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# Motorized Recreation on National Park Service Lands

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## Summary

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

**ATVs and Oversand Vehicles.** Only 13 of the 401 park units are open to public recreational use of all-terrain vehicles (ATVs), four-wheel drive vehicles, and/or dune, sand, and swamp buggies. The extent of unauthorized use of such vehicles is in dispute. Several units have developed pilot education and deterrence programs to address unauthorized use. Legislative measures in the 113<sup>th</sup> Congress (H.R. 819, H.R. 2954, S. 486) seek to regulate OHV use at one NPS site, Cape Hatteras National Seashore.

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

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

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

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



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## Introduction

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

The National Park System, with 401 units covering approximately 85 million acres of land, received more than 268 million recreational visits in 2013.<sup>2</sup> Use of off-highway vehicles (OHVs) in the parks—including all-terrain vehicles (ATVs), snowmobiles, personal watercraft, and others—along with recreational activities such as mountain biking, snow biking, heli-skiing, and aircraft tours, have evolved and gained in popularity. These newer forms intersect with more traditional, nonmotorized forms of recreation, including land-based activities such as hiking, camping, hunting, birdwatching, horseback riding, and rock climbing, and water-based pursuits such as fishing, canoeing, kayaking, and rafting.

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

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

<sup>1</sup> The NPS “Organic Act” of 1916 directs the Park Service to manage its lands so as “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” (16 U.S.C. §1).

<sup>2</sup> NPS visitor use statistics are available on the NPS website at <https://irma.nps.gov/Stats/>. For 2013 statistics through December, see “Current Year Monthly and Annual Summary Report.” For comparison, a decade ago, in 2004, the National Park System received approximately 277 million recreational visits.

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

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

opportunities. Critics also point to the beneficial economic impact of nonmotorized recreation on local communities.<sup>5</sup>

The 113<sup>th</sup> Congress has addressed motorized recreation in the National Park System through legislation and oversight. Bills concerning motorized recreation at NPS units include H.R. 819, H.R. 2954, and S. 486, all of which would change regulations for OHVs at Cape Hatteras National Seashore; and H.R. 3590, as amended (H.Amdt. 538), which would prohibit NPS from altering regulations that allow the use of motorized vessels for fishing at Ozark National Scenic Riverways. In its oversight role, the House Natural Resources Committee has held hearings on outdoor recreation, including motorized and nonmotorized uses, on federal lands. A May 2013 hearing addressed outdoor recreation issues such as insurance and permitting problems for outfitters and guides.<sup>6</sup> A June 2013 hearing discussed federal, state, and local interactions regarding outdoor recreation and addressed problems of coordination, trail and travel planning, conflicts between motorized and nonmotorized uses, and local input into agency planning.<sup>7</sup>

## Authorities Governing Motorized Recreation on NPS Lands

### Executive Orders

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

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

<sup>6</sup> U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, *Impediments to Public Recreation on Public Lands*, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., May 7, 2013, at <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg80815/pdf/CHRG-113hhrg80815.pdf>.

<sup>7</sup> U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, *Outdoor Recreation Opportunities on State, Local and Federal Land*, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., June 27, 2013, at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=339839>.

OHV use and amend or rescind area designations or other actions taken pursuant to the order as needed to further the policy of the executive order.

A subsequent executive order (E.O. 11989, May 24, 1977) amended the 1972 order to exclude military, emergency, and law enforcement vehicles from the definition of off-road vehicles (to which restrictions would apply). It provided authority to immediately close areas or trails if OHVs were causing or would cause considerable damage to the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails. Areas could remain closed until the manager determined that “the adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.” Also, each agency was authorized to adopt the policy that areas could be closed to OHV use except for those areas or trails that are specifically designated as open to such use. This meant that only open areas would have to be marked, a lesser burden on the agencies.

## Other NPS Authorities

While the executive orders apply to federal lands generally, other authorities concerning OHVs are specific to the National Park System. In particular, NPS regulations generally limit OHV use in the park system to four types of NPS units—national recreation areas, national seashores, national lakeshores, and national preserves.<sup>8</sup> The regulations also require special rulemaking, with environmental impact analysis and public comment, to designate routes and areas for OHVs in these park units. NPS’s management policies provide additional guidance, stating that OHV use “may be allowed only in locations where there will be no adverse impacts on the area’s natural, cultural, scenic, and esthetic values, and in consideration of other existing or proposed recreational uses.”<sup>9</sup> In general, the management policies emphasize the conservation of park resources in conservation/use conflicts.<sup>10</sup>

Although the executive orders cited earlier include oversnow vehicles in the definition of OHVs, the NPS regulations that permit OHV use only at certain types of park units do not apply to snowmobiles.<sup>11</sup> Instead, snowmobile use in the National Park System is governed by separate regulations that limit such vehicles to designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons.<sup>12</sup> The regulations prohibit snowmobiles except “when their use is consistent with the park’s natural, cultural, scenic and aesthetic values, safety considerations, [and] park management objectives, and will not disturb wildlife or damage park resources.” NPS management policies further state that snowmobile use can be authorized only where it will not result in unacceptable impacts.<sup>13</sup>

The enabling legislation for individual NPS units may establish specific activities as an appropriate use (e.g., water-oriented recreation, snowmobiling for subsistence or recreational purposes, or OHV travel to reach hunting or fishing areas). Additional unit-level direction for

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<sup>8</sup> 36 C.F.R. §4.10(b). For a discussion of the various unit designations in the National Park System, see CRS Report R41816, *National Park System: What Do the Different Park Titles Signify?*, by (name redacted).

<sup>9</sup> National Park Service, *Management Policies 2006*, §8.2.3.1, p. 104, at <http://www.nps.gov/policy/mp2006.pdf>.

<sup>10</sup> *Ibid.*, §1.4.3.

<sup>11</sup> Personal communication with Kyle Earnest, NPS Congressional and Legislative Affairs Office, December 6, 2012.

<sup>12</sup> 36 C.F.R. §2.18.

<sup>13</sup> National Park Service, *Management Policies 2006*, §8.2.3.2, p. 104, at <http://www.nps.gov/policy/mp2006.pdf>.

designated routes (such as temporary route closures) may be included in a park's general management plan and/or determined by the park superintendent.<sup>14</sup>

## ATVs and Oversand Vehicles<sup>15</sup>

Excluding Alaska, 13 NPS units allow off-road use of ATVs, four-wheel drive vehicles, and/or dune, sand, and swamp buggies by the general public.<sup>16</sup> Environmental groups have alleged that these vehicles damage wildlife habitat and disturb nonmotorized activities, both in the units that permit their use and in other areas where, they claim, unauthorized use occurs. Users of the vehicles, by contrast, have sought more routes and areas for off-road recreation and increased motorized access to hunting and fishing sites. They assert that NPS restrictions harm communities surrounding parks, which depend on business generated by OHV users.

NPS is in the process of issuing special regulations to designate routes and areas for off-road use in those units that permit ATVs and oversand vehicles. Eleven of the 13 park units have special regulations in place: Big Cypress National Preserve; Apostle Islands National Lakeshore; Curecanti, Gateway, and Lake Meredith National Recreation Areas (NRAs); and Assateague, Cape Cod, Cape Hatteras, Fire Island, Gulf Islands, and Padre Island National Seashores.<sup>17</sup> Two additional units are open to public use while NPS completes OHV management planning: Glen Canyon NRA<sup>18</sup> and Cape Lookout National Seashore.<sup>19</sup> Also, Lake Meredith and Curecanti NRAs and Big Cypress National Preserve are developing regulations to change the current boundaries for OHV riders.<sup>20</sup> Other areas that once allowed public off-road use of ATVs and oversand vehicles are now closed to such use, including Little River Canyon National Preserve and Big South Fork National River and Recreation Area.<sup>21</sup>

<sup>14</sup> 36 C.F.R. §1.5.

<sup>15</sup> This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and (name redacted), CRS Legislative Attorney.

<sup>16</sup> Personal communication with Kyle Earnest, NPS Office of Legislative and Congressional Affairs, February 10, 2014; also special regulations and superintendent's compendia for individual park units. Some additional units permit use of ATVs and oversand vehicles by inholders, Native Americans, or others for specific limited purposes under a variety of authorizations. (An inholder is an owner of land within the boundaries of an NPS unit.)

<sup>17</sup> See special regulations for these NPS units at 36 C.F.R. Part 7.

<sup>18</sup> NPS released a *Draft Off-Road Vehicle Management Plan and Environmental Impact Statement* for Glen Canyon NRA on January 3, 2014 (available at <http://parkplanning.nps.gov/document.cfm?parkID=62&projectID=19520&documentID=56859>). Public comments are being accepted on the draft plan through March 4, 2014.

<sup>19</sup> Cape Lookout National Seashore is developing a draft off-road vehicle management plan and environmental impact statement. NPS accepted comments on proposed alternatives through July 20, 2012; for information, see <http://www.nps.gov/caloparkmgmt/upload/CALO-ORV-alts-brochure-full-061212.pdf>. ORV use at the seashore is currently governed by the unit's 1982 General Management Plan and a 2006 Interim Protected Species Management Plan; for information, see <http://www.nps.gov/caloparkmgmt/current-documents.htm#IPSP>. For updates on the planning process, see <http://parkplanning.nps.gov/projectHome.cfm?projectID=15978>.

<sup>20</sup> In January 2013, Lake Meredith NRA released a *Draft Off-Road Vehicle Management Plan/Environmental Impact Statement*, available at <http://parkplanning.nps.gov/document.cfm?parkID=76&projectID=20192&documentID=51446>. Public comments on the plan were accepted through March 26, 2013; see 78 *Fed. Reg.* 5494. For updates on the planning process, see <http://parkplanning.nps.gov/projectHome.cfm?projectID=20192>. For Curecanti NRA, NPS issued a proposed rule in May 2013 (78 *Fed. Reg.* 27132) that would modify access for OHVs and snowmobiles. For Big Cypress National Preserve, see discussion below under "Site-Specific Conflicts."

<sup>21</sup> OHV use at Little River Canyon ceased in 2010. For additional information, see <http://www.nps.gov/liri/parkmgmt/index.htm>. Big South Fork is closed to recreational OHV riders and currently has no designated trails for them. (continued...)



Some of NPS's regulatory actions respond to a 2005 lawsuit by environmental organizations.<sup>22</sup> The groups alleged that ATVs and other off-highway vehicles constituted a "serious threat" to NPS resources that the agency failed to address. The parties settled in 2008.<sup>23</sup> NPS is still addressing some requirements of the settlement, such as the requirement that the agency develop environmental impact statements and special rules governing OHV use at Glen Canyon NRA and Cape Lookout National Seashore. (Cape Lookout has completed public scoping and is developing a draft alternative OHV management plan and environmental assessment; Glen Canyon released a draft plan in January 2014.) Also in response to the settlement agreement, NPS is encouraging education via the websites of units permitting OHV use.

## Unauthorized ATV Use in the National Park System

As use of ATVs and other off-highway vehicles on federal lands has grown in recent decades, unauthorized use has also been reported in some areas, including NPS units. The extent of unauthorized OHV use in the National Park System is unclear. A 1999 survey from Bluewater Network found 40 park units with unauthorized use,<sup>24</sup> but a 2004 NPS survey found unauthorized use in "several parks" and generally "less than significant" resource damage.<sup>25</sup>

NPS has addressed unauthorized OHV use through public outreach, education, and enforcement activities such as officer training and increased fines and penalties.<sup>26</sup> The agency also encourages units with illegal OHV use to pursue enforcement actions. However, some believe NPS budgetary and staff constraints limit enforcement effectiveness.<sup>27</sup>

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(...continued)

However, designated multiple-use trails are open to ATV use by licensed hunters while actively hunting deer or wild boar. See <http://www.nps.gov/biso/parknews/gmpimplementation.htm>.

<sup>22</sup> Friends of the Earth v. U.S. Department of the Interior, No. 1:05-CV-2302 (D.D.C. Nov. 11, 2005) (*complaint*); see [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2005cv2302-63](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-63) and [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2005cv2302-64](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-64).

<sup>23</sup> Friends of the Earth v. U.S. Department of the Interior, No. 1:05-CV-2302 (D.D.C. May 1, 2008) (*notice of settlement*).

<sup>24</sup> Bluewater Network, *Off-the-Track: America's National Parks under Siege*, 1999. Bluewater surveyed 108 park units for unauthorized use of ATVs, four-wheel drive vehicles (jeeps, SUVs, etc.), and dune, sand, and swamp buggies.

<sup>25</sup> Letter from Steve P. Martin, NPS Deputy Director of Operations, to Bluewater Network Executive Director Russell Long, May 3, 2005. No more recent estimates are available. In a 2009 GAO report (GAO, *Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles*, GAO-09-509, June 2009, at <http://www.gao.gov/new.items/d09509.pdf>), some park superintendents reported an increase in unauthorized use of ATVs and oversand vehicles at their units, but the responses were not quantified.

<sup>26</sup> Some of these activities also stem from the settlement of the Friends of the Earth v. Department of the Interior lawsuit cited in footnote 23. The settlement required NPS to implement a pilot public education and deterrence program at 10 units between 2008 and 2011 to address unauthorized OHV use. For example, NPS produced and distributed a brochure on off-road driving, available at <http://www.nps.gov/aboutus/loader.cfm?csModule=security/getfile&PageID=431411>.

<sup>27</sup> About half of the NPS officials surveyed in GAO's 2009 report identified staffing and financial resources as a "great challenge" in managing both authorized and unauthorized OHV use. See GAO, *Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles*, GAO-09-509, June 2009, pp. 37-38, at <http://www.gao.gov/new.items/d09509.pdf>.

## Site-Specific Conflicts

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

### Big Cypress National Preserve

There is ongoing disagreement over OHV trail designation at Big Cypress National Preserve. Conservation groups cite potential harm by ATVs and similar off-highway vehicles to the endangered Florida panther, the endangered red-cockaded woodpecker, and the threatened eastern indigo snake, and to their habitat and prey. In contrast, those concerned about access to areas for hunting, fishing, and trapping have opposed limitations on OHV use in the preserve. The preserve's enabling act authorizes motorized vehicles and hunting, fishing, and trapping, but also authorizes NPS to limit those activities to "assure [the area's] natural and ecological integrity."<sup>28</sup>

Recent conflict has centered on the preserve's "addition lands," some 147,000 acres added to the site in 1988.<sup>29</sup> NPS released a management plan for the addition lands that establishes 130 miles of OHV trails and allows up to 650 off-road permits annually; it also proposes 47,067 acres for wilderness designation.<sup>30</sup> Hunters oppose the plan's limitations on OHV use, including the proposed wilderness acreage and approximately 50,000 additional acres to be zoned "primitive backcountry." Both designations would ban OHVs from these lands. Conservationists, however, oppose the 130 miles of new OHV trails, asserting that OHV use is "fragmenting the landscape" and causing air, water, and soil pollution.<sup>31</sup> Conservation groups filed lawsuits against NPS challenging the addition lands management plan in October and November 2011.<sup>32</sup> Oral arguments were held in June 2013.

OHV use has also been at issue in the original preserve. In July 2012, the U.S. District Court for the Middle District of Florida held that NPS violated the National Environmental Policy Act<sup>33</sup> and the Endangered Species Act when it reopened OHV routes in the preserve's Bear Island area.<sup>34</sup> The ruling closed approximately 25 miles of off-highway trails that had been opened in the area.<sup>35</sup>

<sup>28</sup> P.L. 93-440, §4.

<sup>29</sup> P.L. 100-301. Hunting, fishing, and trapping are also expressly authorized in the addition (§3(b)).

<sup>30</sup> See NPS's 2011 record of decision on the general management plan for the addition lands at <http://parkplanning.nps.gov/document.cfm?parkID=352&projectID=11164&documentID=38924>. See also the management plan at <http://www.nps.gov/bicy/parkmgmt/addition-lands-gmp.htm>; and the announcement of the final environmental impact statement (EIS) for the plan at 75 *Fed. Reg.* 71730 (November 24, 2010).

<sup>31</sup> See, for example, Public Employees for Environmental Responsibility, "Big Cypress ORV Plan Triggers Lawsuit Threat," press release, March 9, 2011, at <http://www.peer.org/news/news-releases/2011/03/09/big-cypress-orv-plan-triggers-lawsuit-threat/>. Also see letters on the NPS project site at <http://parkplanning.nps.gov/documentsList.cfm?parkID=352&projectID=11164>. As of December 2013, the unit is engaging in public scoping for a backcountry access plan addressing OHV use on "secondary" trails. See NPS statement of December 23, 2013, at <http://parkplanning.nps.gov/projectHome.cfm?projectID=49334>.

<sup>32</sup> The case was referred to magistrate court. *National Parks Conservation Association v. U.S. Department of the Interior*, 2:14-mc-1 (M.D. Fla.).

<sup>33</sup> 42 U.S.C. §4332.

<sup>34</sup> *Defenders of Wildlife v. Salazar*, 877 F. Supp. 2d 1271 (M.D. Fla. 2012).

<sup>35</sup> See David Fleshler, "Judge Shuts Some Big Cypress Trails to Swamp Buggies," *South Florida Sun-Sentinel*, July 11, 2012, at [http://articles.sun-sentinel.com/2012-07-11/news/fl-vehicles-lawsuit-20120710\\_1\\_swamp-buggies-hunters-\(continued...\)](http://articles.sun-sentinel.com/2012-07-11/news/fl-vehicles-lawsuit-20120710_1_swamp-buggies-hunters-(continued...))

Separately, in 2011 NPS banned “dispersed” OHV access (outside of designated trails) in Big Cypress National Preserve. All use of ATVs and other off-highway vehicles within the original preserve must be only on designated primary and secondary trails.<sup>36</sup> Preserve Superintendent Pedro Ramos called the designated trail network “a big and positive step” in achieving resource protection while providing traditional access for sportsmen. However, the Big Cypress Sportsmen’s Alliance as well as environmental groups have criticized the designated trail network for providing too little or too much OHV access to preserve lands.<sup>37</sup>

## Cape Hatteras National Seashore

At Cape Hatteras National Seashore, management planning has addressed potential harm by beach buggies and other oversand vehicles<sup>38</sup> to endangered species such as the piping plover and three species of sea turtles. OHV users, fishermen, and local businesses have opposed vehicle restrictions as harmful to the local economy. The balance of preservation and use at the seashore is further weighted by its enabling act, which provides that the area shall be a “recreational area for the benefit and enjoyment of the people,” but also states that the “area shall be permanently reserved as a primitive wilderness,” except for those portions “especially adaptable for recreational uses.”<sup>39</sup>

In January 2012, after public scoping and environmental review, NPS published special regulations for the use of motorized vehicles at the seashore.<sup>40</sup> The regulations designate 28 of the 67 seashore miles as year-round OHV routes, with 13 additional miles to be OHV-accessible seasonally, but the remaining 26 miles are designated as vehicle-free areas. To further protect wildlife, the regulations provide for night-driving restrictions during sea turtle nesting season. They also establish vehicle standards and require a fee-based weekly or seasonal OHV permit.

The 2012 regulations contrast with NPS’s 2007 interim OHV management plan for the seashore, which had allowed greater access for motorized vehicles.<sup>41</sup> The interim plan was the subject of a lawsuit by environmental groups against NPS, alleging that the plan failed to provide adequate protection for seashore resources, including rare turtle, avian, and plant species.<sup>42</sup>

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and-environmentalists-big-cypress-sportsmen-s-alliance; and Wildlands CPR, “Big Cypress National Preserve Protected from Off Road Vehicle Abuse,” press release, July 11, 2012, at <http://www.wildlandscpr.org/blog/big-cypress-national-preserve-protected-road-vehicle-abuse>. The full opinion is available at <http://www.wildlandscpr.org/files/131%20-%20Opinion%20granting%20P%27s%20MFSJ.pdf>.

<sup>36</sup> See “Designated Trail Implementation” at <http://www.nps.gov/bicy/planyourvisit/designated-trail-implementation.htm>; and “Preserve Goes to Designated Trail Use Only for ORVs,” July 13, 2011, at <http://www.nps.gov/bicy/parknews/preserve-goes-to-designated-trail-use-only-for-orvs.htm>.

<sup>37</sup> See “National Park Service: Off-Road Vehicles Must Stay on Trails in Big Cypress,” *Naples Daily News*, July 13, 2011, at <http://m.naplesnews.com/news/2011/jul/13/national-park-service—road-vehicles-must-stay-tra/>.

<sup>38</sup> The seashore allows oversand vehicles but does not permit the use of ATVs or utility vehicles (UTVs). See National Park Service, “Cape Hatteras, Frequently Asked Questions: Off-Road Vehicle Use,” February 10, 2012, at <http://www.nps.gov/caha/planyourvisit/upload/02-10-12-FAQ-Site-Bulletin-for-CAHA-ORV-regulation.pdf>.

<sup>39</sup> 50 Stat. 670 (1937).

<sup>40</sup> 77 *Fed. Reg.* 3123.

<sup>41</sup> See National Park Service, “Cape Hatteras National Seashore: Interim Protected Species Management Strategy,” at <http://parkplanning.nps.gov/projectHome.cfm?parkID=358&projectID=13331>.

<sup>42</sup> *Defenders of Wildlife v. National Park Service*, No. 2:07-CV-45 (E.D.N.C. 2008). The parties entered a consent decree agreeing that NPS would draft a management plan by December 31, 2010, resolving some of the resource (continued...)

## Legislative Activity

In the 113<sup>th</sup> Congress, H.R. 819 and H.R. 2954 propose to overturn the 2012 regulations at Cape Hatteras and reinstate the 2007 interim management plan. H.R. 2954 has passed the House.<sup>43</sup> Supporters of the bills contend that the 2012 regulations reduce visitor access to local stores, hotels, and restaurants and are unnecessary for wildlife protection. Opponents assert that OHV restrictions have already helped the seashore's endangered species and have not reduced visitation to the site.<sup>44</sup> A Senate bill, S. 486, also would address OHV management at Cape Hatteras, but with a different strategy than the House bills. The Senate bill, which has been reported, would not reinstate the 2007 interim plan, but would reduce wildlife buffers at the seashore, mandate new vehicle access points, and require a public process to consider opening more beaches, extending seasonal off-road routes, and modifying the extent and location of vehicle-free areas.

No broader legislation has been introduced in the 113<sup>th</sup> Congress on the use of ATVs and similar vehicles in the National Park System, and no such bills were introduced in the 112<sup>th</sup> Congress.

## Snowmobiles<sup>45</sup>

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

In 2000, NPS announced the enforcement of long-standing regulations that would have banned snowmobile use throughout almost all of the National Park System; later it modified its enforcement stance to allow snowmobile use to continue in the 43 park units that had permitted it prior to the announcement. To date, NPS has taken no further action on a general policy for snowmobiles.<sup>46</sup> However, NPS's management policies state that, outside Alaska, special regulations are required to designate snowmobile and oversnow vehicle routes after park planning determines such use to be appropriate.<sup>47</sup> Designated routes are limited to those used by motorboats and motorized vehicles in other seasons.

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(...continued)

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

<sup>43</sup> The House bills are similar to legislation (H.R. 4094 and S. 2372) introduced in the 112<sup>th</sup> Congress.

<sup>44</sup> For views of both opponents and supporters of the bill, see H.Rept. 113-146 on H.R. 819, as well as U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, hearing on H.R. 819, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., March 14, 2013, at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=322461>.

<sup>45</sup> This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and (name redacted), CRS Legislative Attorney.

<sup>46</sup> For background information on snowmobile use in NPS units and its effects on the environment, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by (name redacted).

<sup>47</sup> National Park Service, *Management Policies 2006*, §8.2.3.2, at <http://www.nps.gov/policy/mp2006.pdf>.

## Site-Specific Conflict: Yellowstone National Park

Since 2000, regulatory and judicial actions to restrict or allow snowmobile use have been park-specific, centering on Yellowstone National Park and units near it, including the John D. Rockefeller Jr. Memorial Parkway and Grand Teton National Park. The Clinton Administration issued final rules in 2001 to incrementally eliminate snowmobile use in these parks (with limited exceptions) and substitute the use of multi-passenger “snowcoaches.”<sup>48</sup> The George W. Bush Administration took a different approach, replacing the Clinton rules with regulations in December 2003 that eliminated the snowmobile ban in favor of daily entry limits, use of trained guides, snowmobile emission standards, and monitoring by park managers for impacts from air and noise pollution.<sup>49</sup> The Clinton plan would not have allowed any snowmobiles at Yellowstone; the Bush plan would have allowed 950 per day. Both plans, as well as most subsequent revisions, were vacated by different federal courts.<sup>50</sup> Conflicting rulings in subsequent legal challenges created confusion for park visitors, local communities, and businesses, with many unsure what winter use rules were in effect at Yellowstone.<sup>51</sup>

<sup>48</sup> 66 *Fed. Reg.* 7260 (January 22, 2001). The rules were part of the settlement of a May 1997 lawsuit, in which the Fund for Animals sued NPS for its policy regarding snowmobiles in Yellowstone and Grand Teton national parks. See *Fund for Animals v. Babbitt*, No. 1:97-cv-01126 (D.D.C. May 20, 1997) (*complaint*); and *Fund for Animals v. Babbitt*, No. 1:97-cv-01126 (D.D.C. September 23, 1997) (*settlement agreement*). NPS regulations at 36 C.F.R. §7.13 define a snowcoach as “a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.”

<sup>49</sup> 68 *Fed. Reg.* 69267 (December 11, 2003). The 2003 rules, which allowed 1,140 snowmobiles in all three parks combined, followed a lawsuit settlement between the Administration, the International Snowmobile Manufacturers Association, and the State of Wyoming, requiring NPS to revisit the snowmobile ban and consider any additional information on “cleaner, quieter” snowmobile technology.

<sup>50</sup> The 2003 plan was vacated by the District Court for the District of Columbia. *Fund for Animals v. Norton*, 294 F. Supp. 2d 92 (D.D.C. 2003). The D.C. court put the 2001 plan (as modified by a November 2002 plan) in place. However, the District Court for the District of Wyoming ruled the 2001 plan, which would ban all snowmobiles, violated the National Environmental Policy Act, describing it as “the product of a prejudged, political decision to ban snowmobiles from all the National Parks.” *International Snowmobile Mfrs. Ass’n v. Norton*, 340 F. Supp. 2d 1249, 1264 (D. Wyo. 2004).

<sup>51</sup> A 2004 final rule (69 *Fed. Reg.* 65348, November 10, 2004, available at <http://www.nps.gov/yell/planvisit/winteruse/fedregfinalrule11-10.pdf>) implemented a temporary winter use plan through 2006-2007, while NPS conducted planning and environmental analysis. A subsequent 2007 record of decision (November 20, 2007, at [http://www.nps.gov/yell/planyourvisit/upload/rod\\_final.pdf](http://www.nps.gov/yell/planyourvisit/upload/rod_final.pdf)) and final rule (72 *Fed. Reg.* 70781, December 13, 2007, at <http://www.nps.gov/yell/parkmgmt/upload/finalrule13Dec2007.pdf>) allowed a maximum of 540 snowmobiles and 83 snowcoaches per day. However, on September 15, 2008, the U.S. District Court for the District of Columbia vacated the 2007 final rule, finding that “[i]n contravention of the Organic Act, the Plan clearly elevates use over conservation of park resources and values.” *Greater Yellowstone Coalition v. Kempthorne*, No. 1:07-cv-02111, 577 F.Supp.2d 183, 210 (D.D.C. 2008). In November 2008, the Wyoming court ordered that the 2004 temporary plan be reinstated, allowing 720 snowmobiles daily into Yellowstone. *State of Wyoming v. Kempthorne*, No. 07-CV-319 (D.Wyo. November 7, 2008) (*order implementing temporary remedy*). The parties to the case before the District Court for the District of Columbia instead agreed that the proposed interim rule issued by NPS on November 5, 2008, would prevail for the 2008 season, authorizing a daily maximum of 318 snowmobiles and 78 snowcoaches (73 *Fed. Reg.* 65784). *Greater Yellowstone Coalition v. Kempthorne*, No. 1:07-cv-02111 (D.D.C. November 12, 2008) (“The Greater Yellowstone Coalition plaintiffs expect that the Park Service’s transitional plan will be finalized prior to the opening of Yellowstone’s winter season on December 15, 2008”). Instead, NPS issued a final rule complying with the Wyoming court on December 9, 2008, allowing up to 720 snowmobiles and 78 snowcoaches daily (73 *Fed. Reg.* 74606). That rule applied for only the 2008 season. On November 20, 2009, final regulations were issued allowing daily entry to 318 snowmobiles and 78 snowcoaches (74 *Fed. Reg.* 60159).

Regulations by the Obama Administration allowed snowmobile use to continue, although at lower levels than in previous years. Through the 2012-2013 winter season, Yellowstone operated under winter use rules promulgated in November 2009,<sup>52</sup> allowing daily entry to 318 commercially guided, best available technology (BAT)<sup>53</sup> snowmobiles and 78 commercially guided snowcoaches. This contrasted with earlier years when up to 720 snowmobiles and 78 snowcoaches had been allowed.<sup>54</sup> (Although the 2003 plan would have allowed 950 snowmobiles per day in Yellowstone, it never went into effect.)

Starting with the 2013-2014 winter season, NPS has issued new regulations intended to govern future snowmobile use in the park.<sup>55</sup> The new regulations are to take effect through a phased transition. For the 2013-2014 season, the 2009 interim rules will continue, with 318 snowmobiles and 78 snowcoaches per day allowed. Starting with the 2014-2015 seasons, Yellowstone will measure winter use in a new way, through “transportation events” instead of vehicle limits. The regulations allow up to 110 transportation events per day, defined as the use of one snowcoach or one group of an average of seven snowmobiles.<sup>56</sup> Most but not all of the vehicles are to be commercially guided,<sup>57</sup> with tour operators allocating the “events” among snowmobiles and snowcoaches. No later than the 2016-2017 winter season, vehicles will have to meet “new best available technology” requirements.<sup>58</sup>

The governor of Wyoming and the Wyoming congressional delegation have supported the plan’s balance between economic and conservation priorities.<sup>59</sup> For example, the regulations increase the maximum number of snowmobiles per day (from the current 318 to potentially up to 480, depending on the distribution of snowcoach and snowmobile use), but also anticipate reductions in noise and pollution because snowmobile trips will be packaged together and guides have incentives to achieve environmental performance standards. Some snowmobile user groups, as well as some environmental groups, have also expressed support for the plan.<sup>60</sup> However, conservation groups have also challenged claims by snowmobile advocates that vehicle

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<sup>52</sup> The 2009 rules were published at 74 *Fed. Reg.* 60159 (November 20, 2009), and were extended through subsequent winter seasons, up to and including the 2012-2013 season (77 *Fed. Reg.* 74027, December 12, 2012).

<sup>53</sup> For more on “best available technology” for snowmobiles, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by (name redacted).

<sup>54</sup> See, for example, 69 *Fed. Reg.* 65348, November 10, 2004.

<sup>55</sup> 36 C.F.R. 7.13(l); 78 *Fed. Reg.* 63069, October 23, 2013. Also see 78 *Fed. Reg.* 16500, announcing the availability of the 2013 *Final Winter Use Plan/Supplemental Environmental Impact Statement* on which the regulations are based. The plan is available at <http://parkplanning.nps.gov/document.cfm?parkID=111&projectID=40806&documentID=51874>.

<sup>56</sup> No more than 50 of the transportation events on any day may consist of snowmobiles.

<sup>57</sup> Under earlier rules, all snowmobiles and snowcoaches had to be commercially guided. The new regulations, in contrast, allow up to four “transportation events” of up to five snowmobiles each to be noncommercially guided.

<sup>58</sup> For more details on the phases of transition to the “new BAT” requirements, see 78 *Fed. Reg.* 63069, section on “Phased Transition to New Management Paradigm.” Beyond the new requirements that all vehicles must meet, operators have the option to further upgrade their vehicles to meet “enhanced best available technology” standards, and those who do so may increase their number of vehicles per transportation event.

<sup>59</sup> See, e.g., “Wyo. Governor Backs NPS Snowmobile Plan,” *Greenwire*, October 23, 2013, at <http://www.eenews.net/greenwire/stories/1059989281/>; and “NPS Completes Yellowstone Snowmobile Plan—for 2014-2015,” *Federal Parks & Recreation*, November 1, 2013.

<sup>60</sup> See, e.g., remarks of the BlueRibbon Coalition in “Yellowstone to Accelerate Pollution Curbs for Snowmobiles,” *Greenwire*, October 22, 2013, at <http://www.eenews.net/greenwire/2013/10/22/stories/1059989215/>; and remarks of the National Parks Conservation Association in “Final Plan for Yellowstone Snowmobiles Earns Praise from Conservationists, Wyo. Gov.,” *Greenwire*, February 22, 2013, at <http://www.eenews.net/Greenwire/2013/02/22/9>.

technology is evolving to produce a “cleaner, quieter” experience for park visitors. They point to a recent NPS report finding some new snowmobile models to have higher emissions than the same companies’ earlier models.<sup>61</sup>

Actual snowmobile use in Yellowstone diminished over the past decade while the winter use rules evolved. During the years when 720 snowmobiles were permitted per day, the average daily use was 266 snowmobiles, with the average use on the year’s peak day being 493 snowmobiles. After the allowed limit changed to 318 snowmobiles, the average daily use dropped to 191 snowmobiles, with the average peak day dropping to 279. Factors other than the NPS regulations also contribute to fluctuations in snowmobile usage, including yearly snowfall, gas prices, and the state of the economy.<sup>62</sup>

## Legislative Activity

No legislation pertaining to snowmobiles in NPS units has been introduced in the 113<sup>th</sup> Congress as of January 2014, and none was introduced in the 112<sup>th</sup> Congress. Some earlier Congresses included language on snowmobiles in Yellowstone in appropriations bills, generally to ensure that judicial rulings could not deny snowmobiles entry during a specified winter use season.

## Aircraft Overflights<sup>63</sup>

NPS is to provide for the public enjoyment of parklands while protecting resources, including natural quiet, while the Federal Aviation Administration (FAA) controls airspace and aircraft overflights. This has created a conflict between resource management and aviation access authorities and their constituencies. Grand Canyon National Park has been the focal point of a conflict between groups seeking to limit overflights of national parks due to concerns about noise and safety, and air tour operators whose economic stability may depend on providing overflights, with ripple effects on local businesses. The National Parks Overflights Act of 1987 (P.L. 100-91) prohibited flights below the canyon’s rim and directed NPS to recommend a flight control plan for Grand Canyon that would provide a “substantial restoration of the natural quiet.” It required an NPS study of the effects of all aircraft overflights, which was submitted to Congress in 1994.<sup>64</sup>

Aircraft overflights are also a concern for other park units. The National Parks Air Tour Management Act of 2000 (P.L. 106-181, Title VIII, hereinafter “Air Tour Act”) regulates commercial air tours at other park units. It requires the FAA and NPS to create management plans

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<sup>61</sup> National Park Service, *Yellowstone Over-snow Vehicle Emission Tests 2012: Preliminary Report*, June 7, 2012, at [http://www.nps.gov/yell/parkmgmt/upload/pem\\_of\\_snowcoaches-snowmobiles\\_3-2012.pdf](http://www.nps.gov/yell/parkmgmt/upload/pem_of_snowcoaches-snowmobiles_3-2012.pdf).

<sup>62</sup> Figures from National Park Service, *Yellowstone National Park: Winter Use Plan/Supplemental Environmental Impact Statement*, February 2013, Chapter 3, p. 148, at <http://parkplanning.nps.gov/document.cfm?parkID=111&projectID=40806&documentID=51874>. The 720-snowmobile limit was in effect for winter 2004-2005 through winter 2008-2009. The 318-snowmobile limit has been in effect since winter 2009-2010. Through all these years, the daily snowcoach limit has been 78 (except in winter 2011-2012, when it dropped to 76). Actual daily average snowcoach use rose from 26 in winter 2004-2005 to 35 in winter 2011-2012, while the peak-day use hovered between 55 and 63.

<sup>63</sup> This section was prepared by Carol Hardy-Vincent, CRS Specialist in Natural Resources Policy.

<sup>64</sup> U.S. Department of the Interior, National Park Service, *Report to Congress: Report on Effects of Aircraft Overflights on the National Park System*, listed under the topic heading “Documents” at [http://www.nps.gov/grca/naturescience/airoverflights\\_documents.htm](http://www.nps.gov/grca/naturescience/airoverflights_documents.htm).

for air tours at individual park units and within a half-mile of their boundaries. Each plan could prohibit or limit air tours, such as by route and altitude restrictions. The Air Tour Act also requires FAA to establish “reasonably achievable” requirements for quiet aircraft technology for Grand Canyon within one year of enactment and to designate, by rule, Grand Canyon routes or corridors for aircraft and helicopters using quiet technology. Quiet aircraft would not be subject to existing caps on canyon overflights.

## Site-Specific Conflict: Grand Canyon National Park

Several actions have been taken to achieve the substantial restoration of natural quiet at Grand Canyon in furtherance of P.L. 100-91, enacted more than 25 years ago. First, an FAA *limitations rule* capped the annual number of commercial air tour overflights at Grand Canyon.<sup>65</sup> Second, the *airspace rule* expanded flight-free zones and restrictive routing over the canyon.<sup>66</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>67</sup> The rule identifies which aircraft meet the standard. Fourth, data on natural ambient sound levels were collected by NPS and are being used, together with air tour reported flight operations data and radar tracking data, to model air tour traffic and aircraft noise at Grand Canyon. The model is being used to measure success in restoring natural quiet, and the noise impact of various alternatives.

On February 4, 2011, NPS published a notice of availability of a draft environmental impact statement (DEIS) on options that could be taken to restore natural quiet at Grand Canyon.<sup>68</sup> The agency had anticipated issuing a final environmental impact statement in the summer of 2012, but postponed that action in light of the enactment on July 6, 2012, of P.L. 112-141, which contains provisions pertaining to the determination and restoration of natural quiet at the park. Those provisions generally have been viewed as potentially resulting in curtailment of NPS planning actions to impose stricter noise standards. NPS is continuing to assess the provisions to determine how they will affect its planning effort.<sup>69</sup> (For additional information on P.L. 112-141, see “Legislative Activity,” below.)

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

- restore natural quiet in 67% of the park during the peak season 10 years after implementation (up from 53% under 2011 management),

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

<sup>66</sup> 71 *Fed. Reg.* 9439 (February 24, 2006).

<sup>67</sup> 70 *Fed. Reg.* 16084 (March 29, 2005).

<sup>68</sup> 76 *Fed. Reg.* 6496 (February 4, 2011). The DEIS is on the NPS website at <http://parkplanning.nps.gov/documentsList.cfm?parkID=65&projectID=28052>.

<sup>69</sup> NPS communication to CRS, February 4, 2014.



- allow for 65,000 annual air tour operations (an increase over actual use of approximately 57,000, but a decrease from the current annual allocation of 93,971),
- limit daily air tours to 364 (up 50 from the peak day of 316 in 2005, but currently with no daily cap),
- move most non-air tour operations outside the park,
- establish higher flight altitudes near the North Rim,
- provide incentives for quiet technology aircraft and require full conversion to quiet technology over 10 years,
- provide an hour of quiet before sunset and after sunrise, and
- raise flight-free zone ceilings to 17,999 feet (up from 14,499 generally; 7,999 at Sanup zone).<sup>70</sup>

### **Legislative Activity**

No general legislation pertaining to air tour management at Grand Canyon National Park has been introduced in the 113<sup>th</sup> Congress as of January 29, 2014.

The 112<sup>th</sup> Congress enacted broad transportation legislation, P.L. 112-141, which contains provisions on air tour management at Grand Canyon. Some provisions set out standards to be used by NPS in restoring natural quiet at the park. Another provision states that the “substantial restoration of natural quiet” would be considered achieved if 50% of the park is free of sound from commercial air tours for at least 75% of each day. This standard is viewed as essentially maintaining the status quo, while the NPS preferred alternative had sought to expand substantial restoration of natural quiet to 67% of the park. Advocates of the legislation sought to set standards for air tours as an alternative to the planning efforts underway by NPS, which they viewed as too restrictive and likely to have adverse effects on the air tour industry.<sup>71</sup> Opponents of the legislation expressed concern that it would limit NPS’s ability to protect Grand Canyon resources and visitors from noise.

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

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<sup>70</sup> This summary is derived from the text of the DEIS, as well as other NPS documents such as a press release of February 2, 2011, at <http://parkplanning.nps.gov/document.cfm?parkID=65&projectID=28052&documentID=40021>.

<sup>71</sup> See “Congressman Gosar Introduces Legislation to Protect the Grand Canyon Tourism Industry,” press release of March 19, 2012, on the website of Representative Gosar at <http://gosar.house.gov/press-release/congressman-gosar-introduces-legislation-protect-grand-canyon-tourism-economy>.

## Air Tour Management Plans

Other regulatory actions have affected commercial air tours at park units generally, particularly in furtherance of the Air Tour Act. The Air Tour Act final rule<sup>72</sup> requires air tour operators to apply for authority to fly over national parks and abutting tribal lands. FAA received applications for commercial air tours over more than 100 of the 401 park units, and has granted interim operating authority to all applicants. Application triggers development of an Air Tour Management Plan (ATMP) by FAA and NPS for each unit where none exists.<sup>73</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 review under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §§4321-4370f).

The FAA and NPS began developing ATMPs at about a dozen areas.<sup>74</sup> Development of ATMPs has been proceeding much more slowly than had been expected, and to date none have been completed.<sup>75</sup> The agencies also are taking actions in furtherance of P.L. 112-95, discussed below under “Legislative Activity.” For instance, they are nearing completion of voluntary agreements for a few areas, in lieu of ATMPs, and are assessing whether other areas are candidates for voluntary agreements under the law. Further, they published an initial list of more than 30 park units that are exempted from the requirement to develop an ATMP or voluntary agreement, based on a provision in the law that exempted park units with 50 or fewer commercial air tours.<sup>76</sup> Based on the same provision, development of an ATMP for Petrified Forest National Park has been terminated.

The agencies have been determining the ambient sound levels at park units for which ATMPs are being developed, as a baseline for measuring noise sources and impacts. In general, acoustic data are being collected for comparison during the two seasons with the most and least overflights—summer and winter. In park units with year-round overflights, sound data generally are being collected in all seasons. Data usually are obtained during at least a 25-day period, at various locations throughout a park. Both the sound pressure level (i.e., intensity) and the frequency (i.e., pitch) are recorded.<sup>77</sup>

<sup>72</sup> 67 *Fed. Reg.* 65661 (October 25, 2002).

<sup>73</sup> FAA provides information on the National Parks Air Tour Management Program via its website at [http://www.faa.gov/about/office\\_org/headquarters\\_offices/arc/programs/air\\_tour\\_management\\_plan/](http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/).

<sup>74</sup> Some of the ATMPs will cover multiple park units. For instance, the ATMP for the Golden Gate National Recreation Area will include the Fort Point National Historic Site, Muir Woods National Monument, and San Francisco Maritime National Historical Park.

<sup>75</sup> A January 2006 Government Accountability Office (GAO) report addressed the impact of the delay in implementation of the Air Tour Act. The report concluded that the delay has had little effect on park units, but has limited the ability of tour operators to make major business decisions. The agency identified four issues for Congress and the agencies to address to improve implementation, relating to the lack of flexibility for determining which parks need plans, an absence of NPS funding for plan development, limited ability to verify and enforce the number of air tours, and inadequate FAA guidance on the act’s safety requirements. See U.S. Government Accountability Office, *National Parks Air Tour Management Act: More Flexibility and Better Enforcement Needed*, GAO-06-263, (Washington, DC: GPO, January 2006). The report, together with information on agency actions on GAO’s recommendations, is available on the GAO website at <http://www.gao.gov/products/GAO-06-263>.

<sup>76</sup> 77 *Fed. Reg.* 75254 (December 19, 2012).

<sup>77</sup> For more information on sound management in NPS units, see the NPS website at <http://www.nature.nps.gov/sound/management.cfm>.

On October 24, 2013, the FAA announced intent to seek approval for the collection of information on the human response to aviation noise in protected natural areas. The agency called the data from this research “critically important for establishing the scientific basis for air tour management policy decisions” in park units under the Air Tour Act, and stated that the research would expand on previous work “by using a wider variety of survey methods, by including different site types and visitor experiences from those previously measured, and by increasing site type replication.”<sup>78</sup> On August 9, 2013, NPS announced intent to seek approval for a public survey about the value of natural quiet in park units. The agency seeks to obtain information on how human-caused sounds affect park visitation.<sup>79</sup>

Some park units are developing soundscape management plans to manage sound, in part caused by overflights and other aircraft, as well as other human-caused noises such as from cars, buses, machines, and voices. For instance, Zion National Park (UT) issued a Soundscape Management Plan to address the increase in sources and intensity of noises in recent decades that could adversely impact visitor enjoyment and the health of ecosystems. The plan seeks in part to identify sources of sound, develop soundscape standards and ensure that standards are being met, eliminate or mitigate sounds incompatible with park purposes, and restore degraded soundscapes.<sup>80</sup>

## Legislative Activity

No general legislation pertaining to air tour management at park units has been introduced in the 113<sup>th</sup> Congress as of January 2014.

The 112<sup>th</sup> Congress enacted broad aviation legislation with provisions affecting commercial air tours over park units generally (P.L. 112-95). The provisions seek to expedite and streamline agency actions, in part because of the slow progress in completing ATMPs. They provide that, in lieu of an ATMP, the NPS director and FAA administrator may enter into a voluntary agreement with a commercial air tour operator that would govern commercial air tours over a park unit. Before implementing a voluntary agreement, the agencies must provide for an opportunity for public review and consult with Indian tribes on affected tribal lands; agreements may be implemented “without further administrative or environmental process” beyond that described in the law.<sup>81</sup> Voluntary agreements may contain provisions to establish conditions for the conduct of commercial air tours, ensure compliance, provide for fees for commercial air tours, and provide incentives for the adoption of quiet aircraft technology by commercial tour operators. Park units with 50 or fewer annual air tour flights are exempt from the requirement for an ATMP or voluntary agreement. However, the NPS director can withdraw an exemption in order to protect park resources and values or visitor use and enjoyment.

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

<sup>78</sup> 78 *Fed. Reg.* 63561 (October 24, 2013).

<sup>79</sup> 78 *Fed. Reg.* 48715-48716 (August 9, 2013).

<sup>80</sup> The plan is available on the website of the NPS at [http://www.nps.gov/zion/parkmgmt/upload/ZNP-Soundscape-Plan\\_Sep\\_2010.pdf](http://www.nps.gov/zion/parkmgmt/upload/ZNP-Soundscape-Plan_Sep_2010.pdf).

<sup>81</sup> P.L. 112-95, Title V, Sec. 501(c).

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

## Personal Watercraft (PWC)<sup>82</sup>

Personal watercraft (PWC) are high-speed, very shallow-draft,<sup>83</sup> and highly maneuverable watercraft “operated by a person or persons sitting, standing, or kneeling on the vessel rather than within the confines of the hull” (36 C.F.R. §1.4). Often used to perform stunt-like maneuvers, PWC include watercraft known by brand and generic names such as Jet Ski<sup>®</sup>, Sea-Doo<sup>®</sup>, Surf-jet<sup>®</sup>, water sled, wet jet, Wavejammer, Wetbike, and WaveRunner<sup>®</sup>. PWC represent a small segment of the recreational boat market—the National Marine Manufacturers Association (NMMA) estimated that 1.3 million PWC were in use in 2012, about 8% of 16.67 million recreational boats.<sup>84</sup> However, the number of PWC accidents has raised concerns. There were 721 PWC injuries and 58 deaths reported for 2012, constituting 19% of reported accidents among all recreational boats.<sup>85</sup> In addition to safety issues, critics of PWC use cite environmental concerns, including noise, air, and water pollution, as well as damage to land, plants, and wildlife. Supporters of access for PWC contend that technological advances enable manufacturers to produce cleaner, more efficient machines, and they point to economic benefits generated by the industry. Recent controversies have focused on regulatory actions that would restrict recreational use of or access for these vehicles, often in specific park units.

## Administrative Actions

NPS has evaluated PWC use in units where motorized boats are allowed, and has issued park-specific regulations, partly in response to a lawsuit settlement that prohibited PWC in park units until these steps were taken.<sup>86</sup> For 13 units, the agency has authorized PWC use in designated areas: Lake Mead, Glen Canyon, Lake Meredith, Lake Roosevelt, Amistad, Chickasaw, Bighorn Canyon, and Curecanti National Recreation Areas; Assateague, Fire Island, Gulf Islands, and Cape Lookout National Seashores; and Pictured Rocks National Lakeshore. One unit, Big Thicket

<sup>82</sup> This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and (name redacted), CRS Legislative Attorney.

<sup>83</sup> A shallow-draft vessel is one in which the keel (the bottom of the hull) is not far below the waterline.

<sup>84</sup> See <http://www.nmma.net/assets/cabinets/Cabinet453/2012-US-Abstract-Preview.pdf>, Table 1.3, “Recreational Boats in Use by Type,” from the NMMA 2012 *Recreational Boating Statistical Abstract*.

<sup>85</sup> See U.S. Department of Homeland Security and U.S. Coast Guard, *Recreational Boating Statistics 2012*, May 2013, at <http://www.uscgboating.org/assets/1/News/2012ReportR2.pdf>, Executive Summary (p. 6), and Table 1 (p. 7), “Vessel Types with the Top Casualty Numbers.”

<sup>86</sup> In 2000, NPS issued a rule (65 *Fed. Reg.* 15077) prohibiting PWC use in 66 of the 87 units that allowed motorized boats. The rule allowed PWC use to continue at the remaining 21 units while NPS developed regulations, but a 2001 negotiated settlement of a lawsuit by Bluewater Network and Earth Island Institute over the PWC rule prohibited PWC from the 21 areas unless the NPS initiated park-specific rules and environmental assessments. *Bluewater Network v. Stanton*, No. 1:00-CV-2093 (D.D.C. April 12, 2001) (*stipulated settlement agreement*). In 2002, NPS prohibited PWC use in 5 of the 21 areas that completed an environmental review process: Cape Cod and Cumberland Island National Seashores, Delaware Water Gap and Whiskeytown NRAs, and Indiana Dunes National Seashore. Two units, Padre Island National Seashore and Gateway NRA, took no action, thereby continuing the PWC ban, and one (Big Thicket National Preserve) is in the rulemaking process. The agency has authorized some PWC use in the 13 remaining areas.

National Preserve, is closed to PWC pending completion of environmental assessments and rulemaking.<sup>87</sup>

In May 2008, a coalition of environmental groups filed a lawsuit in the U.S. District Court for the District of Columbia seeking reinstatement of PWC bans at two units: Gulf Islands National Seashore and Pictured Rocks National Lakeshore.<sup>88</sup> In July 2010, the court held that NPS violated the National Environmental Policy Act by not fully considering PWC impacts on wildlife, water quality, air quality, noise, and visitor experiences at these park units.<sup>89</sup> The court ordered NPS to re-evaluate environmental assessments justifying PWC use, but did not vacate or overturn the current rules allowing them. In February 2013, NPS issued a notice of intent to prepare an environmental impact statement concerning the use of PWC at Gulf Islands National Seashore.<sup>90</sup>

## Legislative Activity

No general legislation affecting PWC use has been introduced in the 113<sup>th</sup> Congress as of the date of this report, and none was introduced in the 112<sup>th</sup> Congress.

## Mountain Bicycles<sup>91</sup>

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

## General NPS Rule

On July 6, 2012, NPS finalized a rule broadly addressing mountain bicycles within NPS units.<sup>92</sup> The final rule revises previous regulations and park management policies that required special regulations to designate bicycle trails other than those on park roads, in parking lots, and within developed areas such as campgrounds.<sup>93</sup> The intent is to provide “park superintendents with a more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate in the park unit they manage.” It authorizes park superintendents to open existing hiking and horse trails for biking without promulgating special regulations, although it continues to require input from the public and environmental assessments in conjunction with park-specific

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<sup>87</sup> Big Thicket is developing a draft general management plan and EIS. Additional information is available at <http://parkplanning.nps.gov/projectHome.cfm?parkID=32&projectID=23065>.

<sup>88</sup> *Bluewater Network v. Kempthorne*, No. 1:08-cv-841 (D.D.C. 2008) (*complaint*). See [http://www.nationalparkstraveler.com/files/Jet\\_Ski\\_Lawsuit.pdf](http://www.nationalparkstraveler.com/files/Jet_Ski_Lawsuit.pdf) for a copy of the complaint.

<sup>89</sup> *Bluewater Network v. Kempthorne*, No. 1:08-cv-841, 721 F. Supp. 2d 7 (D.D.C. 2010).

<sup>90</sup> 78 *Fed. Reg.* 8189.

<sup>91</sup> This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy.

<sup>92</sup> 77 *Fed. Reg.* 39927 (July 6, 2012).

<sup>93</sup> The previous regulations are at 36 C.F.R. §4.30. For the management policies, see National Park Service, *Management Policies 2006*, §9.2.2.5, at <http://www.nps.gov/policy/mp2006.pdf>.

trail decisions. Special regulations continue to be required for any bicycle trails involving new construction outside developed areas.

## Site-Specific Actions

Currently, more than 40 NPS units allow mountain biking on dirt trails and/or dirt roads.<sup>94</sup> The IMBA and NPS renewed a five-year partnership agreement (through 2015) to explore additional opportunities for mountain biking in park units. A number of park units are contemplating or moving forward on bicycle-applicable rules and/or multi-use trails.

For example, in February 2013, NPS published a final rule designating the Sleeping Bear Heritage Trail, under construction at Michigan's Sleeping Bear Dunes National Lakeshore, as a route for bicycle use.<sup>95</sup> In March 2013, the agency published a final rule authorizing bicycle use at Chattahoochee River National Recreation Area, and designating several trail segments in the NRA as multi-use trails, open to pedestrians and bicyclists.<sup>96</sup> Another final rule by the agency, in December 2013, authorized bicycle use at New River Gorge National River.<sup>97</sup> It provided for the construction of three new trails for hiking and bicycle use, as well as allowing bicycling on certain existing park trails and administrative roads.

Some NPS actions to increase trails available for biking have been controversial. For example, NPS is re-evaluating a plan to construct a bike path in the Moose-Wilson Corridor of Grand Teton National Park, in response to concerns about the effects of path construction on wildlife habitat.<sup>98</sup>

## Legislative Activity

No legislation on the use of mountain bicycles in the National Park System has been introduced in the 113<sup>th</sup> Congress as of the date of this report, and none was introduced in the 112<sup>th</sup> Congress.

## Conclusion

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

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<sup>94</sup> For a list of units that allow mountain biking, see the IMBA website at <http://www.imba.com/nps-trails-roads>.

<sup>95</sup> 78 *Fed. Reg.* 11981 (February 21, 2013).

<sup>96</sup> 78 *Fed. Reg.* 14447 (March 6, 2013).

<sup>97</sup> 78 *Fed. Reg.* 73092 (December 5, 2013).

<sup>98</sup> See 78 *Fed. Reg.* 73559 (December 6, 2013); National Park Service, *Moose-Wilson Corridor Public Scoping Newsletter*, December 2013, at <http://parkplanning.nps.gov/document.cfm?parkID=68&projectID=48252&documentID=56561>; and Kyle Roerink, "Conservation, Recreation, Safety Issues Abound in Grand Teton Bike Path Debate," *Wyoming Star-Tribune*, January 20, 2014, at [http://trib.com/news/state-and-regional/govt-and-politics/conservation-recreation-safety-issues-abound-in-grand-teton-bike-path/article\\_5276cd45-11fb-5cd7-9d60-4a723309f91f.html](http://trib.com/news/state-and-regional/govt-and-politics/conservation-recreation-safety-issues-abound-in-grand-teton-bike-path/article_5276cd45-11fb-5cd7-9d60-4a723309f91f.html).

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

The 113<sup>th</sup> Congress has addressed motorized recreation in the National Park System through legislation and oversight. While oversight hearings have concerned broad topics, such as impediments to motorized recreation on federal lands generally, introduced legislation has focused on OHV use at specific units. Congress could consider other specific conflicts or broader topics, such as NPS management of motorized recreation, calls to increase motorized access, or impacts of motorized use on natural resources, in the remainder of the 113<sup>th</sup> Congress.

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