

# CRS Issue Brief for Congress

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## Recreation on Federal Lands

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## Recreation on Federal Lands

### SUMMARY

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

**Motorized Recreation in the National Forests and on BLM Land.** The use of off-highway vehicles (OHVs) on Forest Service (FS) and Bureau of Land Management (BLM) lands has been particularly controversial. Both agencies decide the extent of allowed OHV use through their planning processes. The FS proposed new regulations (July 15, 2004) governing OHV use that would require designation of areas open for OHV use and prohibit OHV use outside designated areas. The BLM issued a national management strategy (2001) governing motorized OHV use on BLM lands and is addressing related transportation issues through other national strategies. A July 13, 2005, House Resources joint subcommittee hearing examined motorized recreation use on federal lands.

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

controversial. The NPS currently is evaluating PWC and snowmobile use in several areas. Service-wide management policies, including those encompassing motorized and nonmotorized forms of recreation, are being reviewed.

**Aircraft Overflights.** Grand Canyon National Park is at the center of a conflict over whether to limit air tours over national parks to reduce noise. The NPS and the Federal Aviation Administration (FAA) continue to work to implement a 1987 law that sought to reduce noise at Grand Canyon as well as a 2000 law that regulates overflights at other park units. Recent regulations require air tour operators to seek authority to fly over park units; the agencies then must develop Air Tour Management Plans at those park units. Additionally, the FAA is developing regulations to provide safety standards for commercial air tours.

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

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

## MOST RECENT DEVELOPMENTS

- BLM is currently making off-highway vehicle (OHV) designations during the planning process on an area-by-area basis.
- On July 13, 2005, a House Resources joint subcommittee hearing examined motorized recreation use on federal lands.
- On October 19, 2005, NPS released a draft Management Policies document to update and revise current policies, including on recreational uses.
- On August 2, 2005, the president signed into law the FY2006 Interior appropriations bill (H.R. 2361, P.L. 109-54). It includes language to ensure that an NPS interim final rule allowing snowmobiles in three Yellowstone area parks remains in effect throughout the 2005-2006 winter season.
- On October 14, 2005, Judge Clarence Brimmer, Federal District Court for Wyoming, upheld the NPS interim rule limiting Yellowstone National Park's daily snowmobile entries to 720 and requiring that they be commercially guided.
- On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59; SAFETEA-LU). It includes provisions reauthorizing and funding the Recreational Trails Program through FY2009.

## BACKGROUND AND ANALYSIS

### Introduction

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

The growth and development of western states, proximity of many urban areas to public lands, and growing popularity of outdoor recreation have translated into high demand for a variety of recreational opportunities on federal lands and waters. Agency figures indicate an overall increase in recreational visits to federal lands in recent decades. Recent DOI figures show 67 million visits to 3,300 BLM recreational sites; 277 million recreation visits to 388 NPS units; 39 million visits to 544 FWS wildlife refuges; and 90 million visits to Bureau of Reclamation recreation sites. (See [[http://www.doiu.nbc.gov/orientation/tables\\_all.cfm](http://www.doiu.nbc.gov/orientation/tables_all.cfm)].) The Forest Service reports 211 million recreation visits to its national forests and grasslands, and the Corps 400 million visits for the most recent year available.

## Motorized Recreation

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

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

A subsequent executive order (E.O. 11989, May 24, 1977) amended the 1972 order to exclude military, emergency, and law enforcement vehicles from the definition of off-road vehicles (to which restrictions would apply). It provided authority to immediately close areas

or trails if OHVs were causing or would cause considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails. Areas could remain closed until the manager determined that “the adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.” Also, each agency head was authorized to adopt the policy that areas could be closed to OHV use except for those areas or trails that are specifically designated as open to such use. This meant that only open areas would have to be marked, a lesser burden on the agencies.

## Overview of Issues

Federal land managers face a difficult task in managing lands to achieve multiple purposes: to provide recreational opportunities for popular, but often conflicting, motorized and nonmotorized recreational uses; to protect resources for future generations; and to determine which lands should be open for development (e.g., timber harvesting, livestock grazing, and energy development). BLM and FS managers formulate guidance, in some cases, on the nature and extent of land uses, including OHV use, through regulations, national policies, land and resource management plans, and area-specific decisions. The NPS is developing regulatory guidance and planning documents for individual park units. NPS also released draft Management Policies for a 90-day public review (*70 Fed. Reg.* 60852, October 19, 2005), part of ongoing efforts to review and revise policies guiding management throughout the national park system, including changing recreational uses and technology. (See [<http://data2.itc.nps.gov/npspolicy/index.cfm>] for current (2001) and proposed Management Policies.) The draft language requires “balance” between “conservation and enjoyment,” whereas current policy states that “conservation is to be predominant” in conservation/enjoyment conflicts (sec. 1.4.3). The draft defines key concepts (“conserve, preserve, protect,” “impairment,” “appropriate use,” and “unacceptable impacts”). The proposed policies also revise language pertaining to soundscape management (sec. 4.9), use of motorized equipment (sec. 8.2), and off-road vehicle use (sec. 8.2.3). The extent to which these and other changes represent a shift in emphasis for management of motorized and other recreation is uncertain.

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

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

Gorte and Carol Hardy Vincent. For information on appropriations for federal land management agencies, see CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.

## Current Issues

### Motorized Recreation on BLM Land (by Carol Hardy Vincent)

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

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

**Administrative Actions.** To manage the diverse recreation demands on its lands, in May 2003 BLM issued *The BLM's Priorities for Recreation and Visitor Services*. The document provides guidance to BLM managers in taking actions affecting recreation during FY2003-FY2007. It contains three goals: to improve access for recreation; ensure a quality experience; and provide for fair value in recreation — for instance, through collecting appropriate fees for recreational uses. For each goal, it contains a variety of actions to be undertaken. Goal 1 in particular addresses motorized recreation.

Guidance on OHV use on BLM lands is provided in law, executive orders, and agency regulations and policies. Under agency regulations (43 C.F.R. 8340), BLM has been designating public lands as open, limited, or closed to OHV use. As of June 6, 2005, the following designations had been made: open, where OHV use is permitted anywhere, 82.5 million acres; limited, where OHV use is in some way restricted, 125.5 million acres; and closed, where OHV use is prohibited, 11.6 million acres. The remaining 42.1 million acres of BLM land (mostly in Alaska) are not currently designated. Other regulations govern OHV

use in particular areas. For instance, on August 18, 2005, BLM issued final supplementary rules for its lands in Oregon and Washington, which include guidance on OHV use. BLM also makes OHV designations during the planning process, on an area-by-area basis, and such designations often have been contentious and complex. Although the agency is in the midst of a multi-year effort to develop and update land use plans, many plans do not currently address OHV use and other relatively recent issues.

The FY2006 BLM budget justification describes BLM's "most pressing challenge" as "implementing a comprehensive approach to managing travel, OHVs, and public access across the west" (p. III-123). BLM is addressing transportation on its lands, including OHV use, through the development of three national strategies. First, in January 2001 BLM issued a *National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands*. (See [<http://www.blm.gov/ohv/>].) The strategy has multiple purposes, including to guide land managers in resolving OHV issues; to promote consistency of OHV decision making; to highlight needed staff and funding for OHV management; to reduce conflicts among land users; to promote responsible OHV use and reduce habitat degradation; and to lead to an update of OHV regulations (which has not occurred to date). Second, in November 2002, BLM released a *National Mountain Bicycling Strategic Action Plan* (see [[http://www.blm.gov/mountain\\_biking/](http://www.blm.gov/mountain_biking/)]). The third strategy, addressing other types of travel on public lands, such as hiking and horseback riding, is in development.

In some cases, the BLM and FS jointly address OHV use on their lands. For instance, an interagency plan governs OHV use on lands in Montana, North Dakota, and South Dakota. Joint management approaches, where federal lands are intermingled, can promote consistency and public understanding of OHV guidance. However, BLM and FS lands are different, and they are governed by separate authorities, making complete consistency on vehicular travel management difficult to achieve.

**Legislative Activity.** A July 13, 2005, House Resources joint subcommittee hearing examined motorized recreational use on federal lands. (See [<http://resourcescommittee.house.gov/archives/109/nprpl/071305.htm>].) Agency representatives discussed the increased popularity of OHV use on federal lands, development and implementation of travel management plans, and challenges of managing OHVs. Other witnesses testified on availability of federal lands for OHV use, and the effects of OHV use on human health, the economy, the environment, and other forms of recreation.

P.L. 109-54, the FY2006 Interior appropriations law, contained \$66.1 million for BLM's recreation program, an increase of 9% over FY2005 (\$60.6 million). Additionally, some measures affect OHV use in particular areas. For instance, H.R. 3603 contains provisions related to OHV use in Central Idaho. They include conveyance of BLM land to the State of Idaho to establish a motorized recreation park, establishment of a special management area on certain BLM and FS lands to provide opportunities for motorized and other recreation, and authorization of up to \$1.0 million for the Secretary of Agriculture to grant to the State of Idaho for the off road motor vehicle program.

## **Motorized Recreation in the National Forests** (by Ross Gorte)

**Background.** The national forests are managed by the USDA Forest Service (FS) for a variety of uses, including many types of recreation — sightseeing, off-highway vehicle use,



backpacking, etc. — while preserving the productivity of the lands. Most forms of recreation use, including OHV use, continue to grow.

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

**Administrative Actions.** Federal guidance on OHV use in E.O. 11644 and E.O. 11989 was incorporated into FS regulations, at 36 C.F.R. Part 295. Despite this guidance, not all forest plans have identified areas as open or closed to OHVs, and local practices as to OHV use vary. On January 16, 2004, in a speech at the Idaho Environmental Forum, FS Chief Dale Bosworth identified threats to the health of the nation’s forests and grasslands. One is *unmanaged recreation* — the “increasing use of the national forests for outdoor activities ... , including the use of off-highway vehicles.” In particular, OHV users have created a large number of unauthorized roads and trails, which involved no planning and are often unsafe and damaging to other resources.<sup>1</sup> In response, the FS proposed new regulations (69 *Fed. Reg.* 42391-42395, July 15, 2004) to *require*, as part of travel management within forest planning, identifying a system of roads, trails, and areas designated for motorized vehicle use, including OHVs. The proposed regulations also would prohibit use of OHVs and other motorized vehicles outside the designated system. Decisions governing motorized uses are to be made with public involvement at each of the 110 national forest planning units.

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

**Legislative Activity.** On July 13, 2005, two subcommittees of House Resources held a joint hearing to examine motorized recreation use on federal lands. (See [<http://resourcescommittee.house.gov/archives/109/nprpl/071305.htm>].) (See “Legislative Activity” under previous section on BLM.” To date, no comprehensive legislation addressing OHV use in national forests generally has been introduced in the 109<sup>th</sup> Congress.

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

**Background.** PWCs are high-speed, very shallow draft, and highly maneuverable watercraft “operated by a person or persons sitting, standing, or kneeling on the vessel rather

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

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

**Administrative Actions.** The NPS currently is evaluating PWC use in several of its 388 units. That effort began in 2000 when the agency issued a rule prohibiting PWC use in 66 of the 87 units where motorized boats were allowed (65 *Fed. Reg.* 15077, effective April 20, 2000). The rule allowed PWC use to continue until April 22, 2002, at the remaining 21 areas while the NPS evaluated whether to permanently authorize PWC use and develop special regulations. The rule recognized that certain National Recreation Areas (NRAs), such as Lake Mead and Glen Canyon, might choose to continue PWC use because their establishing legislation emphasized motorized water-based recreation as a primary purpose. An April 2001 negotiated settlement of a lawsuit by Bluewater Network and Earth Island Institute over the PWC rule prohibited PWCs from the 21 areas unless the Park Service initiated park-specific rules and environmental analyses. PWCs could continue to operate during the rulemaking process, which was to be completed by specified deadlines.

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

Draft NPS Management Policies include revisions concerning PWCs (sec. 8.2.3.3). The draft replaces existing language stating that “(PWC) use is prohibited unless it has been identified as appropriate for a specific park” and consistent with visitor use criteria (sec. 8.2), with revised wording stating that “(PWC) use may be permitted through special regulations and when this use has been identified as appropriate for a specific park.” Whether these changes would have a substantive impact on PWC management is unclear.

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

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

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

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

Subsequent legal challenges effectively split the 2003-2004 winter season into two sub-seasons, each managed under different rules with significantly different limits on daily snowmobile entries. (See [[http://www.nps.gov/yell/planvisit/winteruse/12\\_16opinion.pdf](http://www.nps.gov/yell/planvisit/winteruse/12_16opinion.pdf)] and [<http://www.ck10.uscourts.gov/wyoming/district/pdf/forms/00cv229b.pdf>].) The two conflicting rulings created confusion for park visitors, local communities, and businesses, with many unsure whether they could visit the park in winter and what winter use rules were in effect.

NPS issued a final rule (69 *Fed. Reg.* 65348, Nov. 10, 2004) to implement a temporary winter use management plan for the two parks and connecting parkway to be in effect for three winter seasons, through 2006-2007, while NPS prepares a new long-term winter use plan. (See [<http://www.nps.gov/yell/press/04114.htm>].) Effective December 10, 2004, the interim rule allows up to 720 commercially guided Yellowstone snowmobile entries daily during winter seasons while NPS monitors snowmobile impacts on park resources and develops a new long-range winter use plan and rule. Commercial guides are not required for the 140 daily snowmobile entries to Grand Teton and the Rockefeller Parkway. The plan includes, with limited exceptions, Best Available Technology (BAT) requirements for snowmobiles to reduce emissions and noise, but no “adaptive management strategy” component. Meanwhile, NPS solicited comments on issues and alternatives the public would like to see addressed in the new winter plan during a public scoping period concluded

September 1, 2005. The next step is NPS preparation of a Draft Environmental Impact Statement (EIS), anticipated for release with a 60-day public comment period in Spring 2006.

A provision in the FY2005 Consolidated Appropriations Act (P.L. 108-447, enacted Dec. 8, 2004) sought to ensure that the NPS interim final rule allowing snowmobiles in the three park units would be in force throughout the 2004-2005 winter use season ending March 13, 2005. Its purpose was to provide stability for recreational snowmobilers and gateway community businesses by ensuring that any judicial rulings limiting snowmobiles in these parks must be deferred until the 2005-2006 season. The FY2006 Interior appropriations legislation (H.R. 2361, P.L. 109-54) includes a similar provision covering the 2005-2006 winter season. Meanwhile, judicial proceedings continue. On October 14, 2005, Judge Clarence Brimmer, Federal District Court for Wyoming, ruled against the Wyoming Lodging and Restaurant Association's challenge of the NPS interim rule on daily snowmobile limits in the three Yellowstone area parks and commercial guiding requirements. The judge called the interim rule "...the best compromise currently available." (For background information on snowmobiles in park units generally, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.)

The recently released NPS draft Management Policies add new language to cover both snowmobiles and oversnow vehicles (sec. 8.2.3.2). It states that "Routes and areas may be designated for snowmobile and oversnow vehicle use by special regulation on routes and water surfaces that are used by motor vehicles or motorboats during other seasons....only when determined to be an appropriate use."

**Legislative Activity.** On April 12, 2005, a House Resources subcommittee held an oversight hearing on snowmobile use and restrictions in the National Park System and their economic impact on local communities. (See [<http://resourcescommittee.house.gov/archives/109/nprpl/041205.htm>].) Also, the FY2006 Interior appropriations law (P.L. 109-54) includes language to prevent lawsuits from denying snowmobiles entry to the three Yellowstone area parks during the 2005-2006 winter season.

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

**Background.** The NPS is to provide for the public enjoyment of parklands while protecting resources, while the Federal Aviation Administration (FAA) controls airspace and aircraft overflights. This has created a conflict between resource management and aviation access authorities and their constituencies. Grand Canyon National Park has been the focal point of a conflict between groups seeking to limit overflights of national parks due to concerns about noise and safety, and air tour operators whose economic stability, with ripple effects on local businesses, may depend on providing overflights. The National Parks Overflights Act of 1987 (P.L. 100-91) directed NPS to recommend a flight control plan for Grand Canyon that would provide a "substantial restoration of the natural quiet" and prohibited flights below the canyon's rim. It required an NPS study of the effects of all aircraft overflights, which was submitted to Congress in 1994.

The National Parks Air Tour Management Act of 2000 (Title VIII, P.L. 106-181, hereafter "Air Tour Act") regulates commercial air tours at other park units. It requires the FAA and NPS to create management plans for air tours at individual park units and within a half-mile of their boundaries. Each plan could prohibit or limit air tours, such as by route and

altitude restrictions. The act also requires the FAA to establish “reasonably achievable” requirements for quiet aircraft technology for the Grand Canyon within one year and to designate, by rule, Grand Canyon routes or corridors for aircraft and helicopters using quiet technology. Quiet aircraft would not be subject to existing caps on canyon overflights.

**Administrative Actions.** Three FAA actions affecting Grand Canyon have been controversial. First, a *limitations rule* capped the annual number of commercial air tour overflights at Grand Canyon (65 *Fed. Reg.* 17708, effective May 4, 2000). The air tour industry has sought exemptions to air tour caps, curfews, and air route restrictions if quiet aircraft technology is used. Second, the *airspace rule* expanded flight-free zones and restrictive routing over the canyon. To address safety concerns, east end Special Flight Rules Area (SFRA) airspace changes have been delayed until February 20, 2006 (68 *Fed. Reg.* 9496). Third, in response to the Air Tour Act, the FAA issued a final rule establishing a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon (70 *Fed. Reg.* 16084, March 29, 2005). The rule identifies which aircraft meet the standard. In future rulemaking, the FAA will address the establishment of routes or corridors for commercial air tour operations that use the quiet technology. The goal is to achieve the substantial restoration of natural quiet at Grand Canyon.

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

Other regulatory actions affect commercial air tours at park units. The FAA issued an Air Tour Act final rule (67 *Fed. Reg.* 65661, Oct. 25, 2002) that requires air tour operators to apply for authority to fly over national park and abutting tribal lands. The FAA is to grant interim operating authority to applicants, and that interim authority was published in the *Federal Register* on June 23, 2005, to provide notice and an opportunity for comment through October 31, 2005. The FAA received applications for operating authority for commercial air tours over 107 of the 388 park units. Application triggers development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where none exists. (See [<http://www.atmp.faa.gov/default.htm>].) The purpose of a plan is to mitigate or prevent any harm by commercial air tours to natural and cultural resources, visitor experiences, and tribal lands. Development of an ATMP requires an environmental analysis under the National Environmental Policy Act of 1969 (NEPA, U.S.C. § 4321-4370f). The FAA and NPS are developing their first ATMPs for six areas.

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

As part of an overall review of its management policies, the NPS has proposed changes on overflights and aviation uses (sec. 8.4) and on soundscape management (sec. 4.9). One proposal would delete existing language stating that the NPS “will preserve, to the greatest extent possible, the natural soundscapes of parks.” Another change would replace “adverse effects” of overflights with “unacceptable impacts” in a number of places. Such changes could be regarded as having a substantive effect on management of overflights.

**Legislative Activity.** P.L. 108-176 directed the Secretary of Transportation to issue a final rule, no later than January 2005, establishing standards for quiet technology that are reasonably achievable at Grand Canyon. The FAA issued the final rule on March 29, 2005. The law also established a mediation process for rulemaking disputes. Conferees stated that they were “greatly disappointed with the lack of progress” in managing the noise in parks from air tours, and directed the agencies to develop ATMPs expeditiously and collaboratively and to determine environmental impacts of air tours. A 108<sup>th</sup> Congress subcommittee hearing addressed implementation of the Air Tour Act.

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

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

**Administrative Actions.** On June 3, 2005, the Secretary of the Interior announced the designation of 37 new National Recreation Trails. Since 2001, the Bush Administration has designated 128 National Recreation Trails, totaling more than 3,400 miles. These designations do not require an act of Congress and are part of an ongoing effort to promote community partnerships and to foster innovative ways to encourage physical fitness.

**Legislative Activity.** Many trail projects became eligible to receive federal highway program funds with the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L. 102-240), reauthorized as the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21, P.L. 105-178). The Recreational Trails Program (RTP), originally a six-year program authorized under ISTEA and reauthorized under TEA-21, provides funds to states to develop and maintain recreational trails and trail-related facilities for motorized and nonmotorized recreational trail uses. TEA-21 was to expire on September 30, 2003. However, Congress has enacted several extensions to continue funding for highway programs; the most recent extension (P.L. 109-42) provided funding through August 14, 2005.

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59, SAFETEA-LU). SAFETEA-LU authorizes funds for the Recreational Trails Program at \$370 million over five years (\$60 million for FY2005, \$70 million for FY2006, \$75 million for FY2007, \$80 million for FY2008, and \$85 million for FY2009). The measure sets a specified level of \$840,000 annually for administrative expenses.

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

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

Measures introduced in the 109<sup>th</sup> Congress to designate, study, or extend specific components of the National Trails System are shown in the following table. The table includes bills that could involve management by the NPS or other agencies. Bills related to the system more generally are listed in the "Legislation" section. Also, on July 26, 2005, the House Resources subcommittee on National Parks conducted an oversight hearing on the implementation of the National Trails System Act. Issues covered by agency and other witnesses include trail designations, maintenance, and management; land acquisitions; private landowner concerns; and public-private initiatives and collaborative efforts. (See [<http://resourcescommittee.house.gov/archives/109/nprpl/072605.htm>].)

Bill Number	Type	Title	Status
H.R. 690	Desig.	National Discovery Trails Act	Introduced
H.R. 1250 S. 588	Study	Arizona Trail Feasibility Study Act	Introduced Hearing held
H.R. 2053 S. 958	Desig.	Star-Spangled Banner National Historic Trail	Introduced Senate calendar
H.R. 1796	Study	Mississippi River Trail Study Act	Introduced
H.R. 2964	Study	Chisholm Trail and Great Western Trail	Introduced
H.R. 3085	Study	Trail of Tears National Historic Trail	Introduced
S. 54	Study Extend	Amends the National Trails System Act to require the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails, and for other purposes	Passed Senate Referred to House Resources Committee
H.R. 2361 H.R. 2588 S. 336	Study	Captain John Smith Chesapeake National Historic Watertrail	P.L. 109-54 Introduced Hearing held
H.R. 3615	Study	1855 Treaty Trail	Introduced

## Other Issues

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

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

Recreational conflicts within the NWRS were more frequent before the 1997 enactment of the National Wildlife Refuge System Improvement Act (P.L.105-57; 16 U.S.C. 668dd). A key provision of this law designates “compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the refuge system.” It also requires that priority public uses must “receive enhanced consideration over other general public uses in planning and management within the System.” The law continues the statutory policy that activities that are not wildlife-dependent (e.g., grazing, growing hay, etc.) may be permitted, provided they are wildlife-compatible. Final regulations for determining compatibility were published on October 18, 2000 (65 *Fed. Reg.* 62457). Some interest groups argued that the regulations did not allow for sufficient public access for some forms of recreation, such as use of off-road vehicles or personal watercraft. Others felt that the regulations struck a proper balance among user groups.

A recent controversy concerns applications for amateur radio operators to have access to three remote island refuges (Farallon, Navassa, and Desecheo) to transmit from these locations. To protect the refuges’ seabird colonies and vegetation, FWS does not allow access or consider radio transmission a priority or compatible use. Two bills would require the Interior Secretary to open these refuges for at least one period each year under special use permits. H.R. 298 applies to the three refuges, while H.R. 1183 (which has been ordered reported) applies to Navassa and Desecheo. Supporters include radio operators but also those who favor wider public access to federal lands in general. Opposition includes scientists and environmental groups based on risk to the colonies through human interference, introduction of invasive species, and precedent for wider access to sensitive islands.

**Recreation at Federal Water Sites.** (by Nicole Carter) In addition to land-based recreation, the nation’s waters provide a variety of recreational opportunities. Much of the recreation on federally owned or managed waters and adjacent lands occurs at U.S. Army Corps of Engineers (in the Department of Defense) and Bureau of Reclamation (in DOI) sites,



primarily at federal reservoirs. These agencies' 4,300 recreation areas attract nearly 500 million visits per year (400 million at Corps-managed areas; 90 million at Bureau sites). While these federal reservoirs often are operated primarily for irrigation, navigation, hydropower, and/or flood control, they also provide recreation and other benefits. Reservoir operations can be contentious because decisions on water releases represent tradeoffs among the multiple reservoir and river uses and among different types of recreation, such as birdwatching, boating, fishing, hunting, sightseeing, swimming, and whitewater activities.

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

The President's FY2006 budget proposed a Corps recreation initiative. First, the Administration proposed that the Corps have authority to collect entrance fees in addition to the user fees it already collects; some other agencies providing recreational services collect entrance fees. Second, the Administration proposed a Corps program for a limited number of demonstration projects to modernize facilities through partnerships with local communities and private entities. No mention of these proposals was made in S.Rept. 109-84 or H.Rept. 109-86 for the Energy and Water Development Appropriations Act of FY2006 (H.R. 2419), which funds the Corps' civil works program.<sup>2</sup>

Two authorization bills include changes to Corps recreation. H.R. 2864, Water Resources Development Act (WRDA) of 2005, would adjust the existing user fee authorization, while the proposals in S. 728, WRDA 2005, would make more extensive changes. Section 2004 of S. 728 includes recreation-related provisions. One provision, which is similar to the Administration's proposal, would require that the Corps implement a recreation admission fees. User and admission fees collected would be available directly to the Corps. This contrasts with the deposit into general Treasury accounts of current collections from Corps user fees. A second provision in §2004 would allow the Corps to enter into a contract with public or private entities to provide visitor services.

**Recreation Fees.** (by Carol Hardy Vincent) The 108<sup>th</sup> Congress established a new recreation fee program for the four major federal land management agencies (NPS, BLM, FWS, and FS) as well as the Bureau of Reclamation. Provisions of P.L. 108-447 (Division J, Title VIII) provide guidance on establishing entrance, standard, expanded, and special recreation permit fees. They outline criteria for establishing fees, and prohibit charging fees for certain activities or services. The law provides for public input in setting fees, including establishing Recreation Resource Advisory Committees to make fee recommendations. It authorizes the creation of an interagency national recreation pass and of regional multi-entity

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<sup>2</sup> The Senate report included language rejecting a change proposed by the Administration to the periodic sand nourishment policies for Corps coastal storm damage reduction projects. The report emphasized the economic significance of beach tourism.

passes. Each agency can spend the revenue collected without further appropriation. In general, not less than 80% of the fees are to be spent at the collecting site, but that amount can be reduced to not less than 60%. The balance of the collections is available to be used agency-wide. The collections can be used for specified purposes, such as repair, maintenance, and facility enhancement. The agencies are to report to Congress on the program every three years, and the program is to terminate 10 years after enactment. The new recreation fee program supersedes the Recreational Fee Demonstration Program (“Fee Demo”), begun in 1996 as a three-year trial but extended several times. The Fee Demo program was controversial, and the new program, authorized on December 8, 2004, sought to eliminate some of these concerns.

DOI and the Department of Agriculture are implementing the new law. They are developing long-term fee guidance and the America the Beautiful Pass, which will cover entrance and standard fees for the five agencies. During the transition to the new program, the agencies have agreed that existing passes will be honored, no new fee areas will be created, and existing fees will be evaluated against the criteria and prohibitions set out in the new law. The 109<sup>th</sup> Congress is overseeing agency efforts to establish, collect, and spend recreation fees under the new program. On February 17, 2005, a Senate subcommittee held a hearing on NPS implementation of the program, with a focus on the development of the America the Beautiful Pass. On October 26, 2005, a Senate subcommittee held a hearing on the implementation of the new fee program.

**Grand Canyon Colorado River Management.** (by David Whiteman) The NPS has regulated recreational use of the Colorado River inside Grand Canyon National Park since the 1970s, particularly with respect to river running boat trips, in order to protect river resources and ensure a high-quality visitor experience. This is a prime example of how recreational pastimes that push deeper into pristine backcountry areas of national parks have increased the resource management challenges of many popular parks. Decades of conflict have ensued over motorized boating on the Colorado River and the use of helicopters to ferry commercial boating passengers in and out of the canyon. These activities have been opposed by environmental groups favoring the preservation of wilderness-like values in the river corridor. Commercial outfitters for river trips favor access for motorized boating on the grounds that this long-standing use does not harm resources, and is the only practical way to offer short-duration trips.

On October 1, 2004, the NPS released the draft of a new Colorado River Management Plan (<http://www.nps.gov/grca/crmp/>) that will govern recreational river use for 10 or more years. Currently, Colorado River recreational use is divided between two primary user groups: professionally outfitted commercial concessioners and non-commercial, self-guided private boaters. More than 8,000 private boaters are reported to be waiting for permits, a wait that can be more than 10 years, and the NPS has imposed a moratorium on any new additions to that list. The proposed management plan would alter the existing ratio of river access between the two groups, reallocating more access to the self-outfitted sector and restricting commercial motorized trips to a shorter season. On January 25, 2005, the two principal user groups announced joint compromise recommendations that propose to allot more access for non-commercial boaters; extend the commercial outfitter season six additional weeks to spread out impacts; and continue the use of motors, mostly for commercial outfitters. (See <http://www.gcroa.org/pdf/joint%20recommendations%20-%20final.pdf>.) Environmental groups generally oppose the river users reported agreement.

Public comment on the draft plan ended February 1, 2005, and was considerable. The NPS is analyzing nearly 20,000 comments, and determining whether to adopt any elements from the user groups' compromise in its Final Environmental Impact Statement (FEIS). The NPS planning team leader anticipates a November 2005 FEIS release date for publication in the Federal Register.

## LEGISLATION

### **P.L. 109-59, H.R. 3 (Young, Don); S. 732 (Inhofe)**

Authorizes funds for federal-aid highways, highway safety programs, and transit programs, and the Recreational Trails Program. Enacted August 10, 2005 (P.L. 109-59).

### **H.R. 1261 (Ryun)**

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

### **H.R. 3603 (Simpson)**

Includes provisions related to motorized recreation on BLM and FS lands in Central Idaho. Introduced July 28, 2005; referred to Committee on Resources.

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

Amends the National Trails System Act to clarify federal authority related to land acquisition from willing sellers for the majority of the trails in the system. S. 974 introduced April 28, 2005; referred to Senate Committee on Energy and Natural Resources. H.R. 2332 introduced May 12, 2005; referred to Committee on Resources.

## FOR ADDITIONAL READING

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

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

CRS Report RS22171, *Federal Lands Recreation Enhancement Act*, by Carol Hardy Vincent.

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

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

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