore natural quiet at Grand Canyon National Park. That mandate, and congressional directives, have segued into an ongoing and contentious rulemaking process.

Three FAA actions affecting Grand Canyon have been controversial. First, a “limitations rule” capped the annual number of commercial air tour overflights at Grand Canyon (effective May 4, 2000). An August, 2002 appeals court decision directed the FAA to use NPS “natural quiet” standards and to consider commercial flight-generated noise impacts in developing air tour overflight regulations. Also, the NPS clarified that restoration of natural quiet for *the day* means on *any given day* (68 *Fed. Reg.* 63129, Nov. 7, 2003), which is viewed as likely to lead to increased quiet. The air tour industry seeks exemptions to air tour caps, curfews, and air route restrictions if quiet aircraft technology is used. Second, the “airspace rule,” imposes increased flight-free zones and restrictive routing over the Canyon (65 *Fed. Reg.* 17736 and 17708, April 4, 2000). New routes and airspace restrictions for the Canyon’s west end Special Flight Rules Area (SFRA) took effect April 19, 2001. To address air tour operators’ safety concerns, east end SFRA airspace changes have been delayed (68 *Fed. Reg.* 9496) until February 20, 2006.

Third, on March 24, 2003, the FAA published a supplemental notice of proposed rulemaking (68 *Fed. Reg.* 14276) to establish a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon. The goal is to help the NPS achieve its mandate (under P.L. 100-91) to provide for the substantial restoration of natural quiet at Grand Canyon, and to determine the role of quiet technology in that regard. The proposal also seeks to comply with an FAA mandate (under P.L. 106-181) to designate reasonably achievable requirements for aircraft to be considered as using quiet aircraft technology. Currently, the agency is formulating a final rule.

Other regulatory actions affect commercial air tours at park units. The FAA issued an Air Tour Act final rule (67 *Fed. Reg.* 65661, October 25, 2002,) to complete the definition of “commercial air tour operation.” The rule required air tour operators to apply for authority, by January 23, 2003, to fly over national park and abutting tribal lands. The FAA received applications for operating authority for commercial air tours over 107 of the 388 park units as well as six tribal lands. This application process triggers the development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where none exists [<http://www.atmp.faa.gov/default.htm>]. The purpose of the plans is to mitigate or prevent any adverse impacts of commercial air tours on natural and cultural resources, visitor experiences, and tribal lands. Development of an ATMP requires an environmental analysis under the National Environmental Policy Act of 1969 (NEPA). Currently, the FAA and NPS are developing ATMPs for nine areas.

Additionally, an FAA final rule (68 *Fed. Reg.* 60832), effective October 26, 2003, continues indefinitely existing safety requirements for air tours conducted in Hawaii. Using the Hawaii rule as a model, on October 22, 2003, the FAA issued a proposed rule (68 *Fed. Reg.* 60572) providing safety standards for commercial air tours nationally, including over Grand Canyon and other park units. The proposed rule is intended to increase the safety of tours by requiring certification of air tour operators and by establishing safety standards, including regarding low level flights, over water flights, and visibility limits. It supplements existing authorities governing tours over park units by providing safety requirements. The proposal has been controversial. Many pilots and flight organizations as well as some Members of Congress have opposed it, asserting that the cost of compliance would make it infeasible for many to continue operating and that existing regulations are sufficient to keep air tours safe. The FAA estimates that 700 small operators would not be able to comply with the regulations and thus might cease to provide services. The National Transportation Safety Board, which has recommended increased safety standards, has criticized the proposed merger of helicopter and airplane traffic as increasing the chance of collisions. The FAA is assessing public comment on the proposal.

**Legislative Activity.** P.L. 108-176 directed the Secretary of Transportation to issue a final rule, no later than January 2005, establishing standards for quiet technology that are “reasonably achievable” at Grand Canyon. It also established a mediation process for rulemaking disputes. Conferees (H.R. 2115) stated that they were “greatly disappointed with the lack of progress” the NPS and FAA have made in managing the impacts on national parks of noise from air tours. They directed the agencies to expeditiously and collaboratively develop ATMPs and determine environmental impacts of air tours.

On July 22, 2004, the Senate Energy and Natural Resources Subcommittee on National Parks held a hearing on implementation of the Air Tour Act. FAA and NPS witnesses stated that the agencies have finalized a Memorandum of Understanding guiding cooperative efforts on implementing the act. The agencies are developing an overall implementation plan covering the preparation of environmental documents, prioritization of park units, and role of agency personnel. According to agency and other witnesses, ongoing issues include methods to establish sound levels and assess potential impacts on park units, guidelines for determining quiet technology, the accuracy of data on flights provided by air tour operators, the issuance of interim operating authority to new tour operators, funding and timing for completing ATMPs, and the relationship and roles of the agencies.

## **Recreational Fee Demonstration Program** (by Carol Hardy Vincent)

**Background.** Congress is considering whether to extend, amend, or make permanent the Recreational Fee Demonstration Program (“Fee Demo,” 16 U.S.C. §460l - 6a note). The program allows the four major federal land management agencies — NPS, Bureau of Land Management, Fish and Wildlife Service, and Forest Service — to test the feasibility of recovering some of the costs of operating recreation sites. Each agency can establish any number of fee projects and spend the revenue collected without further appropriation; at least 80% of the funds are to be retained at the collecting site. The NPS typically collects far more revenues than the other agencies combined, with revenues estimated at \$123 million for each of FY2004 and FY2005. The agencies may spend the money on the repair and maintenance backlog; interpretation; signs; habitat and facility enhancement; resource preservation; maintenance and operation, including the costs of fee collection; and law enforcement. Originally a three-year trial authorized in FY1996, the program has been extended through December 2005 for fee collection with the revenue available to be spent through FY2008.

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

**Administrative Actions.** The Bush Administration supports making the Fee Demo Program permanent, but appears not to have submitted a related legislative proposal to date. The Interagency Recreation Fee Leadership Council, which facilitates coordination and consistency among the agencies on recreation fees, has developed seven guiding principles for a permanent program (see [<http://www.doi.gov/oc1/2002/s2473.htm>]). Further, the Administration has testified in support of an interagency program, a new fee structure to replace entrance and use fees, a single interagency national pass, and site-specific and regional multi-entity passes. The Administration supports using a large portion of the NPS collections to address the deferred maintenance backlog. In the past, approximately 60% of NPS Fee Demo funds have been allocated for the backlog, including new construction that may result from deferred maintenance. The NPS has asserted that there may be a need to shift the current 80%/20% split in funds to increase monies for deferred maintenance.

**Legislative Activity.** A House bill (H.R. 3283) has been introduced to establish a permanent recreation fee program for the four federal land management agencies as well as the Bureau of Reclamation. The bill outlines criteria for establishing fees; authorizes basic and expanded recreation fees as well as special recreation permit fees; provides for the distribution and use of collected fees; and creates an interagency recreation pass, among other provisions. On May 6, 2004, a House subcommittee held a hearing on the bill. While some witnesses expressed support for the bill in its current form, others proposed modifications, opposed any fee program, or recommended an extension rather than a permanent program. Another bill, S. 1107, would establish a permanent recreation fee program for the National Park Service only. The Secretary of the Interior is to establish fees based on an analysis of factors, including benefits and services to the visitor and comparable fees, and may allow discounted or free admission or use. The bill seeks to coordinate fees collected under the recreation fee program with fees collected for other purposes. In general, 80% of fees are to be returned to the collecting site, but not less than 90% of fees can be

retained by areas with revenue sharing agreements with states. The Secretary determines how the Park Service uses the balance of the collections, and no more than 15% of revenues can be used to administer the program. The Secretary is to report to Congress every three years on the implementation of the program. On May 19, 2004, the bill passed the Senate.

A hearing of the Public Lands and Forests Subcommittee of the Senate Committee on Energy and Natural Resources, held April 21, 2004, focused on the implementation of Fee Demo by the Forest Service and BLM. DOI and FS officials supported an interagency program and discussed changes made in agency implementation to improve the program. Other witnesses testified on the shortcomings and successes of Fee Demo and whether and how to create a permanent program. One witness testified against access fees and another favored sharing FS collections with counties. Also, a September 17, 2003, hearing by the Subcommittee on Forests and Forest Health of the House Committee on Natural Resources focused on the Forest Service's Fee Demo program.

The Fee Demo Program was extended for 15 months (through December 2005) for fee collection and for one year (through September 2008) for fee expenditures (P.L. 108-108). The program was extended through an appropriations law to allow the authorizing committees more time to consider whether to create a permanent program, according to the Appropriations Committee. Also, a GAO report (GAO-02-10) found that agencies in the program could increase innovation in setting and collecting fees, improve program coordination and consistency, and establish performance measures for program managers. The agencies continue to make administrative changes to address concerns.

## **The National Trails System** (by Sandra L. Johnson)

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

**Administrative Actions.** During 2003, the Administration designated 27 new National Recreation Trails (NRTs). Specifically, on June 5, 2003, the Director of the NPS announced the designation by Interior Secretary Gale Norton of 23 NRTs in 12 states. Also, Ann Veneman, Secretary of Agriculture, designated 4 non-motorized NRTs on USDA lands. According to Veneman “these designations contribute to President Bush’s Healthier US initiative by providing opportunities for the public to exercise in the great outdoors.”

The NPS coordinates a traveling exhibition to commemorate the Bicentennial of Lewis and Clark’s epic expedition of the West to find an overland route to the Pacific Ocean. The exhibition — *Corps of Discovery II: 200 Years to the Future* — launched the three-year (2003-2006) national celebration, which will extend from Virginia to the Oregon coast along the trail traveled by Lewis and Clark and in places used to prepare for the journey. It is a joint effort of federal and state agencies, together with private and nonprofit organizations.

**Legislative Activity.** The Federal Surface Transportation Program is a major funding source for trails, shared use paths, and related projects in the United States. Prior to 1991, highway funds were to be used only for highway projects and selected bicycle transportation facilities. Many trail projects paths became eligible to receive federal highway program funds with the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L. 102-240), subsequently reauthorized as the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21, P.L. 105-178). TEA-21 was to expire on September 30, 2003; however, Congress has passed five extensions to continue funding for highway programs. The most recent (P.L. 108-280) extended funding through September 30, 2004.

ISTEA established the National Recreational Trails Funding Program as a state-administered, federal-aid grant program to provide funds to states to develop and maintain recreational trails and facilities for nonmotorized and motorized recreational and diverse trail uses. Under TEA-21, the program was reauthorized and renamed the Recreational Trails Program (RTP). TEA-21 authorized \$30 million for the RTP for FY1998, \$40 million for FY1999, and \$50 million annually for FY2000-FY2003.

Currently, Congress is considering legislation to reauthorize the RTP, as part of broad Highway Trust Fund legislation. H.R. 3550, the Transportation Equity Act: A Legacy for Users (TEA-LU), would fund the RTP at \$53 million for FY2004, \$70 million for FY2005, \$80 million for FY2006, \$90 million for FY2007, \$100 million for FY2008, and \$110 million for FY2009. A conference was held on the bill on June 9 and 23 and July 7, 2004. In earlier action, the Senate passed its reauthorization bill (S. 1072) to fund the RTP at \$60 million per year through FY2009, then subsequently incorporated this bill into H.R. 3550. Also, hearings were held on H.R. 2088, an earlier version of H.R. 3550.

H.R. 4865 has been introduced to amend the National Trails System Act by adding *National Discovery Trails* as a new category of long-distance trails, and designating the *American Discovery Trail* (ADT) as the nation's first coast-to-coast National Discovery Trail. If designated by Congress, National Discovery Trails would be multi-modal and inter-urban, and protection of the routes would lie primarily with state and local jurisdictions, not the federal government. There currently are four categories of trails created under the National Trails System Act: national scenic, national historic, national recreation, and side-and-connecting. National scenic and national historic trails are created by Congress. H.R. 4865 would establish the ADT, stretching for more than 6,000 miles across 15 states, as the only coast-to-coast, nonmotorized recreational trail. The ADT would connect several national scenic, historic, and recreation trails, as well as many other local and regional trails. P.L. 102-461 had directed the Secretary of the Interior to study the feasibility and desirability of adding the ADT to the NTS. The study, completed in 1995 and submitted to Congress in 1998, indicated that the ADT had unique attributes to possibly qualify as a fifth category of national trail. The 104th-107th Congresses considered, but did not enact, ADT legislation.

Two national trails bills passed the Senate during the first session of the 108<sup>th</sup> Congress. S. 635 would direct the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails: the California, Oregon, Pony Express, and Mormon Pioneer National Historic Trails. S. 651 would amend the NTS Act to clarify federal authority to acquire land from willing sellers for certain trails. It would limit land acquisitions along the Oregon, Mormon Pioneer, Lewis and Clark, Iditarod, and Nez Perce National Historic Trails and the Continental Divide National Scenic Trail to an average of

not more than one-quarter mile on either side of the trail. The measure would provide federal land managers the authority to acquire land beyond the one-quarter width for the North Country, Ice Age, and Potomac Heritage National Scenic Trails. On February 26, 2004, the National Trails System Willing Seller Act (H.R. 3860) was introduced to provide willing seller authority for the nine trails which do not have land acquisition authority. H.R. 3860 is a companion bill to S. 651, which passed the Senate in July 2003.

Two other national trails bills were among those examined at a May 6, 2003 hearing of the Senate Energy and Natural Resources Subcommittee on National Parks. S. 324 seeks to clarify federal authority to acquire land from willing sellers for certain trails. It would give acquisition authority to the Ice Age and the North Country NSTs. S. 634, authorizing a study of the feasibility of designating the Trail of the Ancients, was not supported at the hearing by the NPS since “the roads proposed for this trail are highways built by the States to connect the various sites...” The area may be studied for possible designation as a National Heritage Area instead of a trail. Some of the hearing testimony addressed the impact on private property rights and development, including oil and gas drilling, of possible federal restrictions on activities within view of a designated trail.

Measures introduced in the 108<sup>th</sup> Congress to designate, study, or extend specific trails are shown in the following table. Additional bills related to the National Trails System more generally are listed in the “Legislation” section below.

Bill Number	Type	Title	Status
H.R. 461/H.R. 2327/S. 642/ S. 2018	Extend	Lewis and Clark NHT Amendments Act of 2003	Introduced
H.R. 897	Study	Mississippi River Trail Study Act	Introduced
H.R. 1051	Study	Pioneer National Historic Trails Studies Act	Introduced
S. 635	Study	Pioneer National Historic Trails Studies Act	Passed Senate; Referred to House Comm.
H.R. 1520	Study	Forks of the Ohio NST Study Act of 2003	Introduced
H.R. 3342	Extend	Trail of Tears National Historic Trail	Introduced
H.R. 3626 H.R. 4122 S. 2052	Desig.	El Camino Real de los Tejas National Historic Trail	Introduced Introduced Ordered Reported
H.R. 4240 S. 2354	Study	NHT or NST Study of the Arizona Trail	Introduced
S. 634	Study	NHT Study of the Trail of the Ancients	Hearing Held



## LEGISLATION

### **P.L. 108-176, H.R. 2115 (Young, Don)**

Contains a provision directing the Secretary of Transportation to issue a final rule, no later than January 2005, establishing standards for quiet technology that are “reasonably achievable” at Grand Canyon National Park. Signed into law December 12, 2003.

### **P.L. 108-280, H.R. 4916 (Young, Don)**

Extends surface transportation funding through September 30, 2004. Signed into law July 30, 2004.

### **H.R. 1130 (Holt), S. 965 (Reid)**

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

### **H.R. 1517 (Graves)**

Amends the Land and Water Conservation Fund to limit the use of funds to maintenance needs of the land management agencies and to require those agencies to reduce backlogged maintenance. Introduced March 31, 2003; referred to Committee on Resources and Committee on Agriculture. Subcommittee hearing held March 25, 2004.

### **H.R. 1831 (Renzi)**

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

### **H.R. 2088, H.R. 3550, and H.R. 3994 (Young, Don); S. 1072 (Inhofe)**

Reauthorize the Recreational Trails Program through FY2009, as part of Highway Trust Fund legislation. H.R. 2088 introduced May 14, 2003; referred to nine committees. Subcommittee hearings held May 2003. Conference held on H.R. 3550, June 9, June 23, and July 7, 2004. H.R. 3994 ordered reported by Committee on Transportation and Infrastructure March 24, 2004. S. 1072 incorporated by Senate into H.R. 3550, May 19, 2004.

### **H.R. 3283 (Regula)**

Establishes a permanent recreation fee program for four federal land management agencies and the Bureau of Reclamation. Introduced October 8, 2003; referred to Committee on Resources and Committee on Agriculture. Subcommittee hearing held May 6, 2004.

### **H.R. 3532 (Ryun)**

Amends the National Trails System Act to improve the acquisition of railroad rights-of-way for interim use as public trails by applying the procedures that govern other federal real estate acquisitions. Introduced November 19, 2003; referred to Committee on Resources.

### **H.R. 3621 (Nethercutt)**

Extends the grace period for personal watercraft use in Lake Roosevelt National Recreation Area until December 31, 2004. Introduced November 21, 2003; referred to Committee on Resources.

**H.R. 3860 (Peterson, John E.)**

Amends the National Trails System Act to clarify federal authority for acquiring land from willing sellers for the majority of the trails in the system. Introduced February 26, 2004; referred to Committee on Resources.

**H.R. 4865 (Bereuter)**

Amends the National Trails System Act to create a new category of trails called National Discovery Trails, and designates the American Discovery Trail as the first such trail. Introduced July 20, 2004; referred to Committee on Resources.

**S. 324 (Levin)**

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

**S. 651 (Allard)**

The National Trails System Willing Seller Act seeks to clarify federal authority for acquiring land from willing sellers for four NSTs and five NHTs. Passed Senate July 17, 2003. Referred to House Committee on Resources July 18, 2003.

**S. 917 (Murkowski)**

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

**S. 1107 (Thomas)**

Establishes a permanent recreation fee program for the National Park Service. Passed Senate May 19, 2004. Referred to House Committee on Resources May 20, 2004.

## **CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS**

U.S. Congress, House Committee on Resources, Subcommittee on National Parks, Recreation, and Public Lands, *Fiscal Year 2005 Budget for the National Park Service and Bureau of Land Management and Ongoing Efforts to Reduce Maintenance Backlogs*, H. Hrg. 108-86, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Feb. 26, 2004, Wash., D.C., 2004.

— *The Impact Land Acquisition Has on the National Park Service Maintenance Backlog, Park Service Management Priorities, and Local Communities*, H. Hrg. 108-61, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess., Sept. 27, 2003, Sherman Oaks, CA.

U.S. Congress, Senate Committee on Energy and Natural Resources, *National Trails System Willing Seller Act*, S.Rept. 108-95, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess., July 11, 2003, Wash., DC, 2003.

— *Pioneer National Historic Trails Studies Act*, S.Rept. 108-64, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess., June 8, 2003, Wash., DC, 2003.

—*Recreational Fee Authority Act of 2004*, S.Rept. 108-233, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., March 9, 2004, Wash., DC, 2004.

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

—*National Parks Backlog*, S. Hrg. 108-94, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess., July 8, 2003, Wash., DC, 2003.

—*Sleeping Bear Dunes; Recreational Fee Demonstration; and Schools in Yosemite National Park*, S. Hrg. 108-193, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess., Sept. 9, 2003, Wash., DC, 2003.

## **FOR ADDITIONAL READING**

CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren.

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

CRS Issue Brief IB10126, *Heritage Areas: Background, Proposals, and Current Issues*, by Carol Hardy Vincent and David Whiteman.

CRS Report RS21503, *Land and Water Conservation Fund: Current Status and Issues*, by Jeffrey A. Zinn.

CRS Report RS20902, *National Monument Issues*, by Carol Hardy Vincent.

CRS Report RS20158, *National Park System: Establishing New Units*, by Carol Hardy Vincent.

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

U.S. General Accounting Office, *Information on Forest Service Management of Revenue from the Fee Demonstration Program*, GAO-03-470, Washington, DC, April 2003.

—*Federal Lands: Agencies Need to Assess the Impact of Personal Watercraft and Snowmobile Use*, GAO/RCED-00-243, Washington, DC, September 2000.