

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb has a dark blue cap, and the bottom bulb has a light blue cap.

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Report RL33525

Recreation on Federal Lands

Kori Calvert, Coordinator, Knowledge Services Group

October 28, 2008

Abstract. The growing and diverse nature of recreation on federal lands has increased the challenge of balancing different types of recreation with each other and with other land uses. Motorized recreation has been particularly controversial, with issues centering on access and environmental impacts. The 110th Congress, as well as the Administration, has been addressing recreation on federal lands, including traditional recreational pursuits and newer forms of motorized recreation. This report covers several prominent issues.

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CRS Report for Congress

Recreation on Federal Lands

Updated October 28, 2008

Kori Calvert, Coordinator, and Sandra L. Johnson
Knowledge Services Group

Carol Hardy Vincent, Coordinator, Ross W. Gorte, Nicole T. Carter,
Nic Lane, David L. Whiteman, and M. Lynne Corn
Resources, Science, and Industry Division

<http://wikileaks.org/wiki/CRS-RL33525>



**Prepared for Members and
Committees of Congress**

Recreation on Federal Lands

Summary

The growing and diverse nature of recreation on federal lands has increased the challenge of balancing different types of recreation with each other and with other land uses. Motorized recreation has been particularly controversial, with issues centering on access and environmental impacts. The 110th Congress, as well as the Administration, has been addressing recreation on federal lands, including traditional recreational pursuits and newer forms of motorized recreation. This report covers several prominent issues.

Motorized Recreation on NPS Land: Off-Highway Vehicles, Snowmobiles, and Personal Watercraft. Off-highway vehicle (OHV), snowmobile, and personal watercraft (PWC) use at National Park Service (NPS) units has fueled ongoing debates over the balance between recreation and the protection of parklands and waters. Several NPS units are conducting environmental studies and developing regulations for existing OHV use. A September 15, 2008, judicial ruling vacated the most recent Winter Use Plan for snowmobiles in Yellowstone National Park, leaving limitations on the upcoming 2008-2009 season unclear while NPS develops new rules. Since 2003, NPS has completed regulations to open designated areas at 13 units to PWC use.

Aircraft Overflights. Grand Canyon National Park is at the center of a conflict over whether or how to limit air tours over national parks to reduce noise. NPS and the Federal Aviation Administration (FAA) continue to work to implement a 1987 law that sought to reduce noise at Grand Canyon, and a 2000 law that regulates overflights at other park units. Recent regulations require air tour operators to seek authority to fly over park units; the agencies then must develop Air Tour Management Plans (ATMPs) at those park units. Provisions of legislation (H.R. 1356, H.R. 2881, S. 1076, S. 1300, and S. 2972) would affect commercial air tours over park units by expediting and streamlining agency actions, in part because of the delay in completing ATMPs. Further, the FAA has issued final safety regulations for commercial air tours nationally.

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

National Trails System. While designation of trails is often popular, issues remain regarding the funding, expansion, and quality of trails. The 110th Congress is considering a variety of trail measures, including adding routes to the National Trails System, authorizing studies of routes for possible additions to the system, and authorizing land acquisitions from willing sellers. P.L. 110-229 established the Star-Spangled Banner National Historic Trail. Legislation has been introduced to create a new category of trails, called National Discovery Trails.

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Recreation on Federal Lands

Introduction

Four federal agencies administer about 95% of the approximately 653 million acres of federally owned land in the United States: the National Park Service (NPS), the Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) in the Department of the Interior (DOI), and the Forest Service (FS) in the Department of Agriculture.¹ These agencies manage federal lands for a variety of purposes relating to the preservation, development, and use of the lands and natural resources. The NPS administers the National Park System for recreational use of parklands and preservation of park resources, a mission that can be contradictory. The FWS manages wildlife refuges primarily for protecting and improving fish and wildlife habitats, with other uses to the extent that they are compatible. The BLM manages public lands and the FS manages national forests for similar multiple uses, including grazing, recreation, timber, water, and fish and wildlife. Many forests and public lands also are available for mineral exploration and development. The National Trails System, administered by the FS, NPS, and BLM, often in cooperation with state and local authorities, permits many recreation uses, but motorized vehicles generally are prohibited.

This preservation/use dichotomy, while varying among agencies, is a focal point for debate over recreation on federal lands. Increased recreation, and allegations of overuse in some areas, contribute to disagreement on issues of access, regulation, integrity of natural and cultural resources, and motorized versus nonmotorized recreational activities. Recreation debates also arise in areas managed by other federal agencies, such as reservoirs and rivers managed by the Army Corps of Engineers (in the Department of Defense) and the DOI's Bureau of Reclamation, where decisions on water releases may affect recreation.

The growth and development of western states, proximity of many urban areas to public lands, and growing popularity of outdoor recreation have translated into high demand for a variety of recreational opportunities on federal lands and waters. BLM, for example, reports that over 22 million people live within 25 miles of public lands and that two-thirds of BLM-administered lands are within 50 miles of an urban area.² Agency figures indicate an overall increase in recreational visits to federal lands in recent decades. The FY2009 DOI budget documents cite over 460 million recreational visits to agency-administered sites in 2007: 57 million visits to 3,602

¹ See the U.S. General Services Administration's *Federal Real Property Profile* (2004) at [http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf]. Table 16 of the GSA report shows federally owned acreage by state.

² See [<http://www.blm.gov/wo/st/en/prog/Recreation.1.html>].

BLM recreational sites; 274 million recreational visits to 391 NPS units; over 40 million visits to 548 FWS wildlife refuges; and 90 million visits to 308 Bureau of Reclamation recreation sites.³ The FS reports 211 million recreational visits to its national forests and grasslands, and the Corps 400 million visits for the most recent year available.

Over the last 40 years, forms of motorized recreation — snowmobiles, personal watercraft, other off-highway vehicles — and nonmotorized vehicles, such as mountain bikes, have evolved and gained in popularity. These new forms intersect with the many popular traditional forms of recreation. These include water-based activities (fishing, canoeing, kayaking, rafting, etc.) and a variety of land-based pursuits (birdwatching, camping, hiking, hunting, horseback riding, rock climbing, etc.).

The use of OHVs on federal lands and waters has been particularly contentious, and lawsuits have challenged their management. OHV supporters contend that these vehicles provide outdoor recreation opportunities for the disabled, senior citizens, and others with mobility limitations; visitor access to hard-to-reach natural areas; economic benefits to communities serving riders; and, for snowmobiles, increased access to sites during the winter season. They believe technological advances do and will continue to limit noise and pollution. Critics of OHVs raise environmental concerns, including potential damage to land and water ecosystems and wildlife habitat; noise, air, and water pollution; and a diminished experience for recreationists seeking quiet and solitude.

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

A subsequent executive order (E.O. 11989, May 24, 1977) amended the 1972 order to exclude military, emergency, and law enforcement vehicles from the definition of off-road vehicles (to which restrictions would apply). It provided authority to immediately close areas or trails if OHVs were causing or would cause considerable damage on the soil, vegetation, wildlife, wildlife habitat, or cultural or

³ Land management agency visitation statistics appear on p. DH-99 of the *FY2009 Interior Budget in Brief* at [http://www.doi.gov/budget/2009/09Hilites/2009_Highlights_Book.pdf].

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

BLM and FS managers formulate guidance on the nature and extent of land uses, including OHV use, through regulations, national policies, land and resource management plans, and area-specific decisions. Legislation establishing NPS units may provide for specific OHV uses. In addition, NPS administers OHV use via unit-specific regulations, management plans, and the superintendent’s compendium. On August 31, 2006, the NPS released final revised management policies to guide management throughout the National Park System, in part to reflect changing recreational uses and evolving technologies.⁴ These management policies largely retain the 2001 edition’s emphasis on conserving park resources in conservation/use conflicts (§ 1.4.3).⁵

The 110th Congress is considering legislation and conducting oversight on issues pertaining to recreation on federal lands. Several major issues are covered in this report, particularly use of traditional OHVs, PWC, and snowmobiles in certain National Park System units; overflights of national park units; motorized recreation on BLM and FS lands; and expansion of the National Trails System. Other issues addressed cover recreation within the National Wildlife Refuge System; recreation at federal (Corps and Bureau) water sites; recreation fees; and Colorado River management within Grand Canyon National Park.

While this report focuses on recreation issues on federal lands, it does not cover additional issues affecting these lands comprehensively. For background on federal land management generally, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent. Overview information on numerous natural resource use and protection issues is provided in CRS Report RL33806, *Natural Resources Policy: Management, Institutions, and Issues*, coordinated by Carol Hardy Vincent, Nicole T. Carter, and Julie Jennings. For information on NPS issues, see CRS Report RL33484, *National Park Management*, coordinated by Carol Hardy Vincent. Information on BLM and Forest Service lands is contained in CRS Report RL33792, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues for the 110th Congress*, by Ross W. Gorte, Carol Hardy Vincent, Marc Humphries, and Kristina Alexander. For information on appropriations for federal land management agencies, see CRS Report RL34461, *Interior, Environment, and Related Agencies: FY2009 Appropriations*, coordinated by Carol Hardy Vincent.

⁴ For additional background information on NPS management policies, see CRS Report RL33484, *National Park Management*, coordinated by Carol Hardy Vincent. See also the NPS website at [<http://www.nps.gov/applications/npspolicy/index.cfm>].

⁵ The final version of the 2006 NPS management policies is available via the NPS website at [<http://www.nps.gov/policy/MP2006.pdf>].

Current Issues

Motorized Recreation on NPS Land (by Kori Calvert)

Background. National Park System units may comprise many different features, including historic, scenic, or scientific resources; outstanding natural and cultural attributes; and outdoor recreational opportunities. Balancing appropriate recreational use and parkland enjoyment with the protection and preservation of resources is a significant ongoing challenge to both NPS administrators and the congressional committees conducting agency oversight. Motorized recreation in particular, and the extent and effect of motorized access, can be contentious. Debate often focuses on a particular form of motorized recreation within an individual park unit or a small number of units. Such issues include snowmobiles at three Yellowstone area parks; Grand Canyon National Park airtour overflights; personal watercraft (PWC) at popular NPS-administered water sites; and other forms of off-highway vehicles (OHVs) — four-wheel drive vehicles, all-terrain vehicles (ATVs), and dune, sand, and swamp buggies — at areas such as Big Cypress National Preserve. This section focuses primarily on these latter forms of OHVs.⁶

Currently, of the 391 NPS units covering over 84 million acres of land, 43 allow snowmobiles and 13 allow PWC. Also, excluding Alaska, NPS counts 12 park units allowing other types of OHV use by the general public. Some additional units permit OHV access to inholders, Native Americans, or others for specific limited purposes under a variety of authorizations.⁷ Manufacturers and various user groups contend that NPS limits on OHV use unfairly restrict access, establish a precedent for other federal land managers to impose or extend restrictions, and may be economically harmful to local communities and industries serving users. Opponents of motorized recreation in NPS units cite damage to the environment and cultural artifacts, safety concerns, conflicts with other forms of recreation, and inadequate NPS staff to effectively monitor motorized use and its impact on park resources. Opponents also cite the NPS statutory mandate to protect park resources and the availability of other federal lands (FS, BLM) where OHV use may be permitted.

Administrative Actions. As noted above, federal guidance on OHV use on NPS lands is provided in E.O. 11644 and E.O. 11989, in agency regulations and policies, and in other authorities. An NPS unit's enabling legislation may establish specific activities as an appropriate use — e.g., water-oriented recreation, snowmobiling for subsistence or recreational purposes, or OHV travel to reach hunting or fishing areas. Under NPS regulations (36 C.F.R. § 4.10), OHV use may be allowed in four types of NPS units whose primary purposes include outdoor recreational opportunities for their visitors — national recreation areas, national seashores, national lakeshores, and national preserves. Agency regulations also require special rulemaking, with environmental impact analysis and public comment,

⁶ A more detailed discussion of snowmobile, overflight, and PWC management issues at NPS units and related legislative and regulatory guidance may be found in the following sections of this report.

⁷ Figures confirmed with NPS via phone conversation, Jan. 30, 2008.

to designate routes and areas for off-road motor vehicles in park units. Additional unit-level direction for previously designated routes (such as temporary route closures) may be included in a park's general management plan and/or determined by the park superintendent (36 C.F.R. § 1.5).

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

The NPS survey identified eight park units with authorized public OHV use and special regulations in place: Big Cypress National Preserve; Gateway and Lake Meredith National Recreation Areas (NRAs); and Assateague, Cape Cod, Fire Island, Gulf Islands, and Padre Island National Seashores. According to the agency, four additional units remain open to public OHV use while it conducts environmental studies and develops special regulations: Glen Canyon¹¹ and Curecanti NRAs, and

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

⁹ Park units continued to respond to the survey, with a final total of 310 NPS units completing it. (Phone conversation with Jerry Case, Regulations Program Manager, NPS, Jan. 30, 2008.)

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

¹¹ 72 *Fed. Reg.* 50393 (Aug. 31, 2007). Notice of Intent to Prepare an Environmental Impact Statement for an Off-Road Vehicle Management Plan, Glen Canyon National Recreation Area, Arizona and Utah. See the NPS Planning, Environment and Public Comment website at [<http://parkplanning.nps.gov/projectHome.cfm?parkId=62&projectId=19520>] for details.

Cape Hatteras¹² and Cape Lookout National Seashores.¹³ Special circumstances apply to two additional areas identified in the NPS survey, Little River Canyon National Preserve and Big South Fork National River and Recreation Area.¹⁴ Also, Lake Meredith NRA requires new regulations to expand current boundaries for OHV riders.¹⁵ NPS is encouraging OHV education via the websites of units permitting OHV use. The agency also is encouraging units with illegal OHV use to pursue enforcement actions. However, some believe NPS budgetary and staff constraints could limit enforcement effectiveness.¹⁶

On November 29, 2005, Bluewater, Wildlands Center for Preventing Roads, and the National Parks Conservation Association (NPCA) sued NPS and DOI in the U.S. District Court for the District of Columbia, alleging that OHVs constitute a “serious threat” to NPS resources which the agency failed to address. On March 21, 2007, Judge Royce Lamberth dismissed Bluewater from the case for lack of standing.¹⁷ The remaining parties settled on May 12, 2008. The settlement requires NPS to implement a pilot public education and deterrence program at 10 NPS units over the next three years to address unauthorized OHV use.¹⁸ Program elements include

¹² 72 *Fed. Reg.* 72316 (Dec. 20, 2007). Establishment of Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management, Cape Hatteras National Seashore. The committee is to assist in the development of special regulations for off-road vehicle management at Cape Hatteras. On July 17, 2007, U.S. District Court Judge Terrance Boyle issued a Court Order indicating that off-road use at the Seashore does not comply with federal management requirements; however, the Order does not mandate restricting OHV access. See [<http://parkplanning.nps.gov/projectHome.cfm?parkId=358&projectId=10641>] for further information.

¹³ 72 *Fed. Reg.* 44178 (August 7, 2007). Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Cape Lookout National Seashore, NC. For further information, see [<http://parkplanning.nps.gov/projectHome.cfm?parkId=359&projectId=15978>].

¹⁴ NPS determined that Little River Canyon permits OHVs only on designated backcountry area multiple-use numbered roads serving hikers, horseback riders, ATVs, and four-wheel drive vehicles. This is not considered to be off-road use. For additional information, see [<http://www.nps.gov/liri/planyourvisit/atv.htm>]. Big South Fork is closed to recreational OHV riders and currently has no designated trails for them. For additional information, see [<http://www.nps.gov/biso/parknews/gmpimplementation.htm>].

¹⁵ 73 *Fed. Reg.* 33111 (June 11, 2008). Notice of Intent to Prepare an Environmental Impact Statement (EIS) for an Off-Road Vehicle Management Plan (ORV Management Plan) for Lake Meredith National Recreation Area, Texas. For additional information, see [<http://parkplanning.nps.gov/projectHome.cfm?parkId=76&projectId=20192>].

¹⁶ Letter to Steven P. Martin, NPS Deputy Director, from Robert D. Rosenbaum, Arnold & Porter LLP (on behalf of Bluewater Network et al.), June 13, 2005, available via the Bluewater website at [<http://www.bluewaternet.org/npsorv/lettertoNPS.pdf>].

¹⁷ See [https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-63] for the court Order and [https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-64] for Judge Lamberth’s Memorandum Opinion.

¹⁸ The 10 units are Ozark National Scenic Riverways (MO), Santa Monica Mountains NRA (CA), New River Gorge National River (including Gauley River NRA) (WV), Joshua Tree (continued...)

public outreach, education, and enforcement activities such as officer training and increased fines and penalties. If successful, the program could become a model for adoption at additional park units. The settlement also requires NPS to develop environmental impact statements and special rules governing current OHV use at Glen Canyon NRA and Cape Lookout National Seashore.

Meanwhile, site-specific conflicts among various constituencies continue. For instance, there is ongoing disagreement at Big Cypress National Preserve over designated OHV trails within the Bear Island unit, the effects of OHV use on endangered Florida panthers and their habitat, and the representational composition of the advisory committee established to enable various stakeholders to put forth alternative approaches and recommendations for OHV management within the preserve. A coalition of conservation groups filed a lawsuit on December 21, 2007, in response to the opening of OHV trails in Bear Island. At Cape Hatteras National Seashore, environmental groups, represented on the advisory committee created to assist in the development of a long-term OHV management plan, sued NPS. In their complaint of October 18, 2007, the plaintiffs alleged that the OHV use permitted under the existing interim NPS management plan failed to provide adequate protection for seashore resources, including rare turtle, avian, and plant species.¹⁹ Under a consent decree of April 16, 2008, the parties agreed to allow OHV beach access to continue year-round, to place seasonal limitations on night driving to protect sea turtles, and to create and monitor defined buffer areas closed to OHVs and pedestrians during specified spring-summer periods of bird breeding, nesting, and fledging.²⁰ The expanded beach closures provide protection for wildlife resources but are unpopular with fishermen and local businesses.

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

¹⁸ (...continued)

National Park (CA), Death Valley National Park (CA), Big Thicket National Preserve (TX), Sleeping Bear Dunes National Lakeshore (MI), St. Croix National Scenic River (WI), Parashant National Monument (AZ), and Wupatki, Sunset Crater and Walnut Canyon National Monuments (AZ).

¹⁹ See [http://www.southernenvironment.org/lawlibrary/coast/2007-10-18_hatteras.pdf] for a copy of the complaint.

²⁰ A copy of the consent decree is available via the Southern Environmental Law Center at [http://www.southernenvironment.org/lawlibrary/coast/2008-04-16_ORV_consent_decree.pdf]. See also [<http://www.nps.gov/caha/planyourvisit/off-road-vehicle-use.htm>] for additional information on OHV management at Cape Hatteras.

Park and environmental groups generally are supportive of the final management policies but cautious about future policy implementation and enforcement. Policy critics view the document as favoring conservation over recreation and are uncertain how the preservation and protection of natural soundscapes may affect motorized recreation. However, some critics point to new language that promotes public collaborative relationships between NPS and gateway communities, among other provisions, as a positive step for incorporating local views on the importance of recreation to the economy of these communities.

Separately, NPS is developing a proposed rule addressing mountain bicycles within NPS units. Current regulations (36 C.F.R. § 4.30) and park management policies (§ 9.2.2.5) require special regulations to designate bicycle trails other than those on park roads, parking lots, and within developed areas such as campgrounds. NPS anticipates that the proposed rule will authorize park superintendents to designate trails for biking if such proposed designations are noncontroversial. Mountain biking advocates such as the International Mountain Biking Association (IMBA) actively support opening additional trails to mountain bikers, while other groups have expressed concern that easing trail designation procedures could cause resource damage and conflict with the enjoyment of visitors on foot or horseback.

Legislative Activity. Two bills, S. 3113 and H.R. 6233, would affect OHV management at Cape Hatteras National Seashore. Both bills seek to nullify the April 2008 consent decree placing seasonal restrictions on OHV access to defined beach areas at Cape Hatteras National Park. The bills would reinstate the NPS Interim Management Strategy issued on June 13, 2007, until a final OHV management plan and implementing rule are completed (anticipated in 2010 and 2011, respectively). Senate and House committee hearings (July 30, 2008, and September 11, 2008, respectively) focused on the impact of limited public beach access for fishing and other recreational activities on tourism and the local economy; one Member said a nearly 15% reduction in seashore visits since implementation of the settlement is economically damaging the area's tourism dependent businesses. Each bill's sponsor also expressed concern that the seashore is being managed via a court decision without sufficient public input. One witness testified that resource closures affect small sections of beach from which nesting shorebird and turtle populations have benefitted and increased in number. Further, an NPS representative said the consent decree accommodates both resource protection and public access to the seashore, and that the proposed legislation, by reducing protected areas, could reverse gains in nesting activity. The Senate Committee on Energy and Natural Resources voted not to report S. 3113, 11-12, on September 11, 2008.

Snowmobiles on NPS Land (by Kori Calvert)

Background. Proposals to regulate recreational snowmobile use in NPS units have been controversial, with debate often mirroring the preservation/use conflict within the NPS mission. On April 27, 2000, the NPS announced the strict enforcement of long-standing regulations on snowmobile use, which would have prohibited recreational snowmobiling throughout the National Park System. Limited exceptions to this enforcement policy included Yellowstone and Grand Teton National Parks, park units in Alaska, Voyageurs National Park (MN), and access to private land within or adjacent to a park. By July 2000, the Interior Department had

modified its strict enforcement stance: snowmobiles would not be banned in the 43 park units permitting such use prior to the April 2000 announcement, pending formal rulemaking and public comment. To date, NPS has taken no further action on a general policy for snowmobiles. However, the final NPS management policies released on August 31, 2006, did include new language to cover both snowmobiles and oversnow vehicles (§ 8.2.3.2). They state that, outside Alaska, special regulations are required to designate snowmobile and oversnow vehicle routes after park planning determines such use to be appropriate. Designated routes are limited to those used by motorboats and motorized vehicles in other seasons.

Administrative Actions. Since the summer of 2000, regulatory and judicial actions to restrict or allow snowmobile use have centered on Yellowstone and Grand Teton National Parks and the connecting John D. Rockefeller, Jr., Memorial Parkway. The Clinton Administration issued final rules to incrementally eliminate snowmobile use in these three park units, with limited exceptions, in favor of multi-passenger “snowcoaches” by the 2003-2004 winter season.²¹ However, a June 2001 Bush Administration lawsuit settlement with the International Snowmobile Manufacturers Association (ISMA) and the State of Wyoming required NPS to revisit the snowmobile ban and consider any additional information on “cleaner, quieter” snowmobile technology. The new NPS final rule reversed the snowmobile ban in favor of daily entry limits, use of trained guides, snowmobile emission standards, and an “adaptive management strategy” allowing park managers to take remedial action if monitoring indicates unacceptable impacts from air and noise pollution.²²

Subsequent legal challenges effectively split the 2003-2004 winter season, with each sub-season managed under different rules with significantly different limits on daily snowmobile entries. These conflicting rulings created confusion for park visitors, local communities, and businesses, with many unsure whether they could visit the park in winter and what winter use rules were in effect. Subsequently, NPS issued a final rule to implement a temporary winter use management plan effective for three winter seasons, through 2006-2007.²³ The interim rule’s intent was to provide certainty to gateway communities, businesses, and park visitors while NPS completed long-term environmental impact analyses of motorized oversnow vehicles on the three area parks and developed a new long-term plan to manage winter recreational use. The temporary rule expired at the conclusion of the 2006-2007 winter season. Without a new rule and winter use plan in place for the 2007-2008 winter season, snowmobiles and snowcoaches would be prohibited. However, on September 24, 2007, NPS released its Winter Use Plans Final Environmental Impact Statement (FEIS) evaluating seven alternative plans for snowmobile and snowcoach winter use management.²⁴ A subsequent Record of Decision (ROD, signed

²¹ 66 *Fed. Reg.* 7260 (Jan. 22, 2001).

²² 68 *Fed. Reg.* 69267 (Dec. 11, 2003).

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

²⁴ 72 *Fed. Reg.* 54456 (Sept 25, 2007). The FEIS and additional winter use documentation (continued...)

November 20, 2007) and a final rule promulgated on December 13, 2007, provide long-term regulatory guidance for managing snowmobile and snowcoach use within the three area parks.²⁵

For the 2007-2008 winter season, the new NPS plan mirrored the interim rule it replaced, continuing with 720 guided best available technology (BAT) snowmobiles per day in Yellowstone, and combined daily access for 140 snowmobiles in Grand Teton and the Rockefeller Parkway — most with BAT emission and noise pollution standards but no guiding requirements. The plan capped daily Yellowstone snowcoach entries at 78 and maintained the requirement limiting all snowcoach and snowmobile travel to existing park roads groomed for their use. Avalanche control operations continued, allowing motorized and nonmotorized oversnow travel via Sylvan Pass near Yellowstone’s East Entrance. Yellowstone’s 2007-2008 winter visitation statistics for all entrances show 31,420 visitors arriving via snowmobile (a 1.2% decrease from the previous winter use season) and 22,344 arriving in snowcoaches (a 9.8% increase). East Entrance/Sylvan Pass statistics, however, show only 550 oversnow visitors — 148 on snowmobiles, 250 snowcoach passengers, and 152 skiers.²⁶

The final rule mandates more restrictive measures beginning with the 2008-2009 winter season, but also allows park management to use “adaptive management” to adjust snowmobile and snowcoach numbers up or down based on impact monitoring. It allows 540 BAT snowmobiles and 83 snowcoaches per day in Yellowstone, all commercially guided, with no more than 11 snowmobiles per group, including the guide. A combined 65 snowmobiles — 62% with BAT requirements but none with guiding requirements — may access Grand Teton and the Rockefeller Parkway daily. By the 2011-2012 season, all snowcoaches must meet BAT emission and sound level requirements. As of the 2008-2009 season, the use of explosives for Sylvan Pass avalanche control was to cease, with motorized and nonmotorized oversnow travel open or closed based on avalanche forecasting safety/danger determinations. However, the Sylvan Pass Study Group — composed of representatives from NPS, the State of Wyoming, Park County (WY), and the city of Cody — explored options to keep Sylvan Pass open to oversnow travel. Based on the study group’s June 3, 2008, recommendations,²⁷ the NPS Intermountain Regional Director approved a ROD Amendment on Sylvan Pass Management on July 16, 2008. The amended decision opens Sylvan Pass to motorized and nonmotorized oversnow travel for a limited core

²⁴ (...continued)

are available at [<http://www.nps.gov/yell/planvisit/winteruse/index.htm>]. The FEIS summary is at [http://www.nps.gov/yell/planyourvisit/upload/summary_updated9-12-07.pdf].

²⁵ See [http://www.nps.gov/yell/planyourvisit/upload/rod_final.pdf], and 72 *Fed. Reg.* 70781 (Dec. 13, 2007) at [<http://www.nps.gov/yell/parkmgmt/upload/finalrule13Dec2007.pdf>] for the ROD and final rule, respectively.

²⁶ Sylvan Pass usage confirmed via phone conversation with the Yellowstone NP Public Affairs Office, August 19, 2008. For additional Yellowstone visitation statistics, see [<http://www.nature.nps.gov/stats/park.cfm?parkid=421>].

²⁷ See [http://www.nps.gov/yell/parkmgmt/upload/spsg_statement_6.3_08.pdf]. Also see [<http://www.nps.gov/yell/parkmgmt/sylvanstudy.htm>] for further information on the Sylvan Pass Study Group and its activities.

winter season — December 22 through March 1 each year — “subject to weather-related constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities.” It calls for the use of avalanche mitigation techniques (for instance, forecasting and explosives dispensed via helicopters and howitzers) and evaluation of additional avalanche risk assessment tools and mitigation techniques to further increase visitor access and safety. Further, it allows the Superintendent to determine dates and hours of operation.²⁸

On September 15, 2008, Judge Emmett Sullivan of the U.S. District Court for the District of Columbia vacated the NPS plan, finding it “arbitrary and capricious, unsupported by the record, and contrary to law.”²⁹ Yet again NPS is preparing an environmental assessment and proposed rule on snowmobile and snowcoach use for public review, with the goal of having a final rule in place in time for the opening of the winter season on December 15, 2008. What oversnow travel restrictions may apply to the upcoming season are uncertain.

Legislative Activity. The FY2008 Interior appropriations bill (S. 1696, § 116), as reported by the Senate Appropriations Committee (S.Rept. 110-91), directed NPS to keep Yellowstone’s interim snowmobile use rule in force throughout the 2007-2008 winter season. The stipulation assured continuity should implementation of a new NPS final winter use plan be delayed. However, the FY2008 Consolidated Appropriations Act (P.L. 110-161) did not include such language. NPS issued a ROD and final rule within the necessary time parameters. Lawsuits challenging the NPS ROD did not request preliminary injunctions, allowing local operations to continue uninterrupted throughout the 2007-2008 winter season. In their Explanatory Statement, the Appropriations Committees stated their belief that this was in the best interest of all parties.³⁰ The 110th Congress also included language in the FY2007 Revised Continuing Appropriations Resolution (P.L. 110-5, § 20516) to keep the NPS Yellowstone interim rule in effect throughout the 2006-2007 winter use season. Such language was meant to ensure that judicial rulings could not deny snowmobiles entry. Earlier legislation contained similar provisions beginning with the 2004-2005 season.

Aircraft Overflights at NPS Sites (by Carol Hardy Vincent)

Background. The NPS is to provide for the public enjoyment of parklands while protecting resources, while the Federal Aviation Administration (FAA) controls airspace and aircraft overflights. This has created a conflict between resource management and aviation access authorities and their constituencies. Grand Canyon

²⁸ *Winter Use Plans Record of Decision Amendment — Sylvan Pass Management* is available at [http://www.nps.gov/yell/planyourvisit/upload/rod_sylvanpass_7-08.pdf]. For additional information, see the Yellowstone National Park Winter Planning website at [<http://www.nps.gov/yell/planyourvisit/winteruse.htm>]. For background information on snowmobiles in NPS park units generally, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.

²⁹ *Greater Yellowstone Coalition et al. v. Dirk Kempthorne*, D.D.C., No. 07-CV-2111; and *National Parks Conservation Association v. U.S. Department of the Interior*, D.D.C., No. 07-CV-2112, p. 61, [https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2007cv2112-36].

³⁰ *Congressional Record*, Dec. 17, 2007, H16130-H16131.

National Park has been the focal point of a conflict between groups seeking to limit overflights of national parks due to concerns about noise and safety, and air tour operators whose economic stability, with ripple effects on local businesses, may depend on providing overflights. The National Parks Overflights Act of 1987 (P.L. 100-91) directed NPS to recommend a flight control plan for Grand Canyon that would provide a “substantial restoration of the natural quiet” and prohibited flights below the canyon’s rim. It required an NPS study of the effects of all aircraft overflights, which was submitted to Congress in 1994.³¹

The National Parks Air Tour Management Act of 2000 (Title VIII, P.L. 106-181, hereafter “Air Tour Act”) regulates commercial air tours at other park units. It requires the FAA and NPS to create management plans for air tours at individual park units and within a half-mile of their boundaries. Each plan could prohibit or limit air tours, such as by route and altitude restrictions. The act also required the FAA to establish “reasonably achievable” requirements for quiet aircraft technology for the Grand Canyon within one year and to designate, by rule, Grand Canyon routes or corridors for aircraft and helicopters using quiet technology. Quiet aircraft would not be subject to existing caps on canyon overflights.

Administrative Actions. Several actions have been taken to achieve the substantial restoration of natural quiet at Grand Canyon. First, a *limitations rule* capped the annual number of commercial air tour overflights at Grand Canyon.³² Second, the *airspace rule* expanded flight-free zones and restrictive routing over the canyon. East-end Special Flight Rules Area (SFRA) airspace changes were delayed until February 20, 2011.³³ Third, the FAA issued a final rule establishing a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon.³⁴ The rule identifies which aircraft meet the standard. In future rulemaking, the FAA is expected to address the routes or corridors for commercial air tour operations that use the quiet technology. Fourth, data on natural ambient sound levels are being collected and used, together with air tour reported flight operations data and radar tracking data, to model air tour traffic and aircraft noise at Grand Canyon. The model is being used to measure success in restoring natural quiet.

The FAA and NPS published a notice of intent to prepare an environmental impact statement (EIS) on options that could be taken to restore natural quiet at Grand Canyon.³⁵ The agencies are developing a draft EIS. They currently are considering seven alternatives, including the status quo, with a range of options for restoring natural quiet while allowing for a viable air tour industry. Changes under

³¹ U.S. Dept. of the Interior, National Park Service, *Report to Congress: Report on Effects of Aircraft Overflights on the National Park System*, listed under the topic heading “NPS Documents” at [http://www.nps.gov/grca/naturescience/airoverflights_documents.htm].

³² 65 *Fed. Reg.* 17708 (April 4, 2000), effective May 4, 2000. Available at [http://www.nps.gov/grca/naturescience/airoverflights_fedregnotices.htm].

³³ 71 *Fed. Reg.* 9439 (Feb. 24, 2006).

³⁴ 70 *Fed. Reg.* 16084 (March 29, 2005). Text of the final rule is available at [http://www.nps.gov/grca/naturescience/airoverflights_fedregnotices.htm].

³⁵ 71 *Fed. Reg.* 4192 (Jan. 25, 2006).

consideration include altered flight free zones, different altitudes and locations of air tour routes, quiet aircraft technology incentives, and limitations on the number and timing of flights.

The NPS issued a notice to clarify the definition of “substantial restoration of natural quiet,” on the grounds that the mandate to substantially restore natural quiet (in P.L. 100-91) cannot be achieved under the current definition.³⁶ Further, the agency stated that a new definition is needed to address a 2002 court decision and the volume of higher-altitude flights over the Grand Canyon. The new definition will address noise of all aircraft, while distinguishing between aircraft above and below 17,999 feet. The EIS in development would be based on this new definition.

Other regulatory actions affect commercial air tours at park units. The Air Tour Act final rule³⁷ requires air tour operators to apply for authority to fly over national park and abutting tribal lands. The FAA received applications for commercial air tours over 106 of the 391 park units, and has granted interim operating authority to all applicants. Application triggers development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where none exists.³⁸ The purpose of a plan is to mitigate or prevent any harm by commercial air tours to natural and cultural resources, visitor experiences, and tribal lands. Development of an ATMP requires an environmental analysis under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §§4321-4370f). The FAA and NPS currently are developing their first ATMPs for five areas. On September 30, 2005, the FAA and NPS released an implementation plan for the development of the ATMPs that sets out the roles and responsibilities of the two agencies in developing ATMPs. The agencies have revised the implementation plan to make clarifications and incorporate information learned from ongoing development of ATMPs.

The Air Tour Act required the FAA and the NPS to establish an advisory group to provide continuing advice regarding commercial air tours over and near national parks. Accordingly, the agencies established the National Parks Overflights Advisory Group, composed of representatives of general aviation, air tour operations, environmental groups, and Native American tribes. The group is co-chaired by the FAA Administrator and the NPS Director or their designees. It meets one to three times per year, and notices of its meetings are published in the *Federal Register*. The group provides advice on a range of issues, including (1) implementation of the Air Tour Act, (2) quiet aircraft technology for use in commercial air tours over parks, (3) safety and environmental issues related to air tours.

A January 2006 Government Accountability Office (GAO) report addressed the impact of the delay in implementation of the Air Tour Act.³⁹ The report concluded

³⁶ 73 *Fed. Reg.* 19246 (April 9, 2008) and 73 *Fed. Reg.* 55130 (September 24, 2008).

³⁷ 67 *Fed. Reg.* 65661 (Oct. 25, 2002).

³⁸ The FAA provides information on the National Parks Air Tour Management Program via their website at [<http://www.atmp.faa.gov/default.htm>].

³⁹ U.S. Government Accountability Office, *National Parks Air Tour Management Act: More* (continued...)

that the delay has had little effect on park units, but has limited the ability of tour operators to make major business decisions. The agency identified four issues for Congress and the agencies to address to improve implementation, relating to the lack of flexibility for determining which parks need plans, an absence of NPS funding for plan development, limited ability to verify and enforce the number of air tours, and inadequate FAA guidance on the act's safety requirements.

The FAA issued a final rule to provide safety standards for commercial air tours nationally, including over Grand Canyon and other park units.⁴⁰ The rule seeks to increase air tour safety through measures including requirements for enhanced passenger briefings, provision of life preservers and helicopter floats for certain over-water flights, and development and compliance with a helicopter performance plan for each commercial air tour.

As part of an overall review of its management policies, the NPS has made some changes to policies on overflights and aviation uses (§ 8.4) and on soundscape management (§ 4.9). The new policies, issued August 31, 2006, replaced “adverse effects” of overflights with “unacceptable impacts” in a number of places. Some regard this change as potentially easing restrictions on overflights. One proposal would have deleted existing language stating that the NPS “will preserve, to the greatest extent possible, the natural soundscapes of parks,” but the final policies retained this soundscape language.

Legislative Activity. Provisions of broad aviation legislation (H.R. 1356, H.R. 2881, S. 1076, S. 1300, and S. 2972) would affect commercial air tours over park units. They seek to expedite and streamline agency actions, in part because of the difficulty in completing ATMPs. H.R. 1356, H.R. 2881, and S. 1076 are similar. They include provisions allowing that in lieu of an ATMP, the NPS Director and FAA Administrator could enter into a voluntary agreement with a commercial air tour operator that would govern commercial air tours over a park unit. Another change would exempt park units with 50 or fewer annual air tour flights from the requirement for an ATMP or voluntary agreement, although the NPS Director could disallow an exemption. Other provisions would establish reporting requirements for commercial air tour operators, and provide for more interim operating authority because interim conditions have prevailed for longer than had been anticipated. H.R. 2881 was considered by the Senate, but was returned to the Senate Calendar on May 7, 2008. S. 1300 and S. 2972 also contain provisions on voluntary agreements, exemptions from air tour requirements, reporting requirements, and operating authority but the provisions differ from those in the other bills. Further, they contain additional sections, such as those on fees and safety guidance. Both bills are on the Senate calendar. (For additional information, see “The Air Tour Management Program” section in CRS Report RL33920).

³⁹ (...continued)

Flexibility and Better Enforcement Needed, GAO-06-263, (Washington, DC: GPO, Jan. 2006), 64 p. Available on the GAO website at [<http://www.gao.gov/new.items/d06263.pdf>].

⁴⁰ *72 Fed. Reg.* 6884 (Feb. 13, 2007). The rule was effective on March 15, 2007, except that certain provisions became effective on September 11, 2007.

A May 2006 GAO report addressed NPS collection of air tour fees.⁴¹ The report determined that some, but not all, fees have been collected from air tour operators at the three national parks where fees are charged: Grand Canyon, Haleakala, and Hawaii Volcanoes. It concluded that the ability of the NPS to collect fees is hindered because the agency cannot verify the number of tours over the parks, it cannot effectively enforce compliance, and the two key laws have different geographic applicability. The report stated that Congress should consider reconciling the geographic applicability of the relevant laws. It further recommended that the Secretary of Transportation direct the FAA to take certain actions to ensure that the NPS receives information on air tour operations at Grand Canyon, and report to Congress on the likely effects on air tour operators of air tour fees, as required under the Air Tour Act.

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

Background. PWC are high-speed, very shallow-draft, and highly maneuverable watercraft “operated by a person or persons sitting, standing, or kneeling on the vessel rather than within the confines of the hull” (36 C.F.R. § 1.4). Often used to perform stunt-like maneuvers, PWC include watercraft known by their brand and generic names as Jet Ski®, Sea-Doo®, Surf-jet®, water sled, wet jet, Wavejammer, Wetbike, and WaveRunner®. While PWC represent a small segment of the recreational boat market — the National Marine Manufacturers Association (NMMA) estimates 1.23 million PWC in use in 2007⁴² — the number of PWC accidents has raised concerns. For example, there were 982 PWC injuries and 67 deaths reported for 2007, and 919 injuries and 68 deaths for 2006. Only open motorboats rank ahead of PWC among vessel types with higher casualty numbers.⁴³ In addition to safety issues, critics of PWC use cite environmental issues, 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 point to the economic benefits to communities serving users. PWC users assert that in park units that allow motorized boating generally, PWC also should be allowed. Recent controversies have focused on regulatory actions that would restrict recreational use of or access to these vehicles, often in specific park units.

Administrative Actions. The NPS currently is evaluating PWC use in several of its 391 units. That effort began in 2000 when the agency issued a rule prohibiting

⁴¹ U.S. Government Accountability Office, *National Parks Air Tour Fees: Effective Verification and Enforcement Are Needed to Improve Compliance*, GAO-06-468, (Washington, DC: GPO, May 2006), 37 p. Available on the GAO website at [<http://www.gao.gov/new.items/d06468.pdf>].

⁴² See [<http://www.nmma.org/facts/boatingstats/2007/files/populationstats3.asp>], Table 1.3, “Recreational Boats in Use by Type,” from the NMMA 2007 *Recreational Boating Statistical Abstract*.

⁴³ See [http://www.uscgboating.org/statistics/Boating_Statistics_2007.pdf], Table 1 (p. 7), “Vessel Types with the Top Casualty Numbers” from *Recreational Boating Statistics 2007*, and [http://www.uscgboating.org/statistics/Boating_Statistics_2006.pdf] for the 2006 edition.

PWC use in 66 of the 87 units where motorized boats were allowed.⁴⁴ The rule allowed PWC use to continue until April 22, 2002, at the remaining 21 units while the NPS evaluated whether to permanently authorize PWC use and develop special regulations. The rule recognized that certain NRAs, such as Lake Mead and Glen Canyon, might choose to continue PWC use because their establishing legislation emphasized motorized water-based recreation as a primary purpose. An April 2001 negotiated settlement of a lawsuit by Bluewater Network and Earth Island Institute over the PWC rule prohibited PWC from the 21 areas unless the NPS initiated park-specific rules and environmental assessments. PWC could continue to operate during the rulemaking process, but only until specified “grace period” deadlines.

The NPS prohibited PWC use (effective April 22, 2002) in 5 of the 21 areas that completed an environmental review process and also favored PWC bans: the Cape Cod and Cumberland Island National Seashores, Delaware Water Gap and Whiskeytown NRAs, and Indiana Dunes National Lakeshore. For 13 other units, NPS authorized PWC use in designated areas: in 2003, at Lake Mead and Glen Canyon (Lake Powell) NRAs, and Assateague National Seashore; in 2004, at Lake Meredith, Lake Roosevelt, Amistad, and Chickasaw NRAs; in 2005, at Bighorn Canyon NRA, Fire Island National Seashore, and Pictured Rocks National Lakeshore; and in 2006, at Gulf Islands and Cape Lookout National Seashores and Curecanti NRA. For one unit — Gateway NRA (February 24, 2006) — the NPS has proposed rules to allow PWC. The last two areas — Padre Island National Seashore and Big Thicket National Preserve — have been closed to PWC pending completion of environmental assessments and rulemaking.⁴⁵ NPS believes it unlikely that either unit will pursue rulemaking to open to PWC.⁴⁶ Meanwhile, on May 15, 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.⁴⁷

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

Legislative Activity. No general legislation on PWC use has been introduced in the 110th Congress. In the 109th Congress, the House Appropriations Committee included report language accompanying the FY2007 Interior appropriations bill (H.R.

⁴⁴ 65 *Fed. Reg.* 15077 (March 21, 2000); effective April 20, 2000.

⁴⁵ Padre Island’s 2006 PWC environmental assessment evaluates three alternative courses of action and identifies the no-action alternative continuing the PWC ban as preferred. See [<http://parkplanning.nps.gov/document.cfm?parkID=86&projectId=12571&documentID=13889>].

⁴⁶ Phone conversation with Jerry Case, Regulations Program Manager, NPS, Jan. 30, 2008.

⁴⁷ See [<http://www.nationalparkstraveler.com/files/Jet%20Ski%20Lawsuit.pdf>] for a copy of the complaint.

5386) urging NPS to complete PWC rulemakings “in an efficient and timely manner.”⁴⁸ This language, however, was not included in the FY2007 Revised Continuing Appropriations Resolution (P.L. 110-5). A March 15, 2006, House Government Reform subcommittee hearing examined NPS rulemaking efforts governing PWC use, status of park-specific rules, and reasons for and impacts of rulemaking delays.⁴⁹

Motorized Recreation on BLM Land (by Carol Hardy Vincent)

Background. The proximity of BLM lands to many areas of population growth in the West has contributed to an increase in recreation on some BLM lands. BLM lands are used for diverse forms of recreation, including hunting, fishing, visiting cultural and natural sites, birdwatching, hiking, picnicking, camping, boating, mountain biking, and off-highway vehicle driving. The growing and diverse nature of recreation on BLM lands has increased the challenge of managing different types of recreation, such as low impact (e.g., hiking) and high impact (e.g., OHV) uses. It also has increased the challenge of managing recreation and other land uses. For instance, in some areas recreation and energy development have come in conflict, with hunters, fishermen, outfitters and guides, and other recreationists at odds with energy producing interests seeking to maintain or increase energy development on public lands. Overall, access to BLM lands for a variety of recreational purposes is viewed as important for fostering public health, public support for land management, and a stable economic base for communities that depend on recreation and tourism. Recreational access also has enhanced interest in protecting the ecological integrity of federal lands from environmental harm as a result of recreational use.

Motorized OHV use, including use of dirt bikes and all-terrain vehicles, is a major recreational use of BLM lands that has been controversial. Controversy exists in various areas throughout the West, such as the San Rafael Swell in Southern Utah, the Imperial Sand Dunes Recreation Area in Southern California, and the Arizona Strip in Northern Arizona. While motorized user groups often have opposed restrictions on OHV use, many environmentalists have been concerned about harm to natural and cultural resources. In some areas, OHV use may conflict with other types of recreation, such as hiking, that seek quiet and solitude on agency lands. There are also differing views on how effectively OHV authorities are being enforced. While BLM employs a variety of means of enforcement, including monitoring, law enforcement, signing and mapping, and emergency closures of routes, enforcement may be impeded in some locations due to their remoteness, insufficient signs, inadequate staff and resources, and other factors.

⁴⁸ See [[http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1\(hr465\)](http://www.congress.gov/cgi-lis/cpquery/R?cp109:FLD010:@1(hr465))], H.Rept. 109-465, p. 45.

⁴⁹ U.S. Congress, House, Committee on Government Reform, Subcommittee on Regulatory Affairs, *Taking on Water: The National Park Service's Stalled Rulemaking Effort on Personal Watercraft*. Available via GPO at [http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.128&filename=27092.pdf&directory=/diskb/wais/data/109_house_hearings].

Administrative Actions. Guidance on OHV use on BLM lands is provided in law, executive orders, and agency regulations and policies. Under agency regulations (43 C.F.R. § 8340), BLM has been designating public lands as open, limited, or closed to OHV use. As of August 7, 2008, the following designations had been made: closed, where OHV use is prohibited, 11.7 million acres (5% of designated area); limited, where OHV use is in some way restricted, 134.8 million acres (60%); and open, where OHV use is permitted anywhere, 79.9 million acres (35%). Included in the open figure are about 100 specifically designated OHV areas. The remaining 33.1 million acres of BLM land (mostly in Alaska) are not currently designated. Because BLM management plans do not address motorized use in these undesignated areas, there are no restrictions. Other regulations govern OHV use in particular areas. For instance, on August 18, 2005, BLM issued final supplementary rules for its lands in Oregon and Washington, which include guidance on OHV use.

BLM manages transportation on its lands through a process described as Comprehensive Travel and Transportation Management.⁵⁰ Goals include providing varied transportation routes for access to BLM lands and providing areas for a variety of motorized and non-motorized forms of recreation. Travel and transportation management plans are developed for particular areas. In addition, BLM has issued two national strategies dealing with transportation on its lands. The *National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands*⁵¹ has multiple purposes, including to guide land managers in resolving OHV issues; to promote consistency of OHV decision-making; to highlight needed staff and funding for OHV management; to reduce conflicts among land users; to promote responsible OHV use and reduce habitat degradation; and to lead to an update of OHV regulations (which has not occurred to date). The *National Mountain Bicycling Strategic Action Plan*⁵² addresses mountain bicycling and other muscle-powered mechanical transport.

BLM revised its land use planning handbook in 2005 regarding motorized and non-motorized recreation.⁵³ The agency makes OHV designations during the planning process, on an area-by-area basis, and such designations often have been contentious and complex. The agency is in the midst of a multi-year effort to develop and update land use plans, because many plans do not currently address OHV use and other relatively recent issues. For instance, six of the eleven BLM field offices in Utah have released proposed resource management plans governing land uses in those areas.⁵⁴ OHVs were a major issue addressed during the process, as part of travel management planning for the areas. The efforts were expected to reduce the acreage open to cross-country travel, according to BLM. Some of the plans call for the establishment of Special Recreation Management Areas, where the combination of a high level of

⁵⁰ Information on BLM's travel management program is on the agency's website at [http://www.blm.gov/wo/st/en/prog/Recreation/recreation_national/travel_management.html].

⁵¹ The BLM Strategy and related documents are available at [<http://www.blm.gov/ohv/>].

⁵² Available at [http://www.blm.gov/mountain_biking/].

⁵³ Available at [http://www.blm.gov/nhp/200/wo210/landuse_hb.pdf].

⁵⁴ Information on the proposed plans, and the text of the plans, are available on the BLM website at [<http://www.blm.gov/ut/st/en.html>].

specific recreational activity and valuable natural resources would require more intensive management. Some of the plans also call for the establishment of Extensive Recreation Management Areas, where recreation would be dispersed and non-specialized and thus would not require intensive management.

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

A 2007 report of the U.S. Geological Survey (USGS) contains a literature review on the effects of OHV use on BLM lands.⁵⁵ The report covers OHV effects on soils and watersheds, vegetation, wildlife and habitats, and water and air quality. It addresses the socioeconomic implications of OHV use, mitigation and restoration, and monitoring and research needs.

Legislative Activity. The Continuing Appropriations Act, 2009 (P.L. 110-329), generally extends funding for BLM accounts through March 6, 2009, at the amounts provided in the FY2008 regular appropriations act. For FY2008, the BLM appropriation for recreation management was \$67.9 million. A focus of the recreation program in FY2008 was developing and implementing travel management plans, which identify and designate roads and trails for motorized use. For FY2009, the Administration requested a decrease in funding, to \$59.1 million. A large part of the decrease was due to the Administration's proposal to shift funding for national monuments and national conservation areas to another subactivity.

Some pending measures would affect OHV use in particular areas. For instance, H.R. 222 contains provisions related to OHV use in central Idaho. They include conveying BLM land to the State of Idaho to establish a motorized recreation park, establishing a special management area on certain BLM and FS lands to provide opportunities for motorized and other recreation (together with other uses), and authorizing up to \$1.0 million for the Secretary of Agriculture to grant to the State of Idaho for the off-road motor vehicle program. As another example, S. 802 and S. 2833 would require the development of travel/transportation management plans for recreation on BLM lands in Owyhee County, Idaho.

Other measures pertain to access for particular types of recreation. For instance, H.R. 6449 would provide access to, and management of, BLM lands for recreational shooting. The bill would define *recreational shooting* as forms of shooting sport or pastime, such as target and practical rifle, pistol and shotgun shooting, archery, trap, skeet, and sporting clays. The bill seeks to ensure that there is no reduction in BLM land available for recreational shooting.

⁵⁵ The report is available on the USGS website at [http://www.fort.usgs.gov/Products/Publications/pub_abstract.asp?PubID=22021].

Still other legislation seeks to establish areas that would emphasize recreation. Several such bills pertain to the Sacramento River National Recreation Area, consisting of 17,000 acres of BLM land in California. H.R. 1241 seeks to preserve and enhance recreational opportunities and to promote local economic development through recreation. S. 811, and provisions of S. 493 and H.R. 860, seek to conserve, protect, and enhance resources in the area. All four bills call for the development of a management plan for the area within three years of enactment. BLM currently has one national recreation area in Alaska.

The 110th Congress has held hearings on OHV management on BLM and other federal lands. For instance, a March 13, 2008, House subcommittee hearing and a June 5, 2008, Senate committee hearing covered many issues, including agency efforts to develop travel management plans, resources for OHV management, effects of OHV use, access for OHV use, and revenues to states from OHV use. Other issues included the adequacy of OHV authorities, enforcement of these authorities, whether there should be more standardization among authorities, the role of public/private partnerships in enforcement, and whether a licensing system would be beneficial.⁵⁶ A March 27, 2007, hearing of the House Natural Resources Committee explored the conflict between recreation and energy development on federal lands. The hearing focused on how to balance fishing and hunting with energy development in the West. Several witnesses expressed concern that the extent of energy development is having negative impacts on wildlife and habitat and access to federal lands for hunting and fishing. One witness described energy industry efforts to make development more compatible with sportsmen's interests.

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

Background. The national forests are managed by the USDA Forest Service (FS) for a variety of uses, including many types of recreation — sightseeing, OHV use, backpacking, etc. — while preserving the productivity of the lands. Recreation use continues to grow, with OHV use among the fastest growing uses.⁵⁷

The various uses and values of the national forests sometimes conflict with one another. For example, timber harvesting and OHV use may affect birdwatching and sightseeing, and can degrade water quality in certain settings. Decisions about what uses are allowed, and when and where, are made in comprehensive land and resource management plans prepared for each unit of the National Forest System, and at the project level. Because of multiple efforts to modify the planning regulations, many plan revisions have been delayed. Much of the attention has been focused on motorized recreation, because of the potentially significant impacts of motorized

⁵⁶ Testimony from these hearings is available on the websites of the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources at, respectively, [http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=27&extmode=view&extid=151] and [http://energy.senate.gov/public/index.cfm?Fuse.Action=Hearings.Hearing&Hearing_ID=ca2e6111-befb-b64a-8a55-3945b88b484e].

⁵⁷ H. Ken Cordell, Carter J. Betz, Gary T. Green, and Becky Stevens, *Off-Highway Vehicle Recreation in the United States, Regions and States* (Athens, GA: FS Southern Research Station, Feb. 2008), at [<http://www.fs.fed.us/recreation/programs/ohv/IrisRec1rpt.pdf>].

recreation on other values. Another issue involves conflicts between recreation uses (notably hunting and fishing) and other activities, such as energy extraction.

Administrative Actions. Federal guidance on OHV use in E.O. 11644 and E.O. 11989 was incorporated into FS regulations, at 36 C.F.R. Part 295. Despite this guidance, not all forest plans have identified areas as open or closed to OHVs, and local practices as to OHV use vary. In 2004, the FS Chief identified *unmanaged recreation* — “increasing use of the national forests for outdoor activities ... , including the use of off-highway vehicles” — as a threat to the nation’s forests and grasslands. In particular, OHV use has created many unauthorized roads and trails, which can be unsafe and harmful to other resources, according to the FS. The FS finalized regulations to *require* forest plans to identify a system of roads, trails, and areas for motorized vehicle use and prohibit the use of OHVs and other motorized vehicles outside the designated system.⁵⁸ As of January 2008, 100 million acres of the 194 million acres of national forest lands (52%) were generally open to OHV use, including 64 million acres open to cross-country use; vehicles were restricted to existing or designated routes on the other 94 million acres (48%).⁵⁹ By the end of FY2008, motor vehicle use maps based on the new regulations were completed for 49% of FS lands, with another 30% scheduled to be completed by the end of FY2009 and the remaining 21% scheduled to be completed in FY2010.⁶⁰

Opinions are divided over the importance and impact of the regulations. Some assert that the regulations do not go far enough, preferring that all OHV uses be prohibited in the national forests, because OHVs can damage national forest lands and resources. Others counter that the regulations penalize the majority of OHV users that obey the current rules and restrict off-highway uses at a time when other landowners and other federal and state agencies are reducing recreational access to their lands. The conflict between interests may be escalating; the FS cancelled a public meeting on the Bitterroot National Forest (MT) travel plan after a threat of violence at one meeting.⁶¹

Conflicts have arisen between hunting, fishing, and other types of recreation and energy development on federal lands. For instance, environmental and wildlife and fish groups have challenged various efforts to lease federal areas for oil and gas exploration and development.⁶² Concerns typically focus on the impacts of oil and gas

⁵⁸ U.S. Dept. of Agriculture, Forest Service, “Travel Management; Designated Routes and Areas for Motor Vehicle Use,” 70 *Fed. Reg.* 68264-68291 (Nov. 9, 2005). For additional information, see also the FS Travel Management & Off-Highway Vehicle (OHV) Program at [<http://www.fs.fed.us/recreation/programs/ohv/index.shtml>].

⁵⁹ See [<http://www.fs.fed.us/recreation/programs/ohv/Summary2008.pdf>].

⁶⁰ *Ibid.*

⁶¹ “Forest Service cancels meeting on Bitterroot,” *Missoulian.com* (Jan. 11, 2008), available at [<http://www.missoulian.com/articles/2008/01/11/news/local/znews03.txt>].

⁶² See, for example, Sportsmen for Responsible Energy Development, *Recommendations for Responsible Oil and Gas Development* (released July 21, 2008), available at [http://www.sportsmen4responsibleenergy.org/images/stories/S4RED_Recommendations_Final-3.pdf];

(continued...)

development on wildlife-related recreation, and the difficulties for interests other than the energy industry to provide input regarding the location, timing, and stipulations for development. The Energy Policy Act of 2005 (P.L. 109-58) expanded the opportunities for energy development on federal lands, which could increase potential conflicts. The Government Accountability Office (GAO) has noted that the public has opportunities to comment on and to challenge leasing decisions, but that the agencies do not maintain data to assess the impact of these challenges.⁶³

The FY2009 FS budget again proposed cutting recreation funds. Recreation management would be funded at \$237.0 million, a \$25.6 million (10%) reduction from the FY2008 level of \$262.6 million. Trails funding would be \$50.0 million, \$26.3 million (34%) below the FY2008 level of \$76.4 million.

Legislative Activity. For FY2009, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act (P.L. 110-329) maintained FS recreation and trails funding at the FY2008 levels. Recreation management was funded at \$262.6 million in FY2008. For trails in the National Forest System, the FY2008 appropriations law provided \$76.4 million.

No general legislation on recreational activities in national forests has been introduced. Various bills address recreation in specific areas. For example, the Central Idaho Economic Development and Recreation Act of 2007 (H.R. 222) would establish the Boulder-White Clouds Management Area; the Chattahoochee National Forest Act of 2007 (H.R. 707/H.R. 4092) would create the Mountaintown National Scenic Area; the Lewis and Clark Mount Hood Wilderness Act of 2007 (S. 647/H.R. 6290/S. 3213) would designate the Mount Hood National Recreation Area, and Title IX (of S. 647 and H.R. 6290) addresses recreational use, fees, and oversight for the region; and the Eastern Sierra and Northern San Gabriel Wild Heritage Act (H.R. 6156/S. 3069) would establish the Bridgeport Winter Recreation Area. Most such area-specific provisions are included in bills that would designate wilderness areas. Such bills are identified in a table in the “Wilderness” section of CRS Report RL33792, *Federal Lands Administered by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues for the 110th Congress*. In addition, H.R. 5671 would authorize the FS to retain and use fees from certain facilities in the Whiskeytown-Shasta-Trinity National Recreation Area and the Columbia River Gorge National Scenic Area, and H.R. 6553 would expand the recreational uses subject to ski area permits.

The 110th Congress has examined OHV use on national forests and other federal lands. On March 13, 2008, a House Natural Resources subcommittee held a hearing on the impacts of unmanaged OHV use on federal lands. On June 5, 2008, the Senate Energy and Natural Resources Committee held an oversight hearing on OHV

⁶² (...continued)

and Natural Resources Defense Council, *Broad Coalition Sends Message to BLM: Do Oil & Gas Right*, at [<http://www.nrdc.org/media/pressreleases/040204.asp>].

⁶³ U.S. Government Accountability Office, *Oil and Gas Development: Challenges to Agency Decisions and Opportunities for BLM to Standardize Data Collection*, GAO-05-124 (Washington, DC: Nov. 2004).

management by federal land management agencies. Both hearings covered a range of issues, such as agency planning and management practices and authorities for controlling OHV use and the environmental and economic impacts of OHV use.

The National Trails System (by Sandra L. Johnson)

Background. The National Trails System Act (P.L. 90-543), authorizing the National Trails System (NTS), became law on October 2, 1968.⁶⁴ Since January 2008, trails supporters have celebrated the 40th anniversary of the NTS through a variety of public and private events. The federal portion of the trails system consists of 26 national trails (8 scenic and 18 historic trails, both of which must be designated by Congress) covering more than 50,000 miles, over 1,000 recreation trails, and 2 connecting and side trails. Issues involve the funding, quality, and quantity of trails; land acquisition for trails; and the creation of a new category of trails.

Administrative Actions. On June 4, 2008, the Secretary of the Interior announced the designation of 24 new National Recreation Trails (NRTs) in 16 states.⁶⁵ Since 2001, the Bush Administration has designated 228 National Recreation Trails, totaling more than 8,900 miles. These designations do not require an act of Congress (although P.L. 110-229 does include designation of an NRT in honor of a former Member)⁶⁶ and are part of an ongoing effort to promote community partnerships and to foster innovative ways to encourage physical fitness.

BLM manages more miles of National Historic Trails than any other federal agency. On February 13, 2006, BLM released its first National Scenic and Historic Trails Strategy and Work Plan for congressionally-designated trails under its jurisdiction.⁶⁷ The 10-year plan provides guidance to establish a coordinated and consistent trails-focused administrative infrastructure; develop national policies to protect and sustain trail resources within BLM's multiple-use mandate; manage trail resources to enhance visitor experiences and promote "appropriate public access"; and maintain and advance BLM's partnerships with trail organizations and other agencies.

Legislative Activity. The 110th Congress is considering legislation to designate, study, or extend components of the National Trails System. Such measures are shown in **Table 1**. The table includes bills that could involve management by the NPS or other agencies. Bills related to the system more generally are not included in the table. On May 8, 2008, the Star-Spangled Banner National Historic Trail was designated (P.L. 110-229, § 341) as part of the National Trails System. H.R. 74 has

⁶⁴ See [<http://www.nps.gov/nts/legislation.html>] for establishing legislation (P.L. 90-543, as amended through P.L. 110-229, May 8, 2008). For additional background information on the National Trails System, see [<http://www.nps.gov/nts/>].

⁶⁵ See [http://www.doi.gov/news/08_News_Releases/080604.html]. Additional information on National Recreation Trails, including access to the NRT database, is available at [<http://www.americantrails.org/nationalrecreationtrails/>].

⁶⁶ P.L. 110-229 (Title I, §102), May 8, 2008 designates the "Jim Weaver Loop Trail" as a National Recreation Trail in the Willamette National Forest (OR).

⁶⁷ See [<http://www.blm.gov/nlcs/nsht/NSHTSWfinalSig.pdf>].

been introduced to add National Discovery Trails as a new category of long-distance trails within the National Trails System, and designate the American Discovery Trail (ADT) as the nation's first coast-to-coast National Discovery Trail. The ADT would connect several national scenic, historic, and recreation trails, as well as many other local and regional trails. The 104th through the 109th Congresses considered, but did not enact, similar legislation.

Two *willing seller* bills (S. 169, H.R. 1847) reintroduced in the 110th Congress would provide federal authority to acquire land from willing sellers to complete nine national scenic and historic trails. This proposal does not commit the federal government to purchase any land or spend any money, but seeks to allow managers to purchase land to protect the national trails as opportunities arise and funds are appropriated. Administration witnesses supported enactment of S. 169 and H.R. 1847 at hearings conducted on April 26, 2007, and July 10, 2008, respectively. S. 169 was reported (S.Rept. 110-167) and placed on the Senate calendar on September 17, 2007. Further, willing seller provisions in S. 169 were incorporated in the Omnibus Public Land Management Act of 2008 (S. 3213, on the Senate calendar). On September 11, 2008, H.R. 1847 (amended to include eight rather than nine trails) was reported favorably (H.Rept. 110-841) by the Natural Resources Committee and placed on the House calendar.

Also, the Trails Act Technical Corrections Act (H.R. 3157, S. 2073) seeks to amend the National Trails System Act relating to the statute of limitations that applies to certain landowner claims for compensation. H.Res. 1443, introduced on September 16, 2008, recognizes the 40th anniversary of the National Trails System Act and the Pacific Crest National Scenic Trail.

Table 1. National Trails System Bills Introduced in the 110th Congress

Title	Bill Number	Type	Status
Amends the National Trails System Act to provide for a study of the Cascadia Marine Trail	H.R. 6740	Study	Introduced
Amends the National Trails System Act to require the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails (Oregon, Pony Express, California, and Mormon Pioneer National Historic Trails), and for other purposes	H.R. 1336 S. 580	Study	Introduced Senate Calendar
America's Historical and Natural Legacy Study Act (House-reported version includes Butterfield Overland Trail Study Act, Lewis and Clark National Historic Trail Extension Study Act, and Mississippi River Study Act; Senate-reported version includes Butterfield Overland Trail Study Act)	H.R. 3998	Study	Senate Calendar
Arizona National Scenic Trail Act	H.R. 2297 S. 1304	Desig.	Hearing Held Senate Calendar

Title	Bill Number	Type	Status
Butterfield Overland Trail Study Act	H.R. 1266	Study	Hearing held
Chisholm and Great Western Cattle Trails Act	H.R. 2849	Study	Introduced
Chisholm Trail and Great Western Trail Studies Act	S. 2255		Senate Calendar
Consolidated Natural Resources Act of 2008 (includes Star-Spangled Banner National Historic Trail, and Lewis and Clark National Historic Trail Extension)	S. 2739	Desig./ Study	P.L. 110-229, § 341, § 343
Ice Age Floods National Geologic Trail Designation Act	H.R. 450 S. 268	Desig.	Introduced Senate Calendar
John Lewis Civil Rights Trail System Act	H.R. 5156	Study	Introduced
Lewis and Clark National Historic Trail Amendments Act of 2007	H.R. 3460	Extension	Introduced
Lewis and Clark National Historic Trail Extension Study Act	S. 2739	Study	P.L. 110-229, § 341
Long Path Trail Study Act of 2008	H.R. 6200 S. 3094	Study	Introduced Introduced
Mississippi River Special Resource Study Act (Mississippi River Trail)	H.R. 2482	Study	Introduced
New England National Scenic Trail Designation Act	H.R. 1528 S. 923	Desig.	Senate Calendar Hearing Held
North Country National Scenic Trail Route Adjustment Act of 2007	H.R. 4291	Extension	Introduced
Omnibus Public Land Management Act of 2008 (includes Arizona and New England National Scenic Trails, Ice Age Floods National Geologic Trail, Washington-Rochambeau Revolutionary Route National Historic Trail, Butterfield Overland Trail)	S. 3213	Desig./ Study	Senate Calendar
Pacific Northwest National Scenic Trail Act of 2008	H.R. 5926 S. 2943	Desig.	Introduced Senate Calendar
Star-Spangled Banner National Historic Trail Act	S. 2739	Desig.	P.L. 110-229, § 341
Trail of Tears Documentation Act	H.R. 5335	Extension	Referred to Senate Comm.
Washington-Rochambeau Revolutionary Route National Historic Trail Designating Act	H.R. 1286 S. 686	Desig.	Referred to Senate Comm. Senate Calendar
Western States Trail Study Act of 2008	S. 2909	Study	Introduced

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

campgrounds for possible inclusion in the Trail of Tears National Historic Trail (P.L. 109-378).

Each agency with management authority over national trails has its own budget or funding system for carrying out activities related to trail administration and management. Federal land managing agencies have agreed, within the limits of agency authorities, to coordinate requests for and obligation of funds related to the National Trails System to eliminate duplication of effort and increase effectiveness. FY2008 funding for the National Trails System was \$22.05 million, and the FY2009 request was \$18.51 million. The Continuing Appropriations Act (P.L. 110-329) generally provided funding for trails at the amounts provided in the FY2008 appropriations act. Also, funding other than for the National Trails System cannot be aggregated because of differences among agencies' budgeting practices.⁶⁸

Other Issues

The 110th Congress is considering several other recreation issues affecting federal land. These include recreation within the National Wildlife Refuge System, recreation at federal water sites (Bureau of Reclamation and Army Corps of Engineers), recreation fees, and Grand Canyon Colorado River management.

Recreation in the National Wildlife Refuge System. (by M. Lynne Corn)

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

Recreational conflicts within the NWRS were more frequent before the 1997 enactment of the National Wildlife Refuge System Improvement Act (16 U.S.C. §668dd). A key provision of this law designates “compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the refuge system.” It also requires that priority public uses must “receive enhanced consideration over other general public uses in planning and management within the System.” The law continues the statutory policy that activities that are not wildlife-dependent (e.g., grazing, growing hay, etc.) may be permitted, provided they

⁶⁸ Other trail projects may be eligible for federal highway funding under SAFETEA-LU (P.L. 109-59). For example, the Recreational Trails Program (RTP) provides funds to states to develop and maintain recreational trails and trail-related facilities for motorized and nonmotorized recreational trail uses. P.L. 109-59 authorized \$370 million for the RTP over five years.

are wildlife-compatible. Final regulations for determining compatibility were published on October 18, 2000.⁶⁹ Some interest groups contended that the regulations did not allow for sufficient public access for some forms of recreation, such as use of OHVs or PWC. Others felt that the regulations struck a proper balance among user groups.

An NWRS budget controversy may affect recreation, especially on less well-known refuges. Costs of operation have increased on many refuges, partly due to specific problems such as hurricane damage and more aggressive border enforcement. Reductions in funding for operations in the NWRS, combined with the need to meet fixed costs such as rent, salaries, and utilities, have led to cuts in funding for programs to aid endangered species, reduce infestation by invasive species, protect water supplies, address habitat restoration, and ensure staffing at the less visited refuges. The Northeast Region (roughly Virginia to Maine, with 71 refuges) took the lead in addressing this issue by attempting to consolidate management at refuges, and increasing the number of refuges which are not staffed on a regular basis (termed “de-staffing”). This region also attempted to consolidate some services in order to spread resources more effectively. Implications for recreation could include reduced trash collection, fewer visitor services, less trail maintenance, and greater reliance on volunteers (if available). Other regions have begun their own plans to address reduced operating budgets.

Legislative Activity. For refuge operations and maintenance in FY2008, the President proposed \$394.8 million, a slight decrease from \$395.3 million in FY2007. The final figure was \$434.1 million (+10%), the same level of funding proposed by the Administration for FY2009. In the Joint Statement of Managers, FWS was directed to use the additional FY2008 funding to reestablish basic operations nationwide. FWS was further directed to report back to the Appropriations Committees on allocation of the increased funding within 60 days. However, on Jan. 29, 2008, President Bush signed E.O. 13457, directing federal agencies to ignore earmarks that are not in the language of the law itself.⁷⁰ While the executive order will not affect the increase itself, statements concerning reestablishment of operations as well as a report to the two committees would be affected. For additional information on the NWRS budget for FY2009, see CRS Report RL34461, *Interior, Environment, and Related Agencies: FY2009 Appropriations*.

Recreation at Federal Water Sites. (by Nicole T. Carter and Nic Lane) Much of the recreation on federally owned or managed waters and adjacent lands occurs at U.S. Army Corps of Engineers (in the Department of Defense) and Bureau of Reclamation (in DOI) sites, primarily at federal reservoirs and along rivers and other waterways. These agencies’ more than 4,000 recreation areas attract nearly 500 million visits per year (400 million at Corps-managed areas; 90 million at Bureau sites). While these federal reservoirs and federally maintained waterways often are operated primarily for navigation, hydropower, flood control and/or irrigation, they also provide recreation and other benefits. Reservoir and waterway operations can be contentious because decisions on water releases often represent tradeoffs among the

⁶⁹ 65 *Fed. Reg.* 62457 (Oct. 18, 2000).

⁷⁰ 73 *Fed. Reg.* 6417 (Feb. 1, 2008).

multiple reservoir and river uses and among different types of recreation, such as birdwatching, boating, fishing, hunting, sightseeing, swimming, and whitewater activities.

Bureau of Reclamation. (by Nic Lane) The Bureau of Reclamation mission is not primarily related to recreation, and thus it has limited authority, funding, and staff to provide for recreation facilities. Nevertheless, Reclamation water sites are popular recreation destinations and there are 289 Reclamation project areas with designated recreation facilities. However, only 32 are managed solely by the agency. Due to the popularity of recreation opportunities afforded by the reservoirs behind Reclamation dams, the agency works with 67 non-federal partners to manage and oversee the recreation facilities at Reclamation projects. Reclamation sites, including those managed by non-federal partners, receive 90 million visits annually; this figure is increasing by 1.2 million annually. Recreation at these sites generates \$6 billion annually in visitor revenue and creates 27,000 non-federal jobs.⁷¹ The agency endeavors to aid concessionaires through outreach programs aimed at helping them succeed in their management of sites. Further, Reclamation seeks to avoid the failure of a concessionaire or management partner which results in the site and facilities reverting to Reclamation's stewardship. Within the agency this known as *turn back*. Turn back had occurred 29 times since 1976 according to an August 2005 Reclamation-commissioned study, and places additional pressure on agency funding and staff resources.⁷²

Corps of Engineers. (by Nicole T. Carter) The Corps is estimated to annually spend roughly \$270 million on recreation-related activities.⁷³ In the omnibus Water Resources Development Act (WRDA) of 2007 (P.L. 110-114), the 110th Congress authorized the Corps to undertake construction activities for a number of water resource projects with recreational components. The legislation also added recreation as a project purpose for a number of existing Corps facilities. Recreation oversight may still arise during the 110th Congress in the context of Corps reservoir operations under the drought conditions facing a number of river basins, such as the Southeast drought's drawdown of Lake Lanier (GA) in the Apalachicola-Chattahoochee-Flint basin. A broader policy issue facing the agency is its treatment of recreation's economic benefits under alternate management regimes for multipurpose federal facilities (e.g., reservoir management in the Missouri River basin).

The consistency of Corps recreation fees and passes with those of other agencies also has received attention. H.R. 4304 and S. 3305 both seek to extend the new recreation fee program established for DOI and the Department of Agriculture land management agencies and the Bureau of Reclamation to the Corps of Engineers.

⁷¹ E-mail correspondence on Jan. 10, 2008, with Mr. Bruce Brown, Partnerships Coordinator, Bureau of Reclamation, Washington, DC.

⁷² Haas, Glenn E., and Robert Aukerman, *An Assessment of the Bureau of Reclamation's Non-Federal Recreation Management Partners*, August 2005. Available via Reclamation's website at [<http://www.usbr.gov/pmts/planning/recpubs/NonFedRecre.pdf>]. See also [<http://www.whitehouse.gov/omb/expectmore/detail/10002226.2004.html>].

⁷³ See [<http://www.whitehouse.gov/omb/expectmore/detail/10002002.2004.html>].

Recreation Fees. (by Carol Hardy Vincent) DOI and the Department of Agriculture are operating under a new recreation fee program, created by P.L. 108-447 (Division J, Title VIII; Federal Lands Recreation Enhancement Act). The law established the new recreation fee program for the four major federal land management agencies (NPS, BLM, FWS, and FS) as well as for the Bureau of Reclamation. The agencies have issued guidance on implementing the program, and have adjusted fees at sites to meet the criteria and prohibitions in the new law. In some areas fees have been eliminated, while in others they have increased. Congress is overseeing agency efforts to establish, collect, and spend recreation fees under the law.

The recreation fee program is supported partly because it generates revenue that can be used for improvements at the sites where collected. Concerns remain over issues such as whether the public should be charged for recreating on public lands, and whether the establishment of higher fees in some areas could be a barrier to visitation. Several states have adopted resolutions opposing the fees. Further, debate continues over which agencies should be covered by the recreation fee program. H.R. 4304 and S. 3305 seek to extend the program to the Corps of Engineers; the agency currently has no general authority to retain recreation fees. By contrast, S. 2438 seeks to repeal the program. However, it authorizes the Secretary of the Interior to establish and collect entrance and use fees at units of the National Park System, under specified terms and conditions; provides for distribution of the receipts; and requires reports to Congress on this fee program at park units. The bill also seeks to reinstate recreation fee provisions of the Land and Water Conservation Fund Act of 1965, which in part provided for entrance fees, primarily at national park units, and daily recreation use fees for federal agencies generally.

P.L. 108-447 provided guidance to the five agencies on establishing entrance, standard, expanded, and special recreation permit fees. It outlined criteria for establishing fees, and prohibited charging fees for certain activities or services. Each agency can spend the revenue collected without further appropriation. In general, not less than 80% of the fees are to be spent at the collecting site, but that amount can be reduced to not less than 60%. The balance of the collections is available to be used agency-wide. The agencies (excluding the Bureau of Reclamation) anticipated collecting about \$240 million in fees in FY2007, with NPS collections accounting for about two-thirds of the total. An estimated \$2 billion has been collected by agencies since the establishment of the predecessor demonstration program in 1996. The collections can be used for specified purposes, such as repair, maintenance, and facility enhancement. The agencies are to report to Congress on the program every three years, and the program is to terminate 10 years after enactment.

The law also authorized the creation of an interagency national recreation pass as well as regional multi-entity passes. To cover entrance and standard fees for the five agencies, in January 2007 a new interagency pass was established — the America the Beautiful National Parks and Federal Recreational Lands Pass. Over a million passes had been issued as of June 2008. The cost of the general pass, at \$80 per year, the extent and convenience of its use, and the distribution of revenues from passes sold are issues of interest. Legislation has been introduced (H.R. 652) to make the pass available to veterans for a cost of \$10 annually. S. 617 and provisions of S. 3213

would make a \$10 pass available to veterans as well as active duty and reserve members of the Armed Forces. Both bills are on the Senate calendar.

On June 18, 2008, a House subcommittee held a hearing on how the fee program is being implemented on federal lands, with a focus on concerns over implementation.⁷⁴ Some of the witnesses testified that fees being charged are inconsistent with the act, particularly on some BLM and FS lands. They cited fees being charged at trailheads, for special recreation permits, and in High Impact Recreation Areas as examples. Another witness testified that the NPS “fee system and structure is out of control, complicated and inequitable.”⁷⁵ He asserted that fees for core, interpretive programs should be eliminated, and that fee collections are inequitably distributed among park units. Some witnesses supported additional public funding for managing federal lands, and claimed that fee revenues are being used instead of appropriations, in contravention of congressional intent. Witnesses from DOI and the Department of Agriculture testified on the accomplishments of the fee program, including that “retention of fee authority is paramount to our ability to maintain and manage our federal lands and effectively address the deferred maintenance backlog at our National Parks, Forests and other federal lands.”⁷⁶ They noted the extent to which federal lands are free to the public, ranging from 99.5% of BLM lands to 62% of NPS sites.

Grand Canyon Colorado River Recreational Use Management. (by David L. Whiteman) As part of its overall management of Grand Canyon National Park (GCNP), the NPS protects the natural resources, monitors the ecosystem health, and regulates the recreational use of the Colorado River corridor within park boundaries at the bottom of the Grand Canyon. A particular focus is the management of recreational watercraft trips on the Colorado River inside GCNP to protect river corridor resources while fostering sustained high-quality visitor experience. The 277-mile river canyon is a popular destination for multi-day boating trips, long considered one of the most “iconic” of National Park experiences. Decades of conflict have ensued over the use of outboard motors on pontoon rafts on the river, helicopter flights used to ferry commercial boating passengers in and out of the canyon, and the proportion of river access for commercial outfitters versus noncommercial private boaters. Historically, about 70% of river access permits had gone to commercial concessioners, with about 30% to noncommercial self-guided private boaters. The motorized activities have long been opposed by groups favoring the preservation of wilderness-like values in the river corridor and those seeking wilderness status for some or all of the park. Commercial river trip outfitters assert that access for

⁷⁴ The hearing testimony is on the House Committee on Natural Resources Website at [http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=54&extmde=view&extid=190].

⁷⁵ See testimony of J.W. “Bill” Wade, The Coalition of National Park Service Retirees, p. 2, at [http://resourcescommittee.house.gov/images/Documents/20080618/NPjointwithWP/testimony_wade.pdf].

⁷⁶ See testimony of P. Lynn Scarlett, Department of the Interior, and Mark Rey, Department of Agriculture, p. 5, at [http://resourcescommittee.house.gov/images/Documents/20080618/NPjointwithWP/testimony_scarlett-rey.pdf].

motorized watercraft does not harm resources and is the only practical way to offer popular short-duration trips.

In 2006, the NPS finalized a revised Colorado River Management Plan (CRMP) governing recreational river use for at least 10 years and establishing goals and objectives for a longer time frame.⁷⁷ This new management plan alters the allocation of river access between commercial and noncommercial users, with more access for the self-outfitted sector. The plan also shortens the season for commercial trips but expands both the number of commercial launches allowed and their group size. A “weighted lottery” system held each February for noncommercial users is being phased in, and the park plans to issue 252 noncommercial launch permits for calendar year 2009.⁷⁸ Some noncommercial users have expressed concern that while they have more overall access, they are largely relegated to off-season periods and are allowed less time on the river. In general, commercial users view the new plan favorably. The CRMP process took nearly 10 years to complete and implement. The 2006 CRMP includes a Visitor Experience Monitoring Plan (VEMP) to assess optimum visitor capacity levels and the quality of visitors’ river running experiences, and a Research Monitoring and Mitigation Program (RM&PM) to assess the effects of recreational use on park resources.

On February 16, 2006, a coalition of conservation groups filed suit in federal court to force Interior to re-evaluate its approach to dam-managed water flow and river canyon ecosystem recovery. They cited continuing damage to beaches, vegetation, unique species, and cultural resources from the operation of the upstream Glen Canyon Dam, and contended that the new CRMP did not adequately protect park resources from river user impacts. The parties settled their case in 2007 and, as a result, Interior is now engaged in a long-term experimentation program for dam release and flow volumes, temperature controls, and other measures to benefit downstream river resources. A high-flow experiment in March 2008 successfully deposited large volumes of sand onto eroded sandbars that serve as camping beaches for river runners and hikers and provided new sediment to protect archeological resources from weathering and erosion. The Grand Canyon Trust, an environmental group, filed a new lawsuit on December 7, 2007, seeking to force the Bureau of Reclamation to conduct “seasonally adjusted” dam releases in low-water years.

A specialized River Ranger Crew patrols the river all year long in support of park scientists and resource specialists and to assist river runners and educate them to be stewards of the river and canyon.

As called for in the CRMP, the NPS has implemented a site-specific restoration program to address user impacts, focusing on popular use areas and campsites. Another coalition of conservation and some boating groups filed a separate suit on

⁷⁷ Background information and related documents are available on the NPS CRMP website at [<http://www.nps.gov/grca/parkmgmt/crmp.htm>].

⁷⁸ Information on Colorado River trips is available via the NPS CRMP website at [<http://www.nps.gov/grca/planyourvisit/whitewater-rafting.htm>]. For weighted lottery information, see [<http://www.nps.gov/grca/planyourvisit/weightedlottery.htm>] and the link for associated FAQs at [<http://www.nps.gov/grca/planyourvisit/river-faq.htm>].

March 28, 2006, over motorized use and perceived inequities of the new river use plan. This lawsuit seeks an injunction that would require the NPS to prepare another CRMP. An October 2006 court ruling allowed intervention in the case by two boater associations favoring the 2006 CRMP.