

# CRS Report for Congress

## Recreation on Federal Lands

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## Summary

The growing and diverse nature of recreation on federal lands has increased the challenge of balancing different types of recreation with each other and with other land uses. Motorized recreation has been particularly controversial, with issues centering on access and environmental impacts. The 110<sup>th</sup> Congress may consider legislation and conduct oversight on issues involving recreation on federal lands, including traditional recreational pursuits and newer forms of motorized recreation. The Administration may continue to address these issues through budgetary, regulatory, and other actions. This report covers several prominent issues.

**Motorized Recreation on NPS Land: Off-Highway Vehicles, Personal Watercraft, and Snowmobiles.** Off-highway vehicle (OHV), personal watercraft (PWC), and snowmobile use at National Park Service (NPS) units has fueled ongoing debates over the balance between recreation and the protection of parklands and waters. Since 2003, NPS has issued regulations to open designated areas at 13 units to PWC. The agency is developing a new winter use plan for snowmobiles at three Yellowstone area parks. OHV use at some units is being challenged in the courts.

**Aircraft Overflights.** Grand Canyon National Park is at the center of a conflict over whether or how to limit air tours over national parks to reduce noise. NPS and the Federal Aviation Administration (FAA) continue to work to implement a 1987 law that sought to reduce noise at Grand Canyon, and 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 (ATMPs) at those park units. Further, the FAA is developing final safety regulations for commercial air tours nationally.

**Motorized Recreation in the National Forests and on BLM Land.** The use of OHVs on Forest Service (FS) and Bureau of Land Management (BLM) lands has been controversial. Both agencies decide the extent of allowed OHV use through their planning processes. The FS finalized regulations (November 9, 2005) governing OHV use that require designating roads, trails, and areas open for OHV use and prohibit OHV use outside the designated system. The BLM is addressing transportation issues through national strategies and other guidance.

**National Trails System.** While designation of trails is often popular, issues remain regarding the funding, expansion, and quality of trails. The 109<sup>th</sup> Congress designated the first all-water national historic trail and authorized the study of additional trail segments for possible inclusion to the National Trails System. In addition, the Congress considered a variety of trail measures, including adding routes to the system and authorizing land acquisitions from willing sellers. Legislation to create a new category of trails called National Discovery Trails and legislation to provide willing seller authority for nine national trails has been reintroduced in the 110<sup>th</sup> Congress.

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# Recreation on Federal Lands

## Introduction

Four federal agencies administer about 95% of the approximately 653 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.<sup>1</sup> These agencies manage federal lands for a variety of purposes relating to the preservation, development, and use of the lands and natural resources. The NPS administers the National 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, with other uses to the extent that they are compatible. The BLM manages public lands and the FS manages national forests for similar multiple uses, including grazing, recreation, timber, water, and fish and wildlife. Many 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 many 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. In 2005, DOI experienced 461 million recreation visits: 58 million visits to 3,496 BLM recreational sites; 273 million recreation visits to NPS units (then 388, now 390 units); 40 million visits to 545 FWS wildlife refuges; and 90 million visits to 308 Bureau of Reclamation recreation sites.<sup>2</sup> The FS reports 211

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<sup>1</sup> See the U.S. General Services Administration's *Federal Real Property Profile* (2004) at [[http://www.gsa.gov/Portal/gsa/ep/contentView.do?noc=T&contentType=GSA\\_DOCUMENT&contentId=13586](http://www.gsa.gov/Portal/gsa/ep/contentView.do?noc=T&contentType=GSA_DOCUMENT&contentId=13586)]. Table 16 shows federally owned acreage by state.

<sup>2</sup> For a graph depicting 2005 recreation visits to DOI sites, see p. DH-54 of the *FY2007* (continued...)

million recreation visits to its national forests and grasslands, and the Corps 400 million visits for the most recent year available.

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 8.6 million visitor-days of motorized recreation on BLM lands during FY2004. This figure includes off-highway vehicle (OHV) use of all-terrain vehicles, dunebuggies, motorcycles, cars, trucks, and sport utility vehicles (SUVs) as well as recreation involving powerboats, personal watercraft, and snowmobiles. In 2004, OHV users accounted for between 11 and 12 million recreation visits to national forests and grasslands, about 5% of all recreation visits. 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, etc.).

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

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

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<sup>2</sup> (...continued)

*Interior Budget in Brief* at [<http://www.doi.gov/budget/2007/07Hilites/DH53.pdf>].

authority to immediately close areas or trails if OHVs were causing or would cause considerable damage 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 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.

BLM and FS managers formulate guidance on the nature and extent of land uses, including OHV use, through regulations, national policies, land and resource management plans, and area-specific decisions. Legislation establishing NPS units may provide for specific OHV uses. In addition, NPS administers OHV use via unit-specific regulations, management plans, and the superintendent’s compendium. On August 31, 2006, the NPS released final revised management policies to guide management throughout the National Park System, in part to reflect changing recreational uses and evolving technologies.<sup>3</sup> These management policies largely retain the 2001 edition’s emphasis on conservation of park resources in conservation/use conflicts (§ 1.4.3).<sup>4</sup>

The 110<sup>th</sup> Congress has begun to consider legislation and conduct oversight on issues pertaining to recreation on federal lands. Several major issues are covered in this report, particularly use of traditional OHVs, PWC, and snowmobiles in certain National Park System units; overflights of national park units; motorized recreation on BLM and FS lands; and expansion of the National Trails System. Other issues addressed 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 RL33806, *Natural Resources Policy: Management, Institutions, and Issues*, coordinated by Carol Hardy Vincent, Nicole T. Carter, and Julie Jennings. For information on NPS issues, see CRS Report RL33484, *National Park Management*, coordinated by Carol Hardy Vincent. Information on BLM and Forest Service lands is contained in CRS Report RL33792, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service: Issues for the 110<sup>th</sup> Congress*, by Ross W. Gorte, Carol Hardy Vincent, and Marc Humphries. For information on appropriations for federal land management

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<sup>3</sup> For additional background information on NPS management policies, see CRS Report RL33484, *National Park Management*, coordinated by Carol Hardy Vincent. See also the NPS website at [<http://www.nps.gov/applications/npspolicy/index.cfm>].

<sup>4</sup> The final version of the 2006 NPS management policies is available via the NPS website at [<http://www.nps.gov/policy/MP2006.pdf>].

agencies, see CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.

## Current Issues

### Motorized Recreation on NPS Land (by Kori Calvert)

**Background.** National Park System units may comprise many different features, including historic, scenic, or scientific resources, outstanding natural and cultural attributes, and outdoor recreational opportunities. Balancing appropriate recreational use and parkland enjoyment with the protection and preservation of resources is a significant ongoing challenge to both NPS administrators and the congressional committees conducting agency oversight. Motorized recreation in particular, and the extent and effect of motorized access, can be contentious. Debate often focuses on a particular form of motorized recreation within an individual park unit or a small number of units. Such issues include personal watercraft (PWC) at popular NPS-administered water sites; snowmobiles at three Yellowstone area parks; Grand Canyon National Park airtour overflights; and other forms of off-highway vehicles (OHVs) — four-wheel drive vehicles, all-terrain vehicles (ATVs), and dune, sand, and swamp buggies — at areas such as Big Cypress National Preserve. This section focuses primarily on these latter forms of OHVs.<sup>5</sup>

Currently, of the 390 NPS units covering over 84 million acres of land, 43 allow snowmobiles and 13 allow PWC. Also, excluding Alaska, NPS counts 15 park units allowing other types of OHV use by the general public. Some additional units permit OHV access to inholders, Native Americans, or others for specific limited purposes under a variety of authorizations.<sup>6</sup> Manufacturers and various user groups contend that NPS limits on OHV use unfairly restrict access, establish a precedent for other federal land managers to impose or extend restrictions, and may be economically harmful to gateway communities and industries serving users. Opponents of motorized recreation in NPS units cite damage to the environment and cultural artifacts; safety concerns; conflicts with other forms of recreation; and inadequate NPS staff to effectively monitor motorized use and its impact on park resources. Opponents also cite the NPS statutory mandate to protect park resources and the availability of other federal lands (FS, BLM) where OHV use may be permitted.

**Administrative Actions.** As noted above, federal guidance on OHV use on NPS lands is provided in E.O. 11644 and E.O. 11989, in agency regulations and policies, and in other authorities. An NPS unit's enabling legislation may establish specific activities as an appropriate use — e.g., water-oriented recreation, snowmobiling for subsistence or recreational purposes, or OHV travel to reach

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<sup>5</sup> A more detailed discussion of snowmobile, PWC, and overflight management issues at NPS units and related legislative and regulatory guidance may be found in following sections of this report.

<sup>6</sup> Figures confirmed with NPS via phone conversation, Sept. 22, 2006. NPS also provided examples of areas with authorized administrative use of OHVs.

hunting or fishing areas. Under NPS regulations (36 C.F.R. § 4.10), OHV use may be allowed in four types of NPS units whose primary purposes include outdoor recreational opportunities for their visitors — national recreation areas, national seashores, national lakeshores, and national preserves. OHV use is an “appropriate use” of those areas when managed to protect park resources and visitors.<sup>7</sup> Agency regulations also require special rulemaking, with environmental impact analysis and public comment, to designate routes and areas for off-road motor vehicles in park units. Additional unit-level direction for previously designated routes (such as temporary route closures) may be included in a park’s general management plan and/or determined by the park superintendent (36 C.F.R. § 1.5).

As OHV use on federal lands grew in recent decades, particularly in western states, unauthorized use also is reported to have increased in some areas, including parklands. In 1999, the environmental organization Bluewater Network surveyed 108 NPS units and reported findings on the ecological effects of OHV use at those units. The organization determined that there was unauthorized use in 40 of them.<sup>8</sup> Bluewater and other groups also petitioned NPS in December 1999 to take specific OHV actions: to ban OHV use in all NPS off-road areas, to define “off-road vehicle usage” as any use not on “pavement or high-standard gravel roads,” and to develop procedures for monitoring OHV use and regulatory compliance. In 2004, the NPS met with Bluewater and agreed to conduct a service-wide survey to determine the extent of authorized and unauthorized OHV use, its impacts, and any OHV monitoring activity. Of the then 388 NPS park units, 256 initially responded.<sup>9</sup> NPS asserts that the survey showed unauthorized OHV use in “several parks” and generally “less than significant” resource damage.<sup>10</sup> Bluewater claims illegal OHV use in 92 (36%) of those reporting units and resource damage in 71 (28%).

The NPS survey identified eight park units with authorized public OHV use and special regulations in place: Big Cypress National Preserve; Gateway and Lake Meredith National Recreation Areas (NRAs); and Assateague, Cape Cod, Fire Island, Gulf Islands, and Padre Island National Seashores. According to the agency, seven

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<sup>7</sup> 52 *Fed. Reg.* 10670-10686, 10673 (April 2, 1987).

<sup>8</sup> *Off-the-Track: America’s National Parks under Siege* is available via the Bluewater Network website at [[http://www.bluewaternet.org/reports/rep\\_pl\\_offroad\\_offtrack.pdf](http://www.bluewaternet.org/reports/rep_pl_offroad_offtrack.pdf)]. Bluewater’s use of the term “off-road vehicle” (ORV) encompasses ATVs, four-wheel drive vehicles (jeeps, SUVs, etc.), and dune, sand, and swamp buggies. Two-wheeled vehicles (motorcycles) and snowmobiles are not included in Bluewater’s definition. For purposes of this section, OHV and ORV are synonymous and have the same definition as used by Bluewater.

<sup>9</sup> Park units have continued to respond to the survey. As of September 2006, 54 additional units (310 units in all) have completed the survey. (Phone conversation with NPS, Sept. 22, 2006.)

<sup>10</sup> Letter from Steve P. Martin, NPS Deputy Director of Operations, to Bluewater Network Executive Director Russell Long, May 3, 2005. Available via the Bluewater website at [<http://www.bluewaternet.org/npsorv/letterfromNPS.pdf>]. See also Bluewater’s response to NPS, available at [<http://www.bluewaternet.org/npsorv/lettertoNPS.pdf>]. NPS provided copies of the initial 256 survey responses to Bluewater Network. (Phone conversation with NPS, Sept. 22, 2006.)



additional units remain open to public OHV use while the agency conducts environmental studies and develops special regulations: Little River Canyon National Preserve; Glen Canyon, Curecanti, and Lake Meredith NRAs; Big South Fork National River and Recreation Area; and Cape Hatteras<sup>11</sup> and Cape Lookout National Seashores. NPS is encouraging units with illegal OHV use to pursue enforcement actions. However, some believe NPS budgetary and staff constraints could limit enforcement effectiveness.<sup>12</sup>

The NPS convened a workshop in March 2005 to discuss OHV management within two contexts — appropriate agency-wide OHV policies, and each park unit's unique establishing purposes. Issues explored included what OHV management elements might best fit under a coordinated national management strategy; whether BLM and FS OHV strategies contain transferable elements; and what issues might be addressed via formal guidance from the NPS Director. The latter could include OHV monitoring protocols; consistent OHV incident reporting requirements; interim OHV use management guidelines for NPS units developing regulations; definitions of OHV, off-road, off-highway, routes, and areas; and clarifying regulations that define park roads. Creation of an OHV-use national website also was discussed. To date, no formal proposals have been issued. Meanwhile, on November 29, 2005, Bluewater and two other conservation groups filed a lawsuit against NPS and DOI in the District of Columbia U.S. District Court. The plaintiffs allege that OHVs constitute a “serious threat” to NPS resources that the agency has failed to address. Three groups representing the OHV industry and OHV enthusiasts (the BlueRibbon Coalition, Motorcycle Industry Council, and Special Vehicle Institute of America) subsequently filed to intervene in defense of OHV use on NPS lands.<sup>13</sup>

Recreation was a key area of debate during an NPS rewrite of its management policies. On August 31, 2006, the NPS released the final version of its 2006 management policies, which guide management throughout the National Park System, including recreational uses. One much-discussed proposed change included in the initial draft would have required “balance” between conservation and enjoyment of park resources, although the final policy states that “conservation is to be predominant” in conservation/enjoyment conflicts (§ 1.4.3). NPS rewrote its draft policies extensively based on analysis of over 45,000 comments, ultimately retaining in large part the 2001 policy language and its emphasis on conservation. The 2006 document cites OHV language in 36 C.F.R. § 4.10(b) that limits OHV use to four specific types of NPS units, restrictive language not included in the 2001 edition. Park and environmental groups generally are supportive of the final management policies but cautious about future policy implementation and enforcement. Policy critics view the document as favoring conservation over recreation and are uncertain how the preservation and protection of natural soundscapes may affect motorized

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<sup>11</sup> 71 *Fed. Reg.* 71552 (Dec. 11, 2006). Notice of Intent (NOI) To Prepare a Draft Environmental Impact Statement (DEIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Cape Hatteras National Seashore, NC.

<sup>12</sup> Letter to Steven P. Martin, NPS Deputy Director, from Robert D. Rosenbaum, Arnold & Porter LLP (on behalf of Bluewater Network et al.), June 13, 2005, available via the Bluewater website at [<http://www.bluewaternet.org/npsorv/lettertoNPS.pdf>].

<sup>13</sup> For additional information, see [<http://www.mic.org/news011306.cfm>].

recreation. However, some critics point to new language that promotes public collaborative relationships between NPS and gateway communities, among other provisions, as a positive step for incorporating local views on the importance of recreation to the economy of these communities.

**Legislative Activity.** General legislation on OHV use in NPS units has not been introduced in the 110<sup>th</sup> Congress to date. One measure enacted in the 109<sup>th</sup> Congress (P.L. 109-362, §10) affects OHV use in a particular area and is illustrative of OHV controversies. The law seeks to guarantee truck access to designated beaches within California’s Redwood National and State Parks for traditional commercial surf fishing, overriding a park policy phasing out beach driving permits. It directs the Secretary of the Interior to issue permits for authorized vehicle access, limits the number of permits to the total number of valid permits held on the act’s date of enactment, and provides that the permits “shall be perpetual.” Local commercial fishermen have opposed park policies restricting trucks on beaches where they traditionally netted and loaded catches of smelt. Some critics, however, assert that vehicular traffic can diminish visitor enjoyment of the park’s natural values, conflicts with establishing legislative language to preserve the park’s coastal redwood forests and associated streams and seashores for such enjoyment,<sup>14</sup> and may contradict existing regulations.

### **Personal Watercraft (PWC) at NPS Sites** (by Kori Calvert)

**Background.** PWC are high-speed, very shallow-draft, and highly maneuverable watercraft “operated by a person or persons sitting, standing, or kneeling on the vessel rather than within the confines of the hull” (36 C.F.R. § 1.4). Often used to perform stunt-like maneuvers, PWC 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 PWC 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 PWC argue that technological advances 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, PWC 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 390 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.<sup>15</sup> The rule allowed PWC use to continue until April 22, 2002, at the remaining 21 units while the NPS evaluated whether to permanently authorize PWC use and develop special regulations. The rule recognized that certain NRAs, such as Lake Mead and

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<sup>14</sup> P.L. 90-545, Oct. 2, 1968.

<sup>15</sup> 65 *Fed. Reg.* 15077 (March 21, 2000); effective April 20, 2000.

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 PWC from the 21 areas unless the NPS initiated park-specific rules and environmental assessments. PWC could continue to operate during the rulemaking process, but only until specified “grace period” deadlines.

The NPS prohibited PWC use (effective April 22, 2002) in 5 of the 21 areas that completed an environmental review process and also favored PWC bans: the Cape Cod and Cumberland Island National Seashores, Delaware Water Gap and Whiskeytown NRAs, and Indiana Dunes National Lakeshore. The agency lifted PWC bans at 13 NPS units and authorized their use in designated areas: in 2003, at Lake Mead and Glen Canyon (Lake Powell) NRAs, and Assateague National Seashore; in 2004, at Lake Meredith, Lake Roosevelt, Amistad, and Chickasaw NRAs; in 2005, at Bighorn Canyon NRA, Fire Island National Seashore, and Pictured Rocks National Lakeshore; and in 2006, at Gulf Islands and Cape Lookout National Seashores and Curecanti NRA. The NPS has proposed rules to allow PWC in one unit, Gateway NRA (February 24, 2006), while Padre Island National Seashore and Big Thicket National Preserve remain closed to PWC pending completion of environmental assessments and rulemaking.<sup>16</sup>

The 2006 NPS management policies (§ 8.2.3.3) state that personal watercraft use is generally prohibited (36 C.F.R. § 3.24) but may be allowed via special regulation *if* such use has been identified as “an appropriate use that will not result in unacceptable impacts.” This revised language could be regarded as a shift in emphasis from the 2001 management policies, which prohibited PWC use *unless* such use is confirmed “appropriate for a specific park.”

**Legislative Activity.** In the 109<sup>th</sup> Congress, the House Appropriations Committee included report language accompanying the FY2007 Interior appropriations bill (H.R. 5386) urging NPS to complete PWC rulemakings “in an efficient and timely manner.”<sup>17</sup> This language, however, was not included in FY2007 continuing budget resolutions. A March 15, 2006, House Government Reform subcommittee hearing examined NPS rulemaking efforts governing PWC use, status of park-specific rules, and reasons for and impacts of rulemaking delays.<sup>18</sup>

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<sup>16</sup> Padre Island’s 2006 PWC environmental assessment evaluates three alternative courses of action. The no-action alternative to continue the PWC prohibition is preferred. See [<http://parkplanning.nps.gov/document.cfm?parkID=86&projectId=12571&documentID=13889>].

<sup>17</sup> See [[http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1\(hr465\)](http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1(hr465))], H.Rept. 109-465, p. 45.

<sup>18</sup> U.S. Congress, House, Committee on House Government Reform, Subcommittee on Regulatory Affairs, *Taking on Water: The National Park Service’s Stalled Rulemaking Effort on Personal Watercraft*. Available at [[http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.128&filename=27092.pdf&directory=/diskb/wais/data/109\\_house\\_hearings](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.128&filename=27092.pdf&directory=/diskb/wais/data/109_house_hearings)].

## **Snowmobiles on NPS Land** (by Kori Calvert)

**Background.** Proposals to regulate recreational snowmobile use in NPS units have been controversial, with debate often mirroring the preservation/use conflict within 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 National Park System. Limited exceptions to this 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 modified its strict enforcement stance: 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. 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 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.<sup>19</sup> However, a June 2001 Bush Administration lawsuit settlement with the International Snowmobile Manufacturers Association (ISMA) and the State of Wyoming required NPS to revisit the snowmobile ban and consider any additional information on “cleaner, quieter” snowmobile technology. The new NPS final rule 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.<sup>20</sup>

Subsequent legal challenges effectively split the 2003-2004 winter season, with each sub-season managed under different rules with significantly different limits on daily snowmobile entries. These conflicting rulings created confusion for park visitors, local communities, and businesses, with many unsure whether they could visit the park in winter and what winter use rules were in effect. Subsequently, NPS issued a final rule to implement a temporary winter use management plan effective for three winter seasons, through 2006-2007.<sup>21</sup> The interim rule allows up to 720 commercially guided Yellowstone snowmobile entries daily. 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 to reduce snowmobile emissions and noise, but no “adaptive management strategy” component.

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<sup>19</sup> 66 *Fed. Reg.* 7260 (Jan. 22, 2001).

<sup>20</sup> 68 *Fed. Reg.* 69267 (Dec. 11, 2003).

<sup>21</sup> 69 *Fed. Reg.* 65348 (Nov. 10, 2004). Available via the NPS website at [<http://www.nps.gov/yell/planvisit/winteruse/fedregfinalrule11-10.pdf>].

The interim rule's intent is to provide certainty to gateway communities, businesses, and park visitors while NPS completes long-term environmental impact analyses of motorized oversnow vehicles on the three area parks, and develops a new long-term plan to manage winter recreational use. On November 20, 2006, the agency released a preliminary draft, evaluating six winter use plan alternatives, to 10 cooperating agencies for technical review and comment.<sup>22</sup> The preferred alternative for snowmobiles is similar to the current interim plan. It allows 720 guided, BAT snowmobiles per day in Yellowstone and combined daily access for 140 snowmobiles — most with BAT emission and noise pollution standards but no guiding requirements — in Grand Teton and the Rockefeller Parkway. Unlike the interim plan, the “Cooperating Agency Review Draft” establishes a Yellowstone snowcoach daily entry limit at 78, sets snowcoach emissions and sound requirements, and addresses avalanche-related safety concerns by treating Sylvan Pass near Yellowstone's East Entrance as backcountry, with no motorized winter access allowed.

In their comments, state and county officials in Idaho, Montana, and Wyoming favor easing Yellowstone's commercial guiding requirements for snowmobiles. They also requested, unanimously, that the Sylvan Pass eastern entrance remain open, citing economic impacts on local businesses. The U.S. Environmental Protection Agency (EPA) recommended that NPS review the draft plan and its potential effects on air quality and visibility, noise levels, wildlife, human health, etc., in conjunction with the resource protections established in the revised agencywide management policies, and consider air and noise pollution mitigation measures. NPS will review comments for potential incorporation in the formal Draft Environmental Impact Statement (DEIS). A March 2007 release for public review is anticipated.<sup>23</sup>

The final NPS management policies released on August 31, 2006, added new language to cover both snowmobiles and oversnow vehicles (§ 8.2.3.2). It states that, outside Alaska, special regulations are required to designate snowmobile and oversnow vehicle routes after park planning determines such use to be appropriate. Designated routes are limited to those used by motorboats and motorized vehicles in other seasons.

**Legislative Activity.** As passed by the House, the revised continuing appropriations resolution for FY2007 (H.J.Res. 20) would keep the current NPS Yellowstone interim rule in effect throughout the 2006-2007 winter use season. The 109<sup>th</sup> Congress enacted a continuing funding resolution (H.J.Res. 102; P.L. 109-383, §135) through February 15, 2007, with similar language. The FY2005 and FY2006

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<sup>22</sup> The 10 cooperating agencies are the states of Wyoming, Montana, and Idaho; Wyoming's Park and Teton counties; Montana's Park and Gallatin counties; Idaho's Fremont county; the U.S. Environmental Protection Agency; and the U.S. Forest Service. See [<http://www.nps.gov/yell/planyourvisit/winteruse.htm>] for a copy of the draft.

<sup>23</sup> For additional information on the EIS process and status, see the Yellowstone National Park Winter Planning website at [<http://www.nps.gov/yell/planvisit/winteruse/index.htm>]. 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.

Interior appropriations laws (P.L. 108-447 and P.L. 109-54) also included similar language to ensure that judicial rulings could not deny snowmobiles entry during the 2004-2005 and 2005-2006 winter use seasons, respectively.

### **Aircraft Overflights at NPS Sites** (by Carol Hardy Vincent)

**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.<sup>24</sup>

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 required 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.** Several actions have been taken to achieve the substantial restoration of natural quiet at Grand Canyon. First, a *limitations rule* capped the annual number of commercial air tour overflights at Grand Canyon.<sup>25</sup> Second, the *airspace rule* expanded flight-free zones and restrictive routing over the canyon. East-end Special Flight Rules Area (SFRA) airspace changes were delayed until February 20, 2011.<sup>26</sup> Third, the FAA issued a final rule establishing a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon.<sup>27</sup> The rule identifies which aircraft meet the standard. In future rulemaking, the FAA is expected to address the routes or corridors for commercial air tour operations that use the quiet technology. Fourth, data on natural ambient sound levels are being collected and used, together with air tour reported flight operations data and radar tracking data, to model air tour traffic and aircraft noise at Grand

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<sup>24</sup> U.S. Dept. of the Interior, National Park Service, *Report to Congress: Report on Effects of Aircraft Overflights on the National Park System*, listed under the topic heading “NPS Documents” at [<http://www.nps.gov/archive/grca/overflights/documents/index.htm>].

<sup>25</sup> 65 *Fed. Reg.* 17708 (April 4, 2000), effective May 4, 2000.

<sup>26</sup> 71 *Fed. Reg.* 9439 (Feb. 24, 2006).

<sup>27</sup> 70 *Fed. Reg.* 16084 (March 29, 2005).

Canyon. The model is being used to measure success in restoring natural quiet. Most recently, the FAA and NPS published a notice of intent to prepare an environmental impact statement on options that could be taken to restore natural quiet at Grand Canyon.<sup>28</sup> The public comment period ended on April 27, 2006.

Other regulatory actions affect commercial air tours at park units. The Air Tour Act final rule<sup>29</sup> requires air tour operators to apply for authority to fly over national park and abutting tribal lands. The FAA received applications for commercial air tours over 107 of the 388 park units, and has granted interim operating authority to all applicants. Application triggers development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where none exists.<sup>30</sup> 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, 42 U.S.C. §§4321-4370f). The FAA and NPS currently are developing their first ATMPs for five areas. On September 30, 2005, the FAA and NPS released an implementation plan for the development of the ATMPs that sets out the roles and responsibilities of the two agencies in developing ATMPs.

A January 2006 Government Accountability Office (GAO) report addresses the impact of the delay in implementation of the Air Tour Act.<sup>31</sup> The report concludes that the delay has had little effect on park units, but has limited the ability of tour operators to make major business decisions. The agency identified four issues for Congress and the agencies to address to improve implementation, relating to the lack of flexibility for determining which parks need plans, an absence of NPS funding for plan development, limited ability to verify and enforce the number of air tours, and inadequate FAA guidance on the act's safety requirements.

The FAA is developing a final rule to provide safety standards for commercial air tours nationally, including over Grand Canyon and other park units.<sup>32</sup> The proposed rule seeks to increase air tour safety by requiring certification of tour operators and by establishing safety standards, especially for low-level flights, over-water flights, and visibility limits. Opponents assert that the cost of compliance would make it infeasible for many to continue operations, existing regulations are sufficient to keep tours safe, and the proposed merger of helicopter and airplane traffic increases the chance of collisions.

As part of an overall review of its management policies, the NPS has made some changes to policies on overflights and aviation uses (§ 8.4) and on soundscape

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<sup>28</sup> 71 *Fed. Reg.* 4192 (Jan. 25, 2006).

<sup>29</sup> 67 *Fed. Reg.* 65661 (Oct. 25, 2002).

<sup>30</sup> The FAA provides information on the National Parks Air Tour Management Program via their website at [<http://www.atmp.faa.gov/default.htm>].

<sup>31</sup> U.S. Government Accountability Office, *National Parks Air Tour Management Act: More Flexibility and Better Enforcement Needed*, GAO-06-263, (Washington, DC: GPO, Jan. 2006), 64 p. Available on the GAO website at [<http://www.gao.gov/new.items/d06263.pdf>].

<sup>32</sup> 68 *Fed. Reg.* 60572 (Oct. 22, 2003).

management (§ 4.9). The new policies, issued August 31, 2006, replaced “adverse effects” of overflights with “unacceptable impacts” in a number of places. Some regard this change as potentially easing restrictions on overflights. One proposal would have deleted existing language stating that the NPS “will preserve, to the greatest extent possible, the natural soundscapes of parks,” but the final policies retained this soundscape language.

**Legislative Activity.** A May 2006 GAO report addresses NPS collection of air tour fees.<sup>33</sup> The report determined that some, but not all, fees have been collected from air tour operators at the three national parks where fees are charged: Grand Canyon, Haleakala, and Hawaii Volcanoes. It concluded that the ability of the NPS to collect fees is hindered because the agency cannot verify the number of tours over the parks, cannot effectively enforce compliance, and the two key laws have different geographic applicability. The report states that Congress should consider reconciling the geographic applicability of the relevant laws. It further recommends that the Secretary of Transportation direct the FAA to take certain actions to ensure that the NPS receives information on air tour operations at Grand Canyon, and report to Congress on the likely effects on air tour operators of air tour fees, as required under the Air Tour Act.

The Administration requested \$2.4 million for NPS development of air tour management plans in FY2007, a \$1.9 million increase over the \$0.5 million appropriation to the NPS for FY2006. The NPS FY2007 budget request noted that under a memorandum of understanding between the NPS and the FAA, the NPS is to pay 40% of the costs of developing ATMPs. It further states that while the FAA has obligated more than \$20 million over the past several years, the sole NPS appropriation was \$0.5 million for FY2006. In its FY2007 funding bill (H.R. 5386), the House Committee on Appropriations instead included \$651,000 over the FY2006 level for the NPS for development of ATMPs. The amount appears to have been retained by the House. In reporting H.R. 5386, the Senate Committee on Appropriations did not include additional funding for the NPS for developing ATMPs. The committee stated in report language that it “sees little point in investing in new air tour management plans” until the NPS and FAA overcome the issues discussed in the GAO report on NPS collection of air tour fees (S.Rept. 109-275, pp. 23-24).<sup>34</sup> Congress has not enacted a regular FY2007 appropriations bill including funding for ATMPs, so funding is being provided by a continuing resolution.

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

**Background.** The proximity of BLM lands to many areas of population growth in the West has contributed to an increase in recreation on some BLM lands. BLM lands are used for diverse forms of recreation, including hunting, fishing,

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<sup>33</sup> U.S. Government Accountability Office, *National Parks Air Tour Fees: Effective Verification and Enforcement Are Needed to Improve Compliance*, GAO-06-468, (Washington, DC: GPO, May 2006), 37 p. Available on the GAO website at [<http://www.gao.gov/new.items/d06468.pdf>].

<sup>34</sup> See [[http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1\(sr275\)](http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1(sr275))], S.Rept. 109-275, p. 23-24.



visiting cultural and natural sites, birdwatching, hiking, picnicking, camping, boating, mountain biking, and off-highway vehicle driving. The growing and diverse nature of recreation on BLM lands has increased the challenge of managing different types of recreation, such as low impact (e.g., hiking) and high impact (e.g., OHV) uses. It also has increased the challenge of managing recreation and other land uses. For instance, in some areas recreation and energy development have come in conflict, with hunters, fishermen, outfitters and guides, and other recreationists at odds with energy producing interests seeking to maintain or increase energy development on public lands. Overall, 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. Recreational access 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 that has been controversial. Controversy exists in various areas throughout the West, such as the San Rafael Swell in Southern Utah, the Imperial Sand Dunes Recreation Area in Southern California, and the Arizona Strip in Northern Arizona. 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 signs, inadequate staff and resources, and other factors.

**Administrative Actions.** 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 October 31, 2006, the following designations had been made: open, where OHV use is permitted anywhere, 80.9 million acres; limited, where OHV use is in some way restricted, 127.0 million acres; and closed, where OHV use is prohibited, 11.6 million acres. The remaining 41.2 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.

The FY2007 BLM budget justification describes BLM's "most pressing challenge" as "comprehensively managing travel, off highway vehicles (OHVs), and public access in the West" (p. III-128). In FY2007, BLM plans to develop approximately 67 travel management plans, which will identify and designate roads and trails for motorized travel, and to begin implementation when the plans are completed. The agency requested \$63.8 million for recreation management generally for FY2007, a 2% reduction from the FY2006 level of \$65.1 million. In passing H.R. 5386, the House approved \$67.0 million for recreation management in FY2007, a 3% increase over FY2006 and a 5% increase over the Administration's request. The Senate Committee on Appropriations recommended \$65.2 million for recreation

management, about equal to the FY2006 level, a 2% increase over the Administration's request, and 3% less than the House passed level. Congress has not enacted a regular FY2007 appropriations bill including funding for recreation, so this program is being funded by a temporary continuing resolution, which does not specify funding at the program level.

BLM has issued two national strategies dealing with transportation on its lands. The *National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands*<sup>35</sup> 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). The *National Mountain Bicycling Strategic Action Plan*<sup>36</sup> addresses mountain bicycling and other muscle-powered mechanical transport. Further, to guide BLM managers in taking actions affecting recreation during FY2003-FY2007, in May 2003 BLM issued *The BLM's Priorities for Recreation and Visitor Services*.<sup>37</sup>

BLM revised its land use planning handbook in 2005 regarding motorized and non-motorized recreation.<sup>38</sup> The agency 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. 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.** Some pending measures affect OHV use in particular areas. For instance, H.R. 222 contains provisions related to OHV use in central Idaho. They include conveying BLM land to the State of Idaho to establish a motorized recreation park, establishing a special management area on certain BLM and FS lands to provide opportunities for motorized and other recreation (together with other uses), and authorizing up to \$1.0 million for the Secretary of Agriculture to grant to the State of Idaho for the off-road motor vehicle program.

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<sup>35</sup> The BLM Strategy and related documents are available at [<http://www.blm.gov/ohv/>].

<sup>36</sup> Available at [[http://www.blm.gov/mountain\\_biking/](http://www.blm.gov/mountain_biking/)].

<sup>37</sup> Available at [<http://www.id.blm.gov/publications/data/recvisit.pdf>].

<sup>38</sup> Available at [[http://www.blm.gov/nhp/200/wo210/landuse\\_hb.pdf](http://www.blm.gov/nhp/200/wo210/landuse_hb.pdf)].

## Recreation in the National Forests (by Ross W. Gorte)

**Background.** The national forests are managed by the USDA Forest Service (FS) for a variety of uses, including many types of recreation — sightseeing, OHV use, backpacking, etc. — while preserving the productivity of the lands. Recreation use continues to grow, with OHV use among the fastest growing uses.<sup>39</sup>

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 have been finalized,<sup>40</sup> and some plan revisions are now proceeding.<sup>41</sup> Much of the attention has been focused on motorized recreation, because of the potentially significant impacts of motorized recreation on other values. However, other recreation uses (notably hunting and fishing) increasingly conflict with other activities, such as energy extraction.

**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. In 2004, the FS Chief identified *unmanaged recreation* — “increasing use of the national forests for outdoor activities ... , including the use of off-highway vehicles” — as a threat to the nation’s forests and grasslands. In particular, OHV use has created many unauthorized roads and trails, which can be unsafe and harmful to other resources. The FS has finalized regulations to *require* forest plans to identify a system of roads, trails, and areas for motorized vehicle use and prohibit the use of OHVs and other motorized vehicles outside the designated system.<sup>42</sup> Opinions are divided over the importance and impact of the regulations. Some 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 national forest lands and resources. Others counter that the regulations 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.

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<sup>39</sup> *Off-Highway Vehicle Recreation in the United States, Regions and States* (USDA-FS Southern Research Station, June 2005), at [<http://www.treesearch.fs.fed.us/pubs/21307>].

<sup>40</sup> 70 *Fed. Reg.* 1023 (Jan. 5, 2005). The final rule describing the FS land management planning framework is available at [<http://www.fs.fed.us/emc/nfma/includes/rule%20.pdf>].

<sup>41</sup> Detailed information and documents concerning the 2005 final rule are available via the FS website at [<http://www.fs.fed.us/emc/nfma/index2.html>].

<sup>42</sup> 70 *Fed. Reg.* 68264-68291 (Nov. 9, 2005). See also the FS Travel Management & Off-Highway Vehicle (OHV) Program at [<http://www.fs.fed.us/recreation/programs/ohv/>].

Environmental and wildlife and fish groups have challenged various efforts to lease federal areas for oil and gas exploration and development.<sup>43</sup> Concerns typically focus on the impacts of oil and gas development on wildlife-related recreation, and the difficulties for interests other than the energy industry to influence decisions about the location, timing, and stipulations for development. The Energy Policy Act of 2005 (P.L. 109-58) expanded the opportunities for energy development on federal lands, which could increase potential conflicts. The Government Accountability Office (GAO) has noted that the public has opportunities to comment on and to challenge leasing decisions, but that the agencies do not maintain data to assess the impact of these challenges and that increased leasing has reduced the BLM's ability to protect the environment.<sup>44</sup>

The FY2007 FS budget proposed cutting recreation funds. Recreation management would be funded at \$250.9 million, a \$7.9 million (3%) reduction from the FY2006 level of \$258.8 million. Trails funding would be \$60.3 million, a \$13.9 million (19%) reduction from the FY2006 level of \$74.2 million, with a greater reduction (in dollars and percentage) in trails construction than in maintenance.

**Legislative Activity.** The House-passed FY2007 Interior appropriations bill, H.R. 5386, restored or increased FS recreation and trails funding, compared to the request. Recreation management was approved at \$262.0 million, \$3.2 million (1%) above FY2006 and \$11.1 million (4%) above the request. Trails funding was approved at \$73.4 million, \$0.8 million (1%) below FY2006 (all in construction) and \$13.1 million (22%) above the request (increasing both construction and maintenance). The Senate Appropriations Committee recommended funding levels much closer to the Administration's request, with recreation management at \$252.0 million (\$6.8 million (3%) below FY2006 and \$1.1 million (0.4%) above the request) and trails funding at \$61.9 million (\$12.3 million (17%) below FY2006 and \$1.6 million (3%) above the request, with the additional funding all in construction). Funding for recreation management in FY2007 is being provided under a continuing resolution, which does not specify funding at the program level.

## **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.<sup>45</sup> The federal portion of the trails system consists of 25 national trails (8 scenic and 17 historic trails, both

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<sup>43</sup> See, for example, Trout Unlimited, *Fact Sheet: Gas and Oil Development on Western Public Lands*, at [<http://www.tu.org/site/pp.asp?c=7dJEKTnuFmG&b=295729>]; and Natural Resources Defense Council, *Broad Coalition Sends Message to BLM: Do Oil & Gas Right*, at [<http://www.nrdc.org/media/presreleases/040204.asp>].

<sup>44</sup> U.S. Government Accountability Office, *Oil and Gas Development: Challenges to Agency Decisions and Opportunities for BLM to Standardize Data Collection*, GAO-05-124 (Washington, DC: Nov. 2004); and *Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities*, GAO-05-418 (Washington, DC: June 2005).

<sup>45</sup> See [<http://www.nps.gov/nts/>] for establishing legislation and background information on the National Trails System.

of which must be designated by Congress) covering more than 50,000 miles, over 900 recreation trails, and 2 connecting and side trails. Issues involve the funding, quality, and quantity of trails; land acquisition for trails; and the creation of a new category of trails.

**Administrative Actions.** On June 1, 2006, the Secretary of the Interior announced the designation of 36 new National Recreation Trails (NRTs). Since 2001, the Bush Administration has designated 164 National Recreation Trails, totaling more than 4,200 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.

BLM manages more miles of National Historic Trails than any other federal agency. On February 13, 2006, BLM released its first National Scenic and Historic Trails Strategy and Work Plan for congressionally-designated trails under its jurisdiction.<sup>46</sup> The 10-year plan provides guidance to establish a coordinated and consistent trails-focused administrative infrastructure; develop national policies to protect and sustain trail resources within BLM's multiple-use mandate; manage trail resources to enhance visitor experiences and promote "appropriate public access"; and maintain and advance BLM's partnerships with trail organizations and other agencies.

**Legislative Activity.** Legislation has been introduced in the 110<sup>th</sup> Congress (H.R. 74) to add National Discovery Trails as a new category of long-distance trails within the National Trails System, and designate 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. The 104<sup>th</sup> through the 109<sup>th</sup> Congresses considered, but did not enact, similar legislation. A *willing seller* bill (S. 169) reintroduced in the 110<sup>th</sup> Congress would provide federal authority to acquire land from willing sellers to complete nine national scenic and historic trails. This proposal does not commit the federal government to purchase any land or spend any money, but seeks to allow managers to purchase land to protect the national trails as opportunities arise and funds are appropriated. The 110<sup>th</sup> Congress also may consider measures to designate, study, or extend components of the National Trails System, as well as funding requests.

The 109<sup>th</sup> Congress established the Captain John Smith Chesapeake National Historic Trail (P.L. 109-418; H.R. 5466), the nation's first all-water national historic trail. Beginning at Jamestown, Virginia, the new trail will trace Captain Smith's 1607-1609 voyages of exploration in the Chesapeake Bay region. The 109<sup>th</sup> Congress also authorized the National Park Service to study additional routes and associated campgrounds for possible inclusion in the Trail of Tears National Historic Trail (P.L. 109-378).

Each agency with management authority over national trails has its own budget or funding system for carrying out activities related to trail administration and

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<sup>46</sup> See [<http://www.blm.gov/nlcs/nsht/NSHTSWfinalSig.pdf>].

management. Federal land managing agencies have agreed, within the limits of agency authorities, to coordinate requests for and obligation of funds related to the National Trails System to eliminate duplication of effort and increase effectiveness. FY2006 funding for the National Trails System was \$22.5 million, and the FY2007 request was \$15.6 million. Funding for trails for FY2007 is being provided through a continuing funding resolution. Funding other than for the National Trails System cannot be aggregated because of differences among agencies' budgeting practices.<sup>47</sup>

## Other Issues

The 110<sup>th</sup> Congress may evaluate several other recreation issues affecting federal land. These include recreation within the National Wildlife Refuge System, recreation at federal water sites (Bureau of Reclamation and Army Corps of Engineers), 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 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 or extractive uses, but in certain cases, some 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 (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.<sup>48</sup> Some interest groups contended that the regulations did not allow for sufficient public access for some forms of recreation, such as use of OHVs or PWC. Others felt that the regulations struck a proper balance among user groups.

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<sup>47</sup> Other trail projects may be eligible for federal highway funding under SAFETEA-LU (P.L. 109-59). For example, the Recreational Trails Program (RTP) provides funds to states to develop and maintain recreational trails and trail-related facilities for motorized and nonmotorized recreational trail uses. P.L. 109-59 authorized \$370 million for the RTP over five years.

<sup>48</sup> 65 *Fed. Reg.* 62457 (Oct. 18, 2000).

An NWRS budget controversy may affect recreation, especially on less well-known refuges. Costs of operation have increased on many refuges, partly due to special problems such as hurricane damage and more aggressive border enforcement. Reductions in funding for operations in the NWRS, combined with the need to meet fixed costs such as rent, salaries, and utilities, have led to cuts in funding for programs to aid endangered species, reduce infestation by invasive species, protect water supplies, address habitat restoration, and ensure staffing at the less popular refuges. The Northeast Region (roughly Virginia to Maine, with 71 refuges) has taken the lead in addressing this issue by attempting to consolidate management at refuges, and increasing the number of refuges which are not staffed on a regular basis (termed “de-staffing” in the region). The region also is attempting to consolidate some services in order to spread resources more effectively. Implications for recreation could include reduced trash collection, fewer visitor services, less trail maintenance, etc. Other regions are observing actions in the Northeast, and working on their own plans to address reduced operating budgets. On July 20, 2006, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on staffing and management in the NWRS (hearing record not yet published).

*Legislative Activity.* In the 109<sup>th</sup> Congress, there was an attempt to address a question of public access to two refuges in the Caribbean (Navassa and Desecheo), an issue raised by ham radio operators who wished to broadcast from these remote islands. These two refuges are seabird breeding colonies and are not staffed by FWS personnel; protection of the birds, blocking the arrival of invasive species, and public safety (due to reports of unexploded ordinance) are the agency’s primary concerns. Legislation to require the Interior Secretary to open Navassa and Desecheo for at least one period each year was reported from the Resources Committee (H.R. 1183, H.Rept. 109-320), and may be brought up again in the 110<sup>th</sup> Congress. Other recreation issues in the refuge system may be raised in the budget and appropriations cycle.

**Recreation at Federal Water Sites.** (by Nicole Carter and Nic Lane) 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 and along rivers and other waterways. These agencies’ more than 4,000 recreation areas attract nearly 500 million visits per year (400 million at Corps-managed areas; 90 million at Bureau sites). While these federal reservoirs and federally maintained waterways often are operated primarily for navigation, hydropower, flood control and/or irrigation, they also provide recreation and other benefits. Reservoir and waterway operations can be contentious because decisions on water releases often 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.

*Bureau of Reclamation.* (by Nic Lane) The Bureau of Reclamation mission is not primarily related to recreation, and thus it has limited authority, funding, and staff to provide for recreation facilities. However, realizing that the reservoirs behind Reclamation dams create desirable recreation opportunities, the agency works with 67 non-federal partners to manage and oversee recreation facilities at Reclamation

projects. Reclamation sites, including those managed by non-federal partners, receive 90 million visits annually, generate \$6 billion in visitor revenue, and create 27,000 non-federal jobs.<sup>49</sup> The agency endeavors to aid concessionaires through outreach programs aimed at helping them succeed in their management of sites, and to avoid the failure of a concessionaire or management partner which results in the site and facilities reverting to Reclamation's stewardship — known as turn back. This has occurred 29 times in the past and places additional pressure on Reclamation's funding and staff resources.<sup>50</sup>

An ongoing issue involving the Bureau's Lake Berryessa in Sonoma County, CA, is indicative of the type of land use conflicts that can arise at federal recreation sites. Formed when the Bureau built Monticello Dam in 1957, the lake is a popular recreation area where the Bureau has let long-term contracts with seven concessionaires who provide recreation support services. Six of these contracts, which have been in place for 40-plus years, will expire in 2008-2009. The seventh, an interim contract, expired at the end of 2005. The Bureau is making significant changes to contract structure upon renewal, including actions that will affect long-term camping (trailer parking) at the lake. A Record of Decision (ROD) signed on June 2, 2006,<sup>51</sup> increases and improves short-term recreation use opportunities and clarifies the Bureau's intent for management of long-term camp sites at the lake. These changes are contentious for both concessionaires who manage long-term camping and current occupants of long-term sites. Although the changes remain contentious for some, the Bureau indicates that management decisions in the final ROD reflect a combination of proposed management plans based on comments from the public and affected parties.

*Corps of Engineers.* (by Nicole Carter) The 110<sup>th</sup> Congress may consider questions related to the maintenance of recreational facilities (under constraints on the agency's recreational spending), relative priority of multiple reservoir uses, and policies for recreational development and land use at Corps projects.<sup>52</sup> The 109<sup>th</sup> Congress considered changes to Corps recreation policies as part of an omnibus Water Resources Development Act (WRDA, H.R. 2864). The House-passed version would have adjusted the existing user fee authorization. The Senate-passed version would have made more extensive changes. One provision of the Senate-passed version, which was similar to the Administration proposal in the FY2006 and FY2007 budget requests, would have required the Corps to implement recreation admission fees. User and admission fees collected would be available directly to the Corps. This contrasts with the current practice of depositing Corps user fees in the general Treasury. A second provision in the Senate-passed version would have allowed the Corps to enter into a contract with public or private entities to provide

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<sup>49</sup> Telephone conversation with Bruce Brown, Partnerships Coordinator, Bureau of Reclamation, Washington, DC, on Dec. 21, 2006.

<sup>50</sup> See [<http://www.whitehouse.gov/omb/expectmore/detail.10002226.2005.html>].

<sup>51</sup> See [[http://www.usbr.gov/mp/mp150/envdocs/CCAO\\_Berryessa\\_ROD%20Final.pdf](http://www.usbr.gov/mp/mp150/envdocs/CCAO_Berryessa_ROD%20Final.pdf)] for the complete text of the Record of Decision.

<sup>52</sup> See [<http://www.whitehouse.gov/omb/expectmore/detail.10002002.2005.html>].



visitor services. Similar provisions may be considered as part of a WRDA in the 110<sup>th</sup> Congress.

**Recreation Fees.** (by Carol Hardy Vincent) DOI and the Department of Agriculture are in transition to a new recreation fee program, and Congress may oversee agency efforts to establish, collect, and spend recreation fees. The 108<sup>th</sup> Congress established the new recreation fee program for the four major federal land management agencies (NPS, BLM, FWS, and FS) as well as for the Bureau of Reclamation. The agencies have issued guidance on implementing the program, and have adjusted fees at sites formerly charging fees to meet the criteria and prohibitions in the new law. To cover entrance and standard fees for the five agencies, in January 2007 a new interagency pass was established — the America the Beautiful National Parks and Federal Recreational Lands Pass. The cost of the general pass (\$80 per year), the extent and convenience of its use, and the distribution of revenues from passes sold are likely to be issues of interest. While the agencies have made progress in implementing the new law, a September 2006 GAO report determined that some issues are unresolved.<sup>53</sup> For instance, some agencies lacked accounting procedures and controls for collected fees, not all federal units were in compliance with the law, and the Bureau of Reclamation had not determined how the law applies to its operations.

Provisions of P.L. 108-447 (Division J, Title VIII) provide guidance to the five agencies 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 authorizes the creation of an interagency national recreation pass as well as regional multi-entity passes. Each agency can spend the revenue collected without further appropriation. In general, not less than 80% of the fees are to be spent at the collecting site, but that amount can be reduced to not less than 60%. The balance of the collections is available to be used agency-wide. The agencies (excluding the Bureau of Reclamation) anticipate collecting about \$240 million in fees in FY2007, with NPS collections accounting for about two-thirds of the total. 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.

**Grand Canyon Colorado River Recreational Use Management.** (by David Whiteman) The NPS regulates recreational use of the Colorado River corridor at the bottom of the Grand Canyon. Of particular concern is the management of river-running boat trips on the Colorado River inside Grand Canyon National Park in order to protect river resources and foster a high-quality visitor experience. The 277-mile river canyon is a popular destination for multi-day raft trips, long considered one of the most “iconic” of National Park experiences. Decades of conflict have ensued over motorized boating on the river, helicopter flights used to

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<sup>53</sup> U.S. Government Accountability Office, *Agencies Can Better Implement the Federal Lands Recreation Enhancement Act and Account for Fee Revenues*, GAO-06-1016 (Washington, DC: GPO, Sept. 2006), 111 p. Available via the GAO website at [<http://www.gao.gov/new.items/d061016.pdf>].

ferry commercial boating passengers in and out of the canyon, and the proportion of commercial outfitters versus noncommercial private boaters. Historically, about 70% of river access permits have gone to commercial concessioners, with about 30% to noncommercial self-guided private boaters. The motorized activities have long been opposed by groups favoring the preservation of wilderness-like values in the river corridor. Commercial river trip outfitters assert that access for motorized boating does not harm resources and is the only practical way to offer popular short-duration trips.

In late 2005, the NPS issued a new Colorado River Management Plan (CRMP)<sup>54</sup> governing recreational river use for at least 10 years and establishing goals and objectives for a longer time frame. This new management plan alters the allocation of river access between commercial and noncommercial users, with more access for the self-outfitted sector. The plan also shortens the season for commercial trips but expands both the number of commercial launches allowed and their group size. A “hybrid” weighted lottery system for noncommercial users is being phased in, and the park plans to issue 197 noncommercial launch permits for 2007.<sup>55</sup> Some noncommercial users have expressed concern that while they have more overall access, they are largely relegated to off-season periods and are allowed less time on the river. In general, commercial users view the new plan favorably. Some conservation interests fear that accommodating motorized use could jeopardize long-pending prospects for wilderness designation.

On February 16, 2006, a coalition of conservation groups filed suit in federal court to force Interior to re-evaluate its approach to river canyon ecosystem recovery. They cite continuing damage to beaches, vegetation, unique species, and cultural resources from the operation of the upstream Glen Canyon Dam, and contend that the new CRMP does not adequately protect park resources from user impacts. Another coalition of conservation and some boating groups filed a separate suit on March 28, 2006, over motorized use and perceived inequities of the new river use plan. This lawsuit seeks an injunction that would require the NPS to prepare a new CRMP. The CRMP process, now challenged, took nearly 10 years to complete and implement. An October 2006 court ruling allowed the intervention in the case by two boater associations favoring the new CRMP.

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<sup>54</sup> Additional background information and related documents are available on the NPS CRMP website at [<http://www.nps.gov/grca/crmp/>].

<sup>55</sup> Information on Colorado River trips is available via the NPS CRMP website at [<http://www.nps.gov/grca/planyourvisit/whitewater-rafting.htm>]. For weighted lottery information, see [<http://www.nps.gov/grca/planyourvisit/weightedlottery.htm>] and the link for associated FAQs at [<http://www.nps.gov/grca/planyourvisit/river-faq.htm>].