



National Park System: Establishing New Units

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Summary

The National Park System includes 392 diverse units administered by the National Park Service (NPS) of the Department of the Interior. Units generally are added to the National Park System by act of Congress, although the President may proclaim national monuments on land that is federally managed for inclusion in the System. Before enacting a law to add a unit, Congress might first enact a law requiring the NPS to study an area, typically to assess its national significance, suitability and feasibility, and other management options. Important areas also are preserved outside the National Park System through programs managed or supported by the NPS. This report will be updated if the processes, criteria, and issues change.

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Overview of the System

The National Park System contains 392 units throughout the nation. They are administered by the National Park Service (NPS) of the Department of the Interior (DOI). As of September 30, 2009, the National Park System encompassed 84.3 million acres of land—80.4 million acres federally owned and 3.9 million acres of private and other public land (e.g., state land) within NPS unit boundaries. Units range in size from less than one acre to more than 13 million acres. Nearly two-thirds of the total acreage is in Alaska.

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

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

Today, there are more than 20 different designations (i.e., titles) for units of the National Park System, reflecting the diversity of the areas. There is no statute that sets out and defines all the designations, and Congress has discretion in choosing the type of designation for a unit being established. While some designations are descriptive and possibly self-explanatory, such as “battlefield,” others have been used in different ways. For instance, the designation “national monument” has been given to a variety of areas, including natural reservations, historic military forts, prehistoric ruins, fossil sites, and the Statue of Liberty.¹ Some park units have unique titles, such as Constitution Gardens, Lyndon Baines Johnson Memorial Grove on the Potomac, National Mall, Theodore Roosevelt Island, and White House, all within the District of Columbia. Some park units have combinations of classifications, such as the Big South Fork National River and Recreation Area, Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, and Mary McLeod Bethune Council House and National Historic Site. Some classifications (such as “national park”) are unique to NPS, while others (such as “national recreation area”) also are used by other land management agencies.

As of November 5, 2009, there were 58 units called national parks, the so-called “crown jewels” of the System. Other commonly used titles include national historic sites (77), national monuments (74), national historical parks (45), national memorials (28), national recreation areas (18), and national preserves (18).

¹ A brief definition for each classification, together with a description of each unit of the System, is included in U.S. Dept. of the Interior, National Park Service, Office of Public Affairs and Harpers Ferry Center, *The National Parks: Index 2009-2011* (Washington, DC: GPO, 2009). See also the descriptions of different designations on the NPS website at <http://www.nps.gov/legacy/nomenclature.html>.

Adding Units by Public Law and Presidential Proclamation

National Park System units are created by act of Congress, except that national monuments also may be added by presidential proclamation. The Antiquities Act of 1906 (16 U.S.C. 431 et seq.) authorizes the President to create national monuments, on land that is already federally owned or controlled, that contains historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest.² Presidents have designated 128 monuments since 1906. Congress has subsequently converted many of them, such as the Grand Canyon, to national parks. Most monuments are managed by NPS, with many newer monuments managed by the Bureau of Land Management or other agencies.³

An act of Congress creating a Park System unit may explain the unit's purpose; set its boundaries; provide specific directions for land acquisition, planning, uses, and operations; and authorize appropriations for acquisition and development. Bills to create units generally are within the jurisdiction of the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, with appropriations typically contained in Interior, Environment, and Related Agencies appropriations acts. In recent years, Congress sometimes has enacted free-standing legislation to add units to the National Park System. Congress also has authorized units as part of omnibus parks and recreation laws containing dozens of recreation-related measures.⁴ Measures sometimes are packaged to facilitate broad evaluation of an issue and to expedite consideration. Legislation creating a new unit may be preceded by legislation to authorize an NPS study of the area, as described below.

Provisions of law, together with NPS policies, govern Congress's consideration of measures to create units of the National Park System. In 1998, Congress amended existing law pertaining to creating units (P.L. 105-391) to standardize procedures, improve the information about potential additions, prioritize areas, focus on outstanding areas, and ensure congressional support for area studies.⁵ Current law charges the Secretary of the Interior with investigating, studying, and monitoring nationally significant areas with potential for inclusion in the System. It outlines a procedure for the Secretary to study areas to provide Congress with information for deciding whether to create park units. The National Park System Advisory Board, composed of private citizens, advises the Secretary of the Interior on possible additions to the National Park System. In practice, NPS performs these functions assigned to the Secretary.

² Extensions or establishment of monuments in Wyoming require the authorization of Congress (16 U.S.C. 431a), and withdrawals in Alaska exceeding 5,000 acres are subject to congressional approval (16 U.S.C. 3213).

³ For more information, see CRS Report R41330, *National Monuments and the Antiquities Act*, by Carol Hardy Vincent and Kristina Alexander.

⁴ For instance, P.L. 111-11, the Omnibus Public Land Management Act of 2009, authorized the establishment of new park units.

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

Recommending Areas for Study

The Secretary of the Interior is required by law to recommend annually to Congress a list of areas for study for potential inclusion in the National Park System. The list is to be submitted at the beginning of each year to the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources. Under the same procedure, the NPS also must submit to Congress a list of areas *previously* studied that contain primarily historical resources, and a list of areas with natural resources. Areas are to be ranked in order of priority for addition to the Park System, and supported by current data. The NPS has determined that over the past 20 years, about one in every four or five studies concluded that an area was eligible for inclusion within the Park System.⁶ For this reason, and because the Bush Administration generally did not support expanding the Park System, the Bush Administration had not been submitting the annual lists.⁷ Similarly, for FY2010 and FY2011, the Obama Administration did not expect to submit lists of areas for potential study or addition to the System, to focus on completing authorized studies and other current responsibilities, such as facility maintenance.⁸

Under 16 U.S.C. 1a-5, NPS must consider three issues in developing for Congress the list of areas recommended for study: (1) whether an area is nationally significant, and would be a suitable and feasible addition to the National Park System; (2) whether an area represents or includes themes, sites, or resources “not already adequately” represented in the System; and (3) requests for studies in the form of public petitions and congressional resolutions (the “popular demand” factor).

Candidates for study are identified by diverse sources, such as local “grassroots” preservation interests, elected officials, and professional evaluations. In the past, the Secretary’s annual list for Congress of damaged or threatened areas on the Registry of Natural Landmarks and the National Register of Historic Places also was used to identify study sites. NPS screens candidates, in some cases conducting a brief site visit or a more detailed reconnaissance survey to assess an area. In the past, NPS ranked areas that passed the initial screening, and the highest-priority areas were recommended to Congress for study.

Preparing Area Studies

Current law does not appear to explicitly require an NPS area study before Congress adds a unit to the Park System, but any such study requires “specific authorization of an Act of Congress” (16 U.S.C. 1a-5).⁹ In the past, studies were prepared at the initiative of NPS, individual Members of Congress, and other entities, as well as required by authorization and appropriations laws. The 1998 statutory change sought to eliminate these separate sources for initiating studies, on the grounds that in some years funding was insufficient to cover all studies, and ongoing studies

⁶ U.S. Dept. of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2007*, p. Const-82-83.

⁷ See, for example, U.S. Dept. of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2009*, p. Const-75.

⁸ U.S. Dept. of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2010*, p. Const-85 and National Park Service, Office of Legislative and Congressional Affairs, personal communication, July 21, 2010.

⁹ The NPS has authority to study adjustments to boundaries of established park units.

sometimes were not completed because funds were earmarked for other studies. However, NPS may conduct preliminary activities, such as resource assessments, provided that they cost less than \$25,000.

After funds are available, NPS must complete a study of an area within three fiscal years. In practice, studies have taken longer to prepare, with an average of 5.6 years for studies completed in FY2009. This is due to the large number of studies authorized by Congress and the extent of available resources.¹⁰ The length of time is being reduced, and the NPS anticipates a reduction to three years by FY2014 if funding for the activity is continued at the FY2010 level.¹¹ Studies are to include public involvement, with at least one public meeting held in the local area, and reasonable efforts to notify affected state and local governments and landowners. Studies also are to comply with the National Environmental Policy Act of 1969 (NEPA), which requires an assessment of the potential impact of the proposed action on the human environment.

Criteria for Studies

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

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

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

NPS views an area as *suitable* if it portrays a natural or cultural resource insufficiently included in the System, unless a similar area is managed for public use by another agency. An area is *feasible* to add if it is large enough, configured so as to allow long-term protection and public use, and affordable to manage. Other important issues in assessing the feasibility of adding an area to the National Park System include ownership of the land and the cost of acquiring it, access, current

¹⁰ In its FY2011 Budget Justification, for example, the NPS reported that at that time the agency was responsible for 47 special resource studies.

¹¹ U.S. Dept. of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2011*, p. Const-83.

and potential land uses, threats to resources, public support, and staff or development requirements. For instance, privately owned land that the owner is unwilling to sell, or that would be expensive to acquire, might not be viewed as feasible.

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

Other Management Options

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

Issues

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

The Obama Administration also expressed a need to focus attention and resources on the current System, including the maintenance backlog, "rather than continuing the rapid expansion of new NPS responsibilities."¹² The Administration is implementing a plan to complete special resource studies already authorized by Congress, and has not submitted to Congress lists of areas for

¹² U.S. Dept. of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2010*, p. Const-85.

possible inclusion in the Park System.¹³ However, the Administration did testify during the 111th Congress in favor of creating at least one new unit of the National Park System and expanding several others.

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

Alternatives to Inclusion in the National Park System

It is generally regarded as difficult to meet the criteria and to secure congressional support and funding for expanding the National Park System. Although there may be hundreds or thousands of related inquiries to Congress and the NPS, usually no more than a handful of new units are created each Congress.

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

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

¹³ U.S. Dept. of the Interior, National Park Service, *Budget Justifications and Performance Information, Fiscal Year 2011*, p. Const-83; and National Park Service, Office of Legislative and Congressional Affairs, personal communication, July 21, 2010.

land. Differences also have existed over whether to create a comprehensive heritage program containing priorities and standards for establishing heritage areas.¹⁴

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

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

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¹⁴ For more information, see CRS Report RL33462, *Heritage Areas: Background, Proposals, and Current Issues*, by Carol Hardy Vincent.