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## National Park Service: Government Shutdown Issues

Like other federal agencies, the National Park Service (NPS) has halted most operations during occasional government shutdowns resulting from lapses in appropriations. Over the past 25 years, such shutdowns occurred in late 1995/early 1996, October 2013, early 2018, and, most recently, from December 22, 2018, to January 25, 2019. Although government shutdowns have affected many agencies and programs, public and congressional attention has focused particularly on certain impacts, one of which is the effect of a shutdown on the National Park System.

Agency actions during a shutdown are governed by the Antideficiency Act (31 U.S.C. §§1341-1342, §§1511-1519) and related guidance, including Circular No. A-11 from the Office of Management and Budget (OMB). One OMB requirement is for agency heads to develop and maintain shutdown plans, known as *contingency plans*, detailing how each agency is to prepare for and operate during a funding gap. During recent shutdowns, NPS has executed successive versions of its contingency plan that have remained consistent in some ways and varied in others.

For example, during the two most recent shutdowns with durations of more than one week—those in October 2013 and December 2018-January 2019—NPS executed contingency plans that were similar in some respects. Under contingency plans in both shutdowns, approximately 21,000 NPS employees were identified for furloughs, and approximately 3,000 employees were required to continue to work to carry out essential activities. However, the contingency plans diverged in other areas, particularly with respect to the extent and types of visitor access planned for parks in a shutdown, given that the bulk of NPS staff would be furloughed.

During both shutdowns, the NPS policies on visitor access to parks were subjects of debate in Congress and among other stakeholders. Issues included, on the one hand, concerns about economic losses to states, localities, and job sectors dependent on park tourism when parks were inaccessible; and, on the other hand, concerns about damages to park resources and threats to visitor health and safety when parks were accessible but not fully staffed. Other topics of debate in NPS shutdowns have related to the availability of funding outside of annual discretionary appropriations, which could enable limited park operations during a lapse in annual appropriations.

### Accessibility of NPS Units in Shutdown

NPS's current contingency plan, dated January 2019 and available at <https://www.doi.gov/shutdown>, provides that "the NPS will not operate parks during the shutdown. However, certain park areas will still be accessible to visitors." Specifically, the plan states that "park roads, lookouts, trails, and open-air memorials will generally remain accessible to visitors," although "no visitor services

will be provided." By contrast, park "facilities" or areas that typically would be "locked or secured during non-business hours" are to be closed "for the duration of the shutdown." Park concessioners (privately owned businesses such as restaurants and hotels in parks) may continue operations at the discretion of park superintendents.

No official reports are available on the extent of park unit closures under this plan in the December 2018-January 2019 shutdown. Because some parks consist solely of buildings and/or other lockable areas, some units were entirely closed. One estimate suggested that roughly one-third of National Park System units may have fallen into this category initially (although certain units later operated with mandatory appropriations; see below). The majority of parks—including well-known units such as Yellowstone National Park, Grand Canyon National Park, Yosemite National Park, the Statue of Liberty National Memorial, and the National Mall in Washington, DC—remained at least partially accessible to visitors throughout the shutdown, with varying levels of services and law enforcement.

During the shutdown, issues were reported in some of the park units that remained accessible. These included trash buildups, restroom waste problems, and accidental and intentional damage to natural resources, among others. The NPS contingency plan provides that "if visitor access becomes a safety, health or resource protection issue (weather, road conditions, resource damage, garbage build-up to the extent that it endangers human health or wildlife, etc.), the area *must* be closed" (emphasis in original). Some parks, and areas within parks, were closed for these reasons as the shutdown continued.

The general accessibility of most national park units during the most recent shutdown differed from the overall NPS approach in the shutdown of October 2013, when all parks were "closed to public visitation and use." To implement the closures, NPS required all visitors to leave the parks. All concessions and commercial visitor services were closed (although certain concessioners negotiated with NPS to reopen during the shutdown). Where possible, park roads were closed and access was denied. According to a 2014 NPS report, the 16-day shutdown in 2013 resulted in an overall loss of 7.88 million visits to the parks and a loss of \$414 million in NPS visitor spending in gateway communities across the country. Similar figures are not available for the December 2018-January 2019 shutdown.

### Funding for Limited Operations

Like some other agencies, NPS has had access to funding sources outside of annual appropriations that have allowed for limited operations during shutdowns. For example, NPS contingency plans (e.g., in 2013 and 2019) have provided for continuation of "projects obligated from funds that are not subject to lapse, such as multi-year appropriations from

prior fiscal years.” In addition, NPS has used mandatory appropriations to fund limited operations during shutdowns. Two notable types of mandatory funding have been (1) donations from states and other entities to support services at individual parks, and (2) in the most recent shutdown, recreation fees collected under the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814). The agency has used the donations and fees to cover operating costs that it had planned to fund through annual appropriations.

### Donations

NPS has authority at 54 U.S.C. §101101 to accept monetary donations for park system purposes. In NPS shutdowns at least since 1995, some nonfederal entities (primarily states) have donated money to NPS to operate selected parks or park activities, with the aim of fostering public access and ameliorating economic losses to communities from reduced park tourism. For example, during the 2013 shutdown, several states (Arizona, Colorado, New York, South Dakota, Tennessee, and Utah) donated varying sums to reopen national park units using state funding. Following a model used in 1995-1996, these states developed agreements with NPS to donate calculated amounts for park operating costs for a certain number of days, during which time the parks would be open to the public and staffed by NPS employees.

In the December 2018-January 2019 shutdown, several states (including Arizona, New York, and Utah) and the territory of Puerto Rico similarly donated funds for daily operations at individual parks for specified periods. Some localities, park partner groups, and other private entities also made donations for specific activities or services within parks, pursuant to NPS authority and guidance in the contingency plan providing that, “at the superintendent’s discretion and with approval of the Regional Director or Director, parks may enter into arrangements with local governments, cooperating associations, and/or other third parties ... for donation of specified visitor services.” As one example, donations to Zion National Park in Utah reportedly came from the state of Utah, Washington County, the city of St. George, and nonprofit groups. The contingency plan appears to allow for nonfederal entities to donate funds and/or provide some volunteer services in kind. At certain parks, nonfederal volunteers reportedly provided services including maintenance and other types of visitor services.

Agreements between NPS and states for shutdown donations typically have provided that NPS would refund to the donor any unobligated balances that remain if the shutdown ends before all the donated monies are spent. However, any funding actually used for park operations could be reimbursed only through an act of Congress. For example, after the 2013 shutdown, multiple bills were introduced to reimburse the states for their shutdown donations, but these bills were not enacted, and so the states were not reimbursed. Some Members of Congress, along with the states themselves, contended that state reimbursement should be prioritized, given that federal appropriations ultimately were provided (retroactively) for the shutdown period. Others took the view that the states

had accepted the uncertainty of reimbursement when they agreed to make the donations.

### Recreation Fees

On January 6, 2019, NPS announced that during the shutdown, the agency would use revenues from recreation fees for certain activities in park units. The activities included maintaining restrooms, collecting trash, operating campgrounds, providing law enforcement and emergency services, maintaining roads, and staffing entrance gates to provide critical safety information. After the announcement, multiple parks began to fund these activities with recreation fees, enabling some staff that previously had been furloughed to return to work on these matters. After the shutdown, NPS officials stated that the agency would “fully restore” the FLREA recreation fee account to pre-shutdown levels, by moving obligations made in the shutdown from the FLREA account to NPS’s main discretionary account.

NPS had an estimated unobligated balance of \$252 million in recreation fees at the end of FY2018. NPS charges, collects, and retains recreation fees under FLREA. Of the 419 NPS units, 165 charge an entrance fee and/or “expanded amenity” fee. Under FLREA and NPS policy, generally 80%-100% of fees are retained for use by the collecting unit, with the remaining collections available agency-wide. (The January 2019 contingency plan provided that, during a shutdown, the NPS Director may allocate agency-wide FLREA fees to park units that do not collect fees or have “insufficient balances.”) NPS has broad discretion in using fee revenues for purposes specified in FLREA, which include interpretation, visitor services, and facility maintenance, repair, and enhancement related to visitor access and health and safety. NPS has stated a policy that parks are to use 55% of fees for deferred maintenance.

Some Members of Congress questioned the legality of using FLREA fees for operations during the shutdown and restoring the account thereafter. On September 5, 2019, GAO issued a legal opinion (B-330776) stating that the Department of the Interior (DOI) violated the purpose statute (31 U.S.C. §1301(a)) and the Antideficiency Act when it obligated FLREA fees during the shutdown for expenses that would normally be charged to NPS discretionary appropriations. GAO stated that DOI should report its violation of the Antideficiency Act as required by 31 U.S.C. §1351 and take actions to prevent future violations. On September 6, 2019, DOI issued a response disputing the GAO opinion, in part on the grounds that NPS has used FLREA fees in the past for operating expenses similar to those covered by the fees in the shutdown.

### For Further Reading

On federal government shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*; CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*; and CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*. On NPS FY2019 appropriations, see CRS In Focus IF10900, *National Park Service: FY2019 Appropriations*; and CRS Report R44934, *Interior, Environment, and Related Agencies: Overview of FY2019 Appropriations*.

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