



# Recreation on Federal Lands

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## Summary

The growing and diverse nature of recreation on federal lands has increased the challenge of balancing different types of recreation with each other and with other land uses. Motorized recreation has been particularly controversial, with issues centering on access and environmental impacts. The 111<sup>th</sup> Congress, as well as the Administration, is 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, in the National Forests, and on BLM Land.** Off-highway vehicle (OHV) use on National Park Service (NPS) lands has fueled ongoing debate arising from the agency's dual mission to provide recreational opportunities while preserving and protecting parkland resources. Relatively few park units are open to public OHV use—12—while the extent of unauthorized OHV use is in dispute. Currently, 10 units are developing pilot education and deterrence programs to address unauthorized use, which could serve as models at other NPS sites. OHV use 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 governing OHVs, 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. No general legislation pertaining to OHV use on NPS, BLM, or FS lands had been introduced as of September 15, 2010, but several measures pertain to recreation on particular lands administered by these agencies or to certain types of recreation.

**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. For instance, the agencies are developing a draft environmental impact statement on options to restore natural quiet at Grand Canyon. They also have begun to develop air tour management plans for park units with commercial air tours. Provisions of legislation (H.R. 1586) would affect commercial air tours over park units by expediting and streamlining agency actions.

**Snowmobiles on NPS Land.** Regulatory and judicial actions to allow or restrict snowmobile use have focused primarily on three Yellowstone area park units. Winter Use Plans developed by NPS to establish numerical limits on snowmobile and snowcoach entries have been the subject of repeated, and often conflicting, court challenges. On November 20, 2009, NPS issued a final rule limiting daily oversnow vehicle entries at Yellowstone to 318 snowmobiles and 78 snowcoaches for the 2009-2010 and 2010-2011 winter use seasons while the agency develops a new long-term management plan. In July 2010, NPS released a draft of six winter-use alternatives to be further studied and analyzed.

**Personal Watercraft (PWC) at NPS Sites.** Since 2003, NPS has completed regulations to open designated PWC areas at 13 units. On July 8, 2010, a federal judge ordered NPS to re-examine environmental assessments justifying PWC use at two of those units but did not overturn existing regulations. One additional unit has proposed allowing PWC.

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## Introduction

Four federal agencies administer about 95% of the approximately 650 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. 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, fish and wildlife, and conservation. Many forests and public lands also are available for mineral exploration and development.

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 extent of motorized versus nonmotorized recreational activities. Recreation debates also may 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. Similarly, recreation debates may occur in the context of lands within cross-cutting systems, such as the National Trails System, administered by the FS, NPS, and BLM, often in cooperation with state and local authorities.

The population growth and development in 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 55 million people live within 25 miles of its National System of Public Lands and that two-thirds of BLM-administered lands are within 50 miles of an urban area.<sup>1</sup> Further, an estimated 80% of the 4,300 Corps recreation areas also are within 50 miles of a large city.<sup>2</sup> Agency figures indicate an overall increase in recreational visits to federal lands in recent decades. The FY2011 DOI budget documents cite approximately 476 million annual recreational visits to DOI-administered sites: more than 57.4 million visits to 3,602 BLM recreational sites; 286 million recreational visits to 392 NPS units; 42.5 million visits to 551 FWS wildlife refuges; and 90 million visits to 289 Bureau of Reclamation recreation sites.<sup>3</sup> The FS reports approximately 198.9 million annual recreational visits to National Forest System lands,<sup>4</sup> and the Corps cites approximately 360 million recreation visits per year.<sup>5</sup>

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

<sup>2</sup> See [http://www.iwr.usace.army.mil/docs/VTN/VTNRecreationBro\\_loresprd.pdf](http://www.iwr.usace.army.mil/docs/VTN/VTNRecreationBro_loresprd.pdf).

<sup>3</sup> Land management agency visitation statistics appear on p. DO-20 of the *FY2011 Interior Budget in Brief* at [http://www.doi.gov/budget/2011/11Hilites/2011\\_Highlights\\_Book.pdf](http://www.doi.gov/budget/2011/11Hilites/2011_Highlights_Book.pdf).

<sup>4</sup> See [http://www.fs.fed.us/recreation/programs/nvum/nvum\\_national\\_summary\\_fy2009.pdf](http://www.fs.fed.us/recreation/programs/nvum/nvum_national_summary_fy2009.pdf), *National Visitor Use Monitoring Results: USDA Forest Service National Summary Report*.

<sup>5</sup> See <http://www.iwr.usace.army.mil/docs/VTN/>

[VTNRecreationBro\\_loresprd.pdf](http://www.iwr.usace.army.mil/waterresources/recreation/recreat)<http://www.iwr.usace.army.mil/waterresources/recreation/recreat> (continued...)

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

The use of off-highway vehicles (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 assert that technological advances do and will continue to limit noise and pollution. Critics of OHVs raise environmental concerns, including potential damage to wildlife habitat and land and water ecosystems, such as the impact of dust on winter snow melts and water supply; noise, air, and water pollution; and a diminished experience for recreationists seeking quiet and solitude and/or hunting and fishing opportunities. They also point to the beneficial economic impact of nonmotorized recreation on local communities.<sup>6</sup>

Clashes over off-road use could be intensifying for riders, law enforcement officers, and property owners as OHV ridership increases and the amount of land available to OHVs diminishes.<sup>7</sup> For example, BLM and FS are identifying lands for OHV use and limiting or prohibiting OHV use in other areas; a 2009 Government Accountability Office (GAO) report examines OHV use and impacts on federal lands, and documents agency OHV enforcement, planning, and management challenges;<sup>8</sup> development has reduced availability of private lands to OHVs; and state legislative efforts to manage OHV use are reflected in several dozen OHV-related bills introduced and nearly two dozen enacted in recent years. State measures focus on a range of actions—safety, wildlife habitat and private property protection, registration requirements and fees, and collaborative approaches to enforcement.<sup>9</sup> As limitations on land management agency staffs and budgets, and the remoteness of many public lands, exacerbate enforcement challenges, some interest groups

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<sup>6</sup> “Economic model cites benefits of ‘quiet’ recreation,” *Land Letter* (Oct. 29, 20009), at <http://www.eenews.net/Landletter/2009/10/29/7/>; and *Economic Impacts of Non-Motorized (Quiet) Recreation on the Wallowa-Whitman National Forest* (March 11, 2009), at <http://wilderness.org/files/WWNF-Economic-Impact-Report.pdf>.

<sup>7</sup> “Off-road vehicle use fuels tension, violence across the U.S.,” *USA Today* (Dec. 31, 2008), at [http://www.usatoday.com/news/nation/2008-12-30-off-road-clashes\\_N.htm](http://www.usatoday.com/news/nation/2008-12-30-off-road-clashes_N.htm); “Two ways of life collide in Wonder Valley,” *Los Angeles Times* (Jan. 5, 2010), at <http://articles.latimes.com/2010/jan/05/local/la-me-outthere5-2010jan05>; and “Off-roaders in search of trails,” *USA Today* (April 5, 2010), at [http://www.usatoday.com/news/nation/2010-04-05-atv-parks\\_N.htm](http://www.usatoday.com/news/nation/2010-04-05-atv-parks_N.htm).

<sup>8</sup> The report is on the GAO website at <http://www.gao.gov/new.items/d09509.pdf>.

<sup>9</sup> “States Move to Curb Off-Highway Vehicles as Federal Efforts Lag,” *Energy and Environment Daily* (Dec. 24, 2008), at <http://www.tu.org/site/apps/nlnet/content2.aspx?c=kkLRJ7MSKtH&b=4046381&ct=6476183>; “Lawmakers increasingly target unruly off-roaders,” *Seattle Times* (Feb. 4, 2009), [http://seattletimes.nwsourc.com/html/nationworld/2008705391\\_apoffroadbattle.html](http://seattletimes.nwsourc.com/html/nationworld/2008705391_apoffroadbattle.html); and “States Rev Up ORV Rules,” *High Country News* (Jun. 8, 2009), at <http://www.glorietamesa.org/States%20rev%20up%20ORV%20rules.pdf>. The Specialty Vehicle Institute of America maintains a chart of “State All-Terrain Vehicle Requirements” at <http://atvsafety.org/InfoSheets/ATVChart-StateReq.pdf>.

have worked together to identify successful enforcement strategies or to develop educational guidance for shared trail use and safety.<sup>10</sup>

Two executive orders define and generally guide OHV use on federal lands. The first (E.O. 11644, February 8, 1972) defines an off-road vehicle (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 historic resources of particular areas or trails. Areas could remain closed until the manager determined that “the adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.” Also, each agency was authorized to adopt the policy that areas could be closed to OHV use except for those areas or trails that are specifically designated as open to such use. This meant that only open areas would have to be marked, a lesser burden on the agencies.

BLM and FS managers formulate guidance on the nature and extent of land uses, including OHV use, through regulations, national policies, land and resource management plans, and area-specific decisions. Legislation establishing NPS units may provide for specific OHV uses. In addition, NPS administers OHV use via unit-specific regulations, management plans, and the superintendent’s compendium. On August 31, 2006, the NPS released final revised management policies to guide management throughout the National Park System, in part to reflect changing recreational uses and evolving technologies.<sup>11</sup> These management policies largely retain the 2001 edition’s emphasis on conserving park resources in conservation/use conflicts (§ 1.4.3).<sup>12</sup>

The 111<sup>th</sup> Congress is considering legislation and conducting oversight on issues pertaining to recreation on federal lands. For example, two companion bills (S. 2999 and H.R. 4589) would

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<sup>10</sup> *Six Strategies for Success: Effective Enforcement of Off-Road Vehicle Use on Public Lands*, released in 2007 by public interest groups concerned about OHV use, presents several case studies on successful enforcement strategies. Available at <http://www.wildlandscpr.org/files/uploads/PDFs/SixStrategiesEnforcementReport.pdf>. See also *Sharing our Trails: A Guide to Trail Safety and Enjoyment*, released Apr. 29, 2009, at <http://www.americantrails.org/resources/ManageMaintain/Sharing-Trail-Safety-guide-multiuse.html>.

<sup>11</sup> For additional background information on NPS management policies, see CRS Report RL33484, *National Park Management*, coordinated by Carol Hardy Vincent. See also the NPS website at <http://www.nps.gov/applications/npspolicy/index.cfm>.

<sup>12</sup> The final version of the 2006 NPS management policies is available via the NPS website at <http://www.nps.gov/policy/MP2006.pdf>.

provide consistent enforcement authority to the federal land management agencies in responding to violations of law and regulations governing the use of public lands, and increase fines and penalties for deliberate violations to \$100,000 and for non-willful violations to \$5,000. Land damage may include, but is not limited to, that caused by recreational OHVs. Another bill (S. 720) directs the federal land management agencies to apply fines collected for damage to their lands and facilities toward restoration and recovery activities.

This report concentrates on several issues involving motorized recreation, and the extent and effect of motorized access. For NPS, debate often focuses on a particular form of motorized recreation within an individual park unit or small number of units. Issues discussed include snowmobile use at three Yellowstone area parks; overflights of national park units; personal watercraft (PWC) at popular NPS-administered water sites; and OHV use in certain National Park System units. Motorized recreation on BLM and FS lands and the planning processes available to designate their use also are discussed.

While this report addresses specific recreation issues on certain federal lands, it does not cover additional issues affecting these lands comprehensively. For general background on federal land management, see CRS Report R40225, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Ross W. Gorte. Information on BLM and Forest Service lands is contained in CRS Report R40237, *Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues for the 111<sup>th</sup> Congress*, coordinated by Ross W. Gorte and Carol Hardy Vincent. For information on appropriations for federal land management agencies, see CRS Report R41258, *Interior, Environment, and Related Agencies: FY2011 Appropriations*, coordinated by Carol Hardy Vincent.

## 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, involving 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, has been controversial.

Excluding Alaska, NPS in 2008 counted 12 park units allowing this type of OHV use by the general public. Some additional units permit OHV access to inholders, Native Americans, or others for specific limited purposes under a variety of authorizations.<sup>13</sup> Manufacturers and various

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<sup>13</sup> Figures confirmed with NPS via phone conversation, Jan. 30, 2008. An inholding is privately owned land within the boundaries of an NPS unit.

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

As OHV use on federal lands grew in recent decades, particularly in western states, unauthorized use also is reported to have increased in some areas, including parklands. In 1999, the environmental organization Bluewater Network surveyed 108 NPS units and reported findings on the ecological effects of OHV use at those units. The organization determined that there was unauthorized use in 40 of them.<sup>14</sup> Bluewater and other groups also petitioned NPS in December 1999 to take specific OHV actions: to ban OHV use in all NPS off-road areas, to define “off-road vehicle usage” as any use not on “pavement or high-standard gravel roads,” and to develop procedures for monitoring OHV use and regulatory compliance. In 2004, the NPS met with Bluewater and agreed to conduct a service-wide survey to determine the extent of authorized and unauthorized OHV use, its impacts, and any OHV monitoring activity. Of the then 388 NPS park units, 256 initially responded.<sup>15</sup> NPS asserts that the survey showed unauthorized OHV use in “several parks” and generally “less than significant” resource damage.<sup>16</sup> Bluewater claims illegal OHV use in 92 (36%) of those reporting units and resource damage in 71 (28%).

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<sup>14</sup> *Off-the-Track: America's National Parks under Siege* is available via the Bluewater Network website at [http://www.bluewaternetwork.org/reports/rep\\_pl\\_offroad\\_offtrack.pdf](http://www.bluewaternetwork.org/reports/rep_pl_offroad_offtrack.pdf). Bluewater's use of the term “off-road vehicle” (ORV) encompasses ATVs, four-wheel drive vehicles (jeeps, SUVs, etc.), and dune, sand, and swamp buggies. Two-wheeled vehicles (motorcycles) and snowmobiles are not included in Bluewater's definition. For purposes of this section, OHV and ORV are synonymous and have the same definition as used by Bluewater.

<sup>15</sup> 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.)

<sup>16</sup> Letter from Steve P. Martin, NPS Deputy Director of Operations, to Bluewater Network Executive Director Russell Long, May 3, 2005. Available via the Bluewater website at <http://www.bluewaternetwork.org/npsorv/letterfromNPS.pdf>. See also Bluewater's response to NPS, available at <http://www.bluewaternetwork.org/npsorv/lettertoNPS.pdf>. NPS provided copies of the initial 256 survey responses to Bluewater Network. (Phone conversation with NPS, Sept. 22, 2006.)



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 Canyon<sup>17</sup> and Curecanti<sup>18</sup> NRAs, and Cape Hatteras<sup>19</sup> and Cape Lookout National Seashores.<sup>20</sup> 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.<sup>21</sup> Also, Lake Meredith NRA requires new regulations to expand current boundaries for OHV riders.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup> Program elements include public

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<sup>17</sup> 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?projectId=19520> for details.

<sup>18</sup> Updated information on Curecanti’s Motorized Vehicle Access Plan and Environmental Assessment is available at <http://parkplanning.nps.gov/projectHome.cfm?projectId=19945>.

<sup>19</sup> 75 *Fed. Reg.* 10307 (Mar. 5, 2010). Notice of Availability of a Draft Environmental Impact Statement for Cape Hatteras National Seashore. See <http://parkplanning.nps.gov/projectHome.cfm?projectId=10641> for further information.

<sup>20</sup> 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?projectId=15978>.

<sup>21</sup> On August 2, 2010, NPS announced that ORV use at Little River Canyon would cease, effective September 1, 2010. For additional information, see <http://www.nps.gov/liri/parkmgmt/index.htm>. Big South Fork is closed to recreational OHV riders and currently has no designated trails for them. For additional information, including about ATV use on designated multiple-use trails by licensed hunters actively hunting deer or wild boar, see <http://www.nps.gov/biso/parknews/gmpimplementation.htm>.

<sup>22</sup> 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?projectId=20192><http://parkplanning.nps.gov/projectHome.cfm?parkId=76&projectId=20192>.

<sup>23</sup> Letter to Steven P. Martin, NPS Deputy Director, from Robert D. Rosenbaum, Arnold & Porter LLP (on behalf of Bluewater Network et al.), June 13, 2005, available via the Bluewater website at <http://www.bluewaternet.org/npsorv/lettertoNPS.pdf>.

<sup>24</sup> See [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2005cv2302-63](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-63) for the court Order and [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2005cv2302-64](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2302-64) for Judge Lamberth’s Memorandum Opinion.

<sup>25</sup> 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 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) (identified by the NPS as one unit for this purpose).

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 OHV trail designation, its effects on endangered Florida panthers and their habitat, and access to lands for hunting. On July 14, 2009, NPS announced the availability of its draft planning document for the management and use of approximately 147,000 acres added to the preserve in 1988. The agency's preferred alternative includes proposed wilderness designations and designation of up to 140 miles of "sustainable primary ORV trails," some of which would run through non-wilderness corridors to provide hunters access to wilderness areas where vehicles are not allowed. A public comment period closed on September 30, 2009, and NPS is assessing these comments and developing a final management plan.

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.<sup>26</sup> Under a consent decree of April 16, 2008, the parties agreed to allow OHV beach access to continue year-round at Cape Hatteras, 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.<sup>27</sup> The expanded beach closures provide protection for wildlife resources but are unpopular with fishermen and local businesses. The negotiated rulemaking committee was unable to reach consensus on a long-term OHV management plan by February 2009; new proposed regulations are being developed by the park's superintendent. A draft OHV management plan/environmental impact statement (DEIS), released in March 2010, evaluates the impacts of six alternatives for OHV use and seashore access.<sup>28</sup> The preferred alternative (F) is designed to provide an array of OHV and non-OHV recreational opportunities, including access to seashore spits and points, but often with specific controls or restrictions in place to limit impacts on sensitive natural resources.

Separately, on December 18, 2008, NPS issued a proposed rule addressing mountain bicycles within NPS units.<sup>29</sup> The proposed rule would revise current regulations (36 C.F.R. § 4.30) and park management policies (§ 9.2.2.5) that require special regulations to designate bicycle trails other than those on park roads, parking lots, and within developed areas such as campgrounds. Its intent is to provide "park superintendents with a more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate in the park unit they manage." It would authorize park superintendents to open existing hiking and horse trails for biking if such

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<sup>26</sup> See [http://www.southernenvironment.org/lawlibrary/coast/2007-10-18\\_hatteras.pdf](http://www.southernenvironment.org/lawlibrary/coast/2007-10-18_hatteras.pdf) for a copy of the complaint.

<sup>27</sup> 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](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.

<sup>28</sup> See <http://parkplanning.nps.gov/document.cfm?parkID=358&projectID=10641&documentID=32596> for information on and the text of the DEIS.

<sup>29</sup> 73 *Fed. Reg.* 76987 (Dec. 18, 2008), as corrected by 73 *Fed. Reg.* 78680 (Dec. 23, 2008).

proposed designations are noncontroversial and would require input from the public and environmental assessments in conjunction with park-specific trail decisions. This trail designation process could trigger formal rulemaking if the effect on an existing trail is significant. Special regulations would continue to be required for any bicycle trails outside developed areas involving new construction. 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, such as erosion; diminish the enjoyment of visitors on foot or horseback; or potentially open proposed wilderness areas to bikes. The comment period closed on February 17, 2009, and NPS is assessing the environmental impact of the proposed rule. Meanwhile, the IMBA and NPS renewed a five-year partnership agreement (from 2010 to 2015) that establishes a formal framework to build on existing projects and explore additional opportunities for mountain biking in some national park units.

### **Legislative Activity**

H.R. 718, introduced on January 27, 2009, and S. 1557, introduced August 3, 2009, are similar to two bills from the 110<sup>th</sup> Congress (S. 3113 and H.R. 6233) in their intended effect on OHV management at Cape Hatteras National Seashore. The bills seek to nullify the April 2008 consent decree placing seasonal restrictions on OHV access to defined beach areas at Cape Hatteras National Seashore. Further, they 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). The 110<sup>th</sup> Congress conducted Senate and House committee hearings (July 30, 2008 and September 11, 2008, respectively) focusing 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 was economically damaging the area's tourism dependent businesses. Bill sponsors also expressed concern that the seashore was being managed via a court decision without sufficient public input. One witness testified that resource closures, from which nesting shorebird and turtle populations have benefitted and increased in number, affected small sections of beach. An NPS representative testified that the consent decree accommodated 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 11-12 not to report S. 3113 on September 11, 2008.

## **Snowmobiles on NPS Land**

(by Kori Calvert)

### **Background**

Currently, of the 392 NPS units covering over 84 million acres of land, 43 allow snowmobiles. 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.<sup>30</sup> 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 NPS issued final rules (November 20, 2009) allowing daily Yellowstone entry to 318 commercially guided, best available technology (BAT) snowmobiles and 78 commercially guided snowcoaches through the 2010-2011 winter season,<sup>31</sup> and limited use in Grand Teton and the Parkway.<sup>32</sup> The Yellowstone rule effectively reinstates limits proposed in November 2008 but then overruled in federal court. From December 2008 until promulgation of the new rule, the parks had been operating under a reinstated 2004 rule allowing daily oversnow access in Yellowstone to 720 snowmobiles and 78 snowcoaches.

During the two years that the November 2009 interim rule is in place, NPS will develop a new long-term winter use plan for motorized oversnow travel. Most recently, in July 2010, the park released a draft range of six potential alternatives for managing winter use. The “no-action” alternative would eliminate all snowmobiles and snowcoaches after the 2010/2011 winter season. Another alternative would phase out snowmobiles and transition to snowcoaches only. Two alternatives focus on different daily limits for snowmobiles and snowcoaches. A “variable management” alternative provides for daily and seasonal limits on motorized oversnow entries and allows for some unguided snowmobile access. A “mixed-use” alternative proposes plowing certain park roads to allow access for commercial buses and vans, and grooming the south entrance road for use by a limited number of snowmobiles and snowcoaches. NPS is analyzing these alternatives and anticipates release of the winter use draft environmental impact statement (DEIS) in early 2011.<sup>33</sup>

Nearly a decade of regulatory-judicial conflict began when the Clinton Administration issued final rules in January 2001 to incrementally eliminate snowmobile use in these three park units, with limited exceptions, in favor of multi-passenger “snowcoaches” by the 2003-2004 winter season.<sup>34</sup> However, a June 2001 Bush Administration lawsuit settlement with the International Snowmobile Manufacturers Association (ISMA) and the State of Wyoming required NPS to revisit the snowmobile ban and consider any additional information on “cleaner, quieter” snowmobile technology. A new NPS final rule issued on December 11, 2003, reversed the snowmobile ban in favor of daily entry limits, use of trained guides, snowmobile emission

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<sup>30</sup> For background information on snowmobiles in NPS units generally, see CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.

<sup>31</sup> 74 *Fed. Reg.* 60159 (Nov. 20, 2009).

<sup>32</sup> 74 *Fed. Reg.* 60183 (Nov. 20, 2009).

<sup>33</sup> See <http://www.nps.gov/yell/planyourvisit/winteruse.htm> for additional information.

<sup>34</sup> 66 *Fed. Reg.* 7260 (Jan. 22, 2001).

standards, and an “adaptive management strategy” allowing park managers to take remedial action if monitoring indicates unacceptable impacts from air and noise pollution.<sup>35</sup>

Subsequent legal challenges effectively split the 2003-2004 winter season, with each sub-season managed under different rules with significantly different limits on daily snowmobile entries. These conflicting rulings created confusion for park visitors, local communities, and businesses, with many unsure whether they could visit the park in winter and what winter use rules were in effect.

Subsequently, on November 10, 2004, the NPS issued a final rule to implement a temporary winter use management plan effective for three winter seasons, through 2006-2007 (hereafter “2004 rule”).<sup>36</sup> The intent of this interim 2004 rule 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.

A subsequent Record of Decision (ROD, signed November 20, 2007) and a final rule issued on December 13, 2007, was to provide long-term regulatory guidance for managing snowmobile and snowcoach use within the three area parks.<sup>37</sup> For the 2007-2008 winter season, the 2007 rule mirrored the 2004 rule it replaced. It continued with 720 guided 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 2007 rule 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

The final 2007 rule also mandated more restrictive measures beginning with the 2008-2009 winter season, but allowed park management to use “adaptive management” to adjust snowmobile and snowcoach numbers up or down based on impact monitoring. It allowed 540 BAT snowmobiles and 83 snowcoaches per day in Yellowstone, all commercially guided, with no more than 11 snowmobiles per group, including the guide; and combined daily access for 65 snowmobiles—62% with BAT requirements but none with guiding requirements—to Grand Teton and the Rockefeller Parkway daily. However, environmental groups challenged the 2007 rule and called for reinstatement of the Clinton Administration snowmobile ban,<sup>38</sup> while the State of Wyoming and others sought to overturn the 2007 rule and increase the number of daily snowmobile entries.<sup>39</sup>

On September 15, 2008, Judge Emmett Sullivan of the U.S. District Court for the District of Columbia vacated the 2007 final rule, finding it “arbitrary and capricious, unsupported by the

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<sup>35</sup> 68 *Fed. Reg.* 69267 (Dec. 11, 2003).

<sup>36</sup> 69 *Fed. Reg.* 65348 (Nov. 10, 2004). Available via the NPS website at <http://www.nps.gov/yell/planvisit/winteruse/fedregfinalrule11-10.pdf>.

<sup>37</sup> See [http://www.nps.gov/yell/planyourvisit/upload/rod\\_final.pdf](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.

<sup>38</sup> *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.

<sup>39</sup> *Wyoming v. U.S. Department of the Interior et al.*, D. Wyo., No. 07-CV-319B and No. 08-CV-0004-B.

record, and contrary to law,”<sup>40</sup> thereby putting the 2008-2009 winter season in limbo unless NPS developed a new plan and regulation for snowmobiles and snowcoaches. In response, the agency released for comment a Winter Use Plans Environmental Assessment on November 3, 2008, and a new proposed rule on November 5, 2008. They allowed daily entry for three winters for up to 318 commercially guided BAT snowmobiles and 78 commercially guided snowcoaches.<sup>41</sup> However, on November 7, 2008, the Wyoming District Court Judge Clarence Brimmer issued an order finding that “equity requires reinstatement of the 2004 temporary rule to provide some semblance of order in this disordered and confusing state of affairs”<sup>42</sup> until NPS can “promulgate an acceptable rule to take its place.”<sup>43</sup> Such reinstatement, without the sunset provision, “will provide businesses and tourists with the certainty that is needed in this confusing litigation.”<sup>44</sup>

NPS issued a final rule on December 9, 2008, in accordance with Judge Brimmer’s order, once again allowing up to 720 snowmobiles and 78 snowcoaches per day in Yellowstone.<sup>45</sup> However, the park reported decreased average daily entries of 187 snowmobiles and 32 snowcoaches in 2009-2010, and 205 snowmobiles and 29 snowcoaches in 2008-2009, compared to 2007-2008 averages of 294 snowmobiles and 35 snowcoaches. Overall, 2008-2009 snowmobile visitors were down approximately 25% and snowcoach visitors 15% from the previous winter season.<sup>46</sup> The data on oversnow vehicle visitors in 2009-2010 showed a decrease in snowmobile visitors, offset by a slight increase in snowcoach visitors, but overall numbers remained flat. A light snow year and the weakened economy may have contributed to the reduced number of winter visitors.

With the November 2009 interim rules now in place through the 2010-2011 winter use season and an appeal dismissed by the United States 10<sup>th</sup> Circuit Court of Appeals in Denver,<sup>47</sup> NPS will prepare yet another environmental impact statement (EIS) and long-term winter use plan to address whether motorized winter use is appropriate and, if so, the types, extent, and locations of such use. Public scoping, the initial phase of this process, elicited over 9,000 comments and was completed in March 2010. NPS is analyzing a draft range of winter use alternatives (released in July 2010) for incorporation in its winter use draft environmental impact statement, anticipated to be issued sometime in February/March 2011.<sup>48</sup>

<sup>40</sup> See [http://www.nps.gov/yell/parkmgmt/upload/sullivan\\_ruling-091508.pdf](http://www.nps.gov/yell/parkmgmt/upload/sullivan_ruling-091508.pdf), p. 61.

<sup>41</sup> See [http://www.nps.gov/yell/parkmgmt/upload/2008\\_winter\\_use\\_ea\(p1\).pdf](http://www.nps.gov/yell/parkmgmt/upload/2008_winter_use_ea(p1).pdf) (Part 1) and [http://www.nps.gov/yell/parkmgmt/upload/2008\\_winter\\_use\\_ea\(p2\).pdf](http://www.nps.gov/yell/parkmgmt/upload/2008_winter_use_ea(p2).pdf) (Part 2); and 73 *Fed. Reg.* 65784 (Nov. 5, 2008).

<sup>42</sup> See <http://www.nps.gov/yell/parkmgmt/upload/111008OrderonOlenhouseMotions.pdf>, p. 15.

<sup>43</sup> *Ibid.*, p. 21.

<sup>44</sup> *Ibid.*, p. 14.

<sup>45</sup> 73 *Fed. Reg.* 74606 (Dec. 9, 2008).

<sup>46</sup> “Yellowstone Reports Drop in Winter Visitation,” Yellowstone National Park news release (Apr. 2, 2009), at <http://www.nps.gov/yell/parknews/09020.htm>; and “Yellowstone Winter Visitor Figures a Mixed Bag,” Yellowstone National Park news release (Apr. 5, 2010) at <http://www.nps.gov/yell/parknews/10022.htm>. See also <http://www.nature.nps.gov/stats/park.cfm?parkid=421>.

<sup>47</sup> *State of Wyoming et al. v. U.S. Department of the Interior et al.*, No. 09-8035, at <http://www.ck10.uscourts.gov/opinions/09/09-8035.pdf>.

<sup>48</sup> 75 *Fed. Reg.* 4842 (Jan. 29, 2010). Additional information about the public scoping process is available at [http://www.nps.gov/yell/parkmgmt/upload/2010-01-27\\_public\\_scoping.pdf](http://www.nps.gov/yell/parkmgmt/upload/2010-01-27_public_scoping.pdf). The winter use planning process also may be tracked at <http://parkplanning.nps.gov/projectHome.cfm?parkId=111&projectId=29281>.

## Legislative Activity

No legislation pertaining to snowmobiles in NPS units had been introduced in the 111<sup>th</sup> Congress as of September 20, 2010. Previous Congresses have included language regarding snowmobiles in Yellowstone in appropriations bills, generally to ensure that judicial rulings could not deny snowmobiles entry during a specified winter use season.

## Aircraft Overflights at NPS Sites

(by Carol Hardy Vincent)

### Background

The NPS is to provide for the public enjoyment of parklands while protecting resources, while the Federal Aviation Administration (FAA) controls airspace and aircraft overflights. This has created a conflict between resource management and aviation access authorities and their constituencies. Grand Canyon National Park has been the focal point of a conflict between groups seeking to limit overflights of national parks due to concerns about noise and safety, and air tour operators whose economic stability, with ripple effects on local businesses, may depend on providing overflights. The National Parks Overflights Act of 1987 (P.L. 100-91) directed NPS to recommend a flight control plan for Grand Canyon that would provide a “substantial restoration of the natural quiet” and prohibited flights below the canyon’s rim. It required an NPS study of the effects of all aircraft overflights, which was submitted to Congress in 1994.<sup>49</sup>

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

### Administrative Actions

Several actions have been taken to achieve the substantial restoration of natural quiet at Grand Canyon. First, a *limitations rule* capped the annual number of commercial air tour overflights at Grand Canyon.<sup>50</sup> Second, the *airspace rule* expanded flight-free zones and restrictive routing over the canyon. East-end Special Flight Rules Area (SFRA) airspace changes were delayed until February 20, 2011.<sup>51</sup> Third, the FAA issued a final rule establishing a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon.<sup>52</sup> The rule identifies which aircraft meet the standard. In future rulemaking, the FAA is expected to address

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<sup>49</sup> U.S. Dept. of the Interior, National Park Service, *Report to Congress: Report on Effects of Aircraft Overflights on the National Park System*, listed under the topic heading “Documents” at [http://www.nps.gov/grca/naturescience/airoverflights\\_documents.htm](http://www.nps.gov/grca/naturescience/airoverflights_documents.htm).

<sup>50</sup> 65 *Fed. Reg.* 17708 (April 4, 2000), effective May 4, 2000.

<sup>51</sup> 71 *Fed. Reg.* 9439 (Feb. 24, 2006).

<sup>52</sup> 70 *Fed. Reg.* 16084 (March 29, 2005).

the routes or corridors for commercial air tour operations that use the quiet technology. Fourth, data on natural ambient sound levels were collected by the NPS and are being used, together with air tour reported flight operations data and radar tracking data, to model air tour traffic and aircraft noise at Grand Canyon. The model is being used to measure success in restoring natural quiet, and the noise impact of various alternatives.

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.<sup>53</sup> The agencies are developing a draft EIS, and currently anticipate that the draft will be available by the end of 2010. They currently are considering several alternatives, including the status quo, with a range of options for restoring natural quiet while allowing for a viable air tour industry. Changes under 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.<sup>54</sup> 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 rule<sup>55</sup> requires air tour operators to apply for authority to fly over national park and abutting tribal lands. The FAA received applications for commercial air tours over 106 of the 392 park units, and has granted interim operating authority to all applicants. Application triggers development of an Air Tour Management Plan (ATMP) by the FAA and NPS for each unit where none exists.<sup>56</sup> The purpose of a plan is to mitigate or prevent any harm by commercial air tours to natural and cultural resources, visitor experiences, and tribal lands. Development of an ATMP requires an environmental analysis under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §§4321-4370f). The FAA and NPS currently are developing their first ATMPs for several areas, but none have been completed to date. The agencies have been determining the ambient sound levels at park units for which ATMPs are being developed, as a baseline for measuring noise sources and impacts.

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. Nevertheless, development of ATMPs has been proceeding much slower than had been expected.

A January 2006 Government Accountability Office (GAO) report addressed the impact of the delay in implementation of the Air Tour Act.<sup>57</sup> The report concluded that the delay has had little

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<sup>53</sup> 71 *Fed. Reg.* 4192 (Jan. 25, 2006).

<sup>54</sup> 73 *Fed. Reg.* 19246 (April 9, 2008) and 73 *Fed. Reg.* 55130 (September 24, 2008).

<sup>55</sup> 67 *Fed. Reg.* 65661 (Oct. 25, 2002).

<sup>56</sup> The FAA provides information on the National Parks Air Tour Management Program via its website at [http://www.faa.gov/about/office\\_org/headquarters\\_offices/arc/programs/air\\_tour\\_management\\_plan/](http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/).

<sup>57</sup> U.S. Government Accountability Office, *National Parks Air Tour Management Act: More Flexibility and Better* (continued...)



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.<sup>58</sup>

The FAA issued a final rule to provide safety standards for commercial air tours nationally, including over Grand Canyon and other park units.<sup>59</sup> 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.

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.

## Legislative Activity

Provisions of broad aviation legislation would have affected commercial air tours over park units. The versions of H.R. 1586 that were passed by the House and Senate in March 2010 contained provisions seeking to expedite and streamline agency actions, in part because of the difficulty in completing ATMPs. However, H.R. 1586 as enacted (P.L. 111-226) did not pertain to air tour management and FAA reauthorization. The air tour management issue (along with other provisions of FAA reauthorization) is being considered by Congress but has not been reintroduced in other legislation.<sup>60</sup>

The version of H.R. 1586 that was passed by the House on March 25, 2010, would have provided 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. Park units with 50 or fewer annual air tour flights would be exempted from the requirement for an ATMP or voluntary agreement, although the NPS Director could disallow an

(...continued)

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

<sup>58</sup> Agency actions on GAO recommendations are on the GAO website at <http://www.gao.gov/products/GAO-06-263#recommendations>.

<sup>59</sup> 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.

<sup>60</sup> The House- and Senate-passed versions of H.R. 1586 discussed in this section can be viewed in the Legislative Information System (LIS) under the bill number. In addition, separately enacted aviation legislation—P.L. 111-216—did not include provisions on air tour management. For information on the reauthorization of aviation programs generally, especially through H.R. 1586, see CRS Report R40410, *Federal Aviation Administration (FAA) Reauthorization: An Overview of Legislative Action in the 111<sup>th</sup> Congress*, coordinated by Bart Elias.

exemption. Among other provisions, the bill would have established reporting requirements for commercial air tour operators, and could have provided for more interim operating authority because interim conditions have prevailed for longer than had been anticipated.

Some of the air tour provisions in the House- and Senate-passed versions of H.R. 1586 were similar, although many of them differed. For instance, the Senate version (passed on March 22, 2010) would have allowed for development of a voluntary agreement to govern air tours over national park units, but did not exempt parks with 50 or fewer annual flights from the requirement to develop an ATMP or a voluntary agreement. Both versions would have allowed the agencies to modify interim operating authority, but only the Senate-passed version would have allowed an air tour operator that obtains operating authority for commercial air tours to transfer that authority to another air tour operator. Both versions would have established reporting requirements for commercial air tour operators, but the Senate-passed version sought to rescind the operating authority of a commercial air tour operator that does not report and to require the Inspector General of the Department of Transportation to audit the reports. Also, only the Senate version would have authorized the Secretary of the Interior to assess a fee on commercial air tour operators, and the Secretary was to collect sufficient revenue to pay the costs of developing ATMPs.

As passed by the Senate, H.R. 1586 did not include the text of a proposed amendment regarding overflights of Grand Canyon National Park.<sup>61</sup> The amendment sought to clarify when the “substantial restoration of natural quiet” would be achieved at Grand Canyon, revise curfews for flights, modify routes for air tours, require air tour aircraft to convert to quiet aircraft technology within 15 years of enactment, prohibit reducing the flight allocation cap, and provide for rulemaking to increase the flight allocation cap, among other changes. The amendment was supported as advancing the restoration of natural quiet at Grand Canyon while providing for opportunities for air tours, but was opposed in part because the agencies are nearing completion of an environmental impact statement on this issue.

A May 2006 GAO report addressed NPS collection of air tour fees.<sup>62</sup> The report determined that some, but not all, fees have been collected from air tour operators at the three national parks where fees are charged: Grand Canyon, Haleakala, and Hawaii Volcanoes. It concluded that the ability of the NPS to collect fees is hindered because the agency cannot verify the number of tours over the parks, 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.<sup>63</sup>

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<sup>61</sup> S.Amdt. 3528, withdrawn in the Senate.

<sup>62</sup> U.S. Government Accountability Office, *National Parks Air Tour Fees: Effective Verification and Enforcement Are Needed to Improve Compliance*, GAO-06-468, (Washington, DC: GPO, May 2006), 37 p. Available on the GAO website at <http://www.gao.gov/new.items/d06468.pdf>.

<sup>63</sup> Agency actions on GAO recommendations are on the GAO website at <http://www.gao.gov/products/GAO-06-468#recommendations>.

## 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<sup>®</sup>, Sea-Doo<sup>®</sup>, Surf-jet<sup>®</sup>, water sled, wet jet, Wavejammer, Wetbike, and WaveRunner<sup>®</sup>. While PWC represent a small segment of the recreational boat market—the National Marine Manufacturers Association (NMMA) estimates 1.29 million PWC in use in 2009,<sup>64</sup> about 8% of 16.74 million recreational boats—the number of PWC accidents has raised concerns. There were 878 PWC injuries and 42 deaths reported for 2009, and 920 injuries and 45 deaths for 2008. Only open motorboats rank ahead of PWC among vessel types with higher casualty numbers.<sup>65</sup> 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 for these vehicles, often in specific park units.

### Administrative Actions

The NPS currently is evaluating PWC use in several of its 392 units. That effort began in 2000 when the agency issued a rule prohibiting PWC use in 66 of the 87 units where motorized boats were allowed.<sup>66</sup> The rule allowed PWC use to continue until April 22, 2002, at the remaining 21 units while the NPS evaluated whether to permanently authorize PWC use and develop special regulations. The rule recognized that certain NRAs, such as Lake Mead and 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

<sup>64</sup> See <http://www.nmma.org/facts/boatingstats/2009/files/Abstract.pdf>, Table 1.3, “Recreational Boats in Use by Type,” from the NMMA 2009 *Recreational Boating Statistical Abstract*.

<sup>65</sup> See [http://www.uscgboating.org/assets/1/workflow\\_staging/Publications/394.PDF](http://www.uscgboating.org/assets/1/workflow_staging/Publications/394.PDF), Table 1 (p. 7), “Vessel Types with the Top Casualty Numbers” from *Recreational Boating Statistics 2009*; for the 2008 edition, see [http://www.uscgboating.org/assets/1/Publications/Boating\\_Statistics\\_2008.pdf](http://www.uscgboating.org/assets/1/Publications/Boating_Statistics_2008.pdf).

<sup>66</sup> 65 *Fed. Reg.* 15077 (March 21, 2000); effective April 20, 2000.

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 and will issue final regulations upon completion of environmental impact studies. 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.<sup>67</sup> NPS believes it unlikely that either unit will pursue rulemaking to open to PWC.<sup>68</sup>

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.<sup>69</sup> In a memorandum opinion issued July 8, 2010, federal judge Gladys Kessler ruled that NPS failed to fully consider PWC impacts on both wildlife and visitor experiences at these park units. The judge ordered NPS to re-evaluate environmental assessments justifying PWC use, but she did not vacate or overturn the current rules allowing them.<sup>70</sup>

## **Legislative Activity**

No general legislation affecting PWC use had been introduced in the 111<sup>th</sup> Congress as of September 20, 2010, nor did the 110<sup>th</sup> Congress introduce any PWC-focused bills. On July 8, 2009, the Senate Commerce, Science, and Transportation Committee approved an amendment to S. 1194, the Coast Guard Authorization Act for FY2010 and FY2011. The amendment would allow PWC the same access as other vessels to the Intracoastal Waterway between Biscayne Bay National Park and the Florida Keys. The amendment also directs the Coast Guard to conduct an environmental study within 150 days of enactment to ensure that the impact of PWC is not disproportionate compared to that of vessels now allowed to travel the 17-mile stretch of the Intracoastal Waterway crossing Biscayne Bay National Park. The amended bill was reported (S.Rept. 111-95) on October 30, 2009, and placed on the Senate calendar.

## **Motorized Recreation on BLM Land**

(by Carol Hardy Vincent)

### **Background**

The proximity of BLM lands<sup>71</sup> 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,

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<sup>67</sup> 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>.

<sup>68</sup> Phone conversation with Philip A. Selleck, Regulations Program Manager, NPS, Jan. 28, 2009.

<sup>69</sup> See <http://www.nationalparkstraveler.com/files/Jet%20Ski%20Lawsuit.pdf> for a copy of the complaint, and [http://www.npca.org/media\\_center/pdf/jetski\\_letter.pdf](http://www.npca.org/media_center/pdf/jetski_letter.pdf) for a copy of the notice of intent to sue letter.

<sup>70</sup> See [http://nationalparkstraveler.com/files/NPS-Jet%20Ski%20ruling\\_0.pdf](http://nationalparkstraveler.com/files/NPS-Jet%20Ski%20ruling_0.pdf) for a copy of the Memorandum Opinion.

<sup>71</sup> BLM lands were designated as the National System of Public Lands by a Secretarial Order dated December 16, 2008.

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

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

## **Administrative Actions**

Guidance on OHV use on BLM lands is provided in law, executive orders, and agency regulations and policies. Under agency regulations (43 C.F.R. § 8340), BLM has been designating public lands as open, limited, or closed to OHV use. As of September 30, 2009, the following designations had been made: closed, where OHV use is prohibited, 12.8 million acres (6% of designated area); limited, where OHV use is in some way restricted, 141.4 million acres (62%); and open, where OHV use is permitted anywhere, 73.8 million acres (32%). The remaining 32.1 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, BLM has supplementary rules for its lands in Oregon and Washington, which include guidance on OHV use. On August 18, 2010, the agency issued revisions to these rules (effective September 17, 2010), in part to address OHV use in the Juniper Dunes OHV/ATV area in Washington.

BLM has issued national strategies dealing with transportation on its lands. For instance, the *National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands*<sup>72</sup> has multiple purposes, including to guide land managers in resolving OHV issues; to promote consistency of OHV decision-making; to highlight needed staff and funding for OHV management; to reduce conflicts among land users; to promote responsible OHV use and reduce habitat degradation; and to lead to an update of OHV regulations (which has not occurred to date). Also, the *National Mountain Bicycling Strategic Action Plan*<sup>73</sup> addresses mountain

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<sup>72</sup> The BLM Strategy and related documents are available at <http://www.blm.gov/ohv/>.

<sup>73</sup> Available at [http://www.blm.gov/mountain\\_biking/](http://www.blm.gov/mountain_biking/).

bicycling and other muscle-powered mechanical transport. BLM is in the process of developing a manual and a handbook on travel and transportation management that will cover planning and management of all modes of travel and public access needs. They are intended to serve as a guide for BLM field offices to improve travel planning, signing, mapping, and travel information. BLM anticipates completing the documents in 2011.

BLM manages transportation on its lands through a process described as Comprehensive Travel and Transportation Management.<sup>74</sup> 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, while protecting sensitive areas. Travel and transportation management plans are developed for particular areas. As of September 30, 2009, 117 BLM areas have completed travel management plans. These plans average roughly a quarter million acres, and together cover about 27 million acres. BLM expects to complete a total of 554 plans covering 231 million acres, with two-thirds of BLM lands having plans in place by 2020.<sup>75</sup> Implementation of travel management plans involves issuing maps; posting signs; educating land users; constructing, reconstructing, and maintaining roads and trails; monitoring impacts; rehabilitating damaged areas; and enforcing restrictions.

BLM makes OHV designations during the planning process, on an area-by-area basis, and such designations often have been contentious and complex.<sup>76</sup> 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 resource management plans governing land uses in those areas.<sup>77</sup> Together the plans cover about 10 million acres in the eastern half of Utah. OHVs were a major issue addressed during the process, as part of travel management planning for the areas. The plans nearly eliminate areas open to cross-country OHV travel. Specifically, only 0.2% of the total acreage is open to cross-country travel, according to BLM. Instead, the plans largely limit OHV use to designated routes, although they close additional areas to OHV use. The plans also call for the establishment of 31 new Special Recreation Management Areas, where the combination of a high level of specific recreational activity and valuable natural resources would require more 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. Also, in central Oregon, one BLM district (Pineville) and two national forests (Deschutes and Ochoco) jointly manage OHV operations on their lands. 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.

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<sup>74</sup> 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](http://www.blm.gov/wo/st/en/prog/Recreation/recreation_national/travel_management.html).

<sup>75</sup> Information obtained by phone on September 17, 2010, from Rob Perrin, BLM Trails and Travel Management Program Lead, Recreation and Visitor Services Division.

<sup>76</sup> BLM revised its land use planning handbook in 2005 regarding motorized and non-motorized recreation. The handbook is available at [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/blm\\_handbooks.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/blm_handbooks.html).

<sup>77</sup> Information on the plans, and the text of the plans, are available on the BLM website at <http://www.blm.gov/ut/st/en.html>.

BLM is reviewing its procedures related to issuing special use permits for OHV racing on its lands. The review stems from a deadly accident in August 2010 in the Johnson Valley OHV open area in Southern California, in which a truck driver is alleged to have exceeded the authorized speed, veered off course, and killed and injured spectators. Agency actions include an investigation of the accident, an examination of options to increase safety for spectators, a review of all pending and approved requests to race on BLM lands, an evaluation of the special recreation permit program, and an increase in the onsite presence of BLM staff at motorized races. Through August 2010, BLM had issued more than 100 special recreation permits this year to individuals or organizations for motorized racing on its lands. The permit holder is required to submit an operating plan with safety measures for participants and spectators, and make every reasonable effort to ensure compliance with all laws and other requirements.<sup>78</sup> Issues for Congress include the adequacy of safety provisions in special use permits and their enforcement by BLM; the extent of penalties for permittees who violate the terms of their permits; and the role of BLM staff at racing events.

A 2007 report of the U.S. Geological Survey (USGS) contains a literature review on the effects of OHV use on BLM lands.<sup>79</sup> 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**

For FY2010, the BLM appropriation for the recreation management program was \$68.4 million, a \$4.7 million (7%) increase over the FY2009 appropriation of \$63.7 million. For FY2011, the Administration has requested \$68.1 million, a slight decrease from FY2010. Through this program BLM manages its wilderness areas and wilderness study areas, thousands of miles of rivers and trails, 380 Special Recreation Management Areas, and more than 3,650 recreation sites, including campgrounds, picnic areas, visitor centers, watchable wildlife sites, historic buildings, and trailhead access points. A focus of the program has been developing and implementing travel management plans, which identify and designate roads and trails for motorized use.

House and Senate companion bills (H.R. 3749 and S. 1770) seek to support, promote, and enhance recreational fishing, hunting, and shooting on federal lands that are managed for conservation of natural resources. They direct federal land officials to exercise their authority under law to provide use of and access to federal lands for these activities, except where limited. Agencies would be required to prepare annual reports on lands closed to fishing, hunting, or shooting, including the reasons for the closures. With regard to BLM (and FS) lands in particular, the bills affirm that they are to be open to these recreational activities, unless the agencies close them.

No general legislation pertaining to OHV use on BLM lands had been introduced in the 111<sup>th</sup> Congress as of September 15, 2010. However, pending measures would affect OHV use or other recreation in particular areas. As one example, H.R. 192 contains provisions related to OHV use

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<sup>78</sup> See BLM News Release No. WO-2010, *BLM to Conduct New Review of Permits Issued for OHV Races Held on Public Lands*, released August 20, 2010, on the BLM website at [http://www.blm.gov/wo/st/en/info/newsroom/2010/august/NR\\_08\\_20\\_2010.html](http://www.blm.gov/wo/st/en/info/newsroom/2010/august/NR_08_20_2010.html).

<sup>79</sup> The report is available on the USGS website at [http://www.fort.usgs.gov/Products/Publications/pub\\_abstract.asp?PubID=22021](http://www.fort.usgs.gov/Products/Publications/pub_abstract.asp?PubID=22021).

in central Idaho. They include conveying BLM land to the State of Idaho to establish a motorized recreation park 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 a second example, H.R. 765 would transfer BLM land to Clark County, Nevada, to establish a centralized OHV recreation park. The measure also would designate an area currently managed by the BLM as the Nellis Dunes as the “Nellis Dunes National Off-Highway Vehicle Recreation Area” and authorize BLM to develop a special management plan for the area. A third example, S. 2921—the California Desert Protection Act of 2010—would govern conservation, development, and recreation in the California Desert Conservation Area, including OHV use. In a fourth example, H.R. 5416 and S. 3185 provide for conveyance of BLM land to the county of Elko, Nevada, for use as a motocross, OHV, and stock car racing area or for other recreation or community purposes.

P.L. 111-11, the Omnibus Public Land Management Act of 2009, contained various recreation-related provisions for particular BLM lands. They included provisions to establish new designations on BLM lands and restrict/govern motorized use therein, establish areas that would emphasize recreation, and require the development of travel/transportation management plans for OHV recreation on certain BLM lands.

The 110<sup>th</sup> Congress also considered measures dealing with recreation on specific BLM lands, but no general legislation governing BLM recreation was considered. Further, the 110<sup>th</sup> Congress 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.<sup>80</sup> A March 27, 2007, hearing of the House Natural Resources Committee focused on how to balance recreation, especially fishing and hunting, with energy development on federal lands.<sup>81</sup>

A June 2009 GAO report on OHV use on agency lands included several recommendations to the agencies for providing OHV opportunities while protecting resources.<sup>82</sup> BLM developed a summary of planned actions in response to the GAO recommendations.<sup>83</sup> For instance, in response to the GAO recommendation for the establishment of performance measures and time frames for carrying out OHV goals, BLM stated an intent (1) to update and develop goals and strategies that are results-driven during the revision of its recreation strategic plan, and (2) to develop a travel management action plan with an implementation schedule to guide and accelerate the completion of all travel management plans. In response to these recommendations, on July 27, 2010, BLM issued an instruction memorandum to all state directors with travel and

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<sup>80</sup> 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](http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=27&extmode=view&extid=151) and [http://energy.senate.gov/public/index.cfm?FuseAction=HearingsHearing&Hearing\\_ID=ca2e6111-befb-b64a-8a55-3945b88b484e](http://energy.senate.gov/public/index.cfm?FuseAction=HearingsHearing&Hearing_ID=ca2e6111-befb-b64a-8a55-3945b88b484e).

<sup>81</sup> The House Committee on Natural Resources provides testimony via the Internet at [http://resourcescommittee.house.gov/index.php?option=com\\_jcalpro&Itemid=32&extmode=view&extid=25](http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=32&extmode=view&extid=25).

<sup>82</sup> The report is on the GAO website at <http://www.gao.gov/new.items/d09509.pdf>. Recommendations for executive action are on pages 42-43 of the report.

<sup>83</sup> U.S. Dept. of the Interior, Office of the Secretary, unpublished correspondence to Members of Congress, October 27, 2009.



transportation performance measures and an action plan.<sup>84</sup> In response to the GAO recommendation to improve communication with the public about OHV use, BLM outlined the development of a Travel and Transportation Management manual and handbook, as discussed above. In response to the GAO recommendation to enhance law enforcement of OHV use, BLM expressed an intent to examine fines for OHV related violations and to seek changes where fines are inconsistent or insufficient.

## 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.<sup>85</sup> However, OHV use is still substantially less than other, non-motorized forms of recreation in the national forests.<sup>86</sup>

The various uses and values of the national forests sometimes conflict with one another. For example, timber harvesting and OHV use can 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 for each project. 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 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, as described in the introduction to this report, 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

<sup>84</sup> See IM2010-167, issued July 27, 2010, available on the BLM website at [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2010/IM\\_2010-167.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-167.html).

<sup>85</sup> 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>.

<sup>86</sup> John C. Adams and Stephen F. McCool, “Finite Recreation Opportunities: The Forest Service, the Bureau of Land Management, and Off-Road Vehicle Management,” *Natural Resources Journal*, vol. 49 (Winter 2009), pp. 45-116.

system.<sup>87</sup> As of July 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%).<sup>88</sup> By the end of FY2008, motor vehicle use maps based on the new regulations were completed for 36% of FS lands, with another 43% scheduled to be completed by the end of FY2009 and the remaining 21% scheduled to be completed in FY2010.<sup>89</sup>

Opinions are divided over the importance and impact of the regulations. Some assert that the regulations do not go far enough, preferring that all OHV uses be prohibited in the national forests, because OHVs can and do damage national forest lands and resources. Others counter that the regulations penalize the majority of OHV users that obey the current rules and restrict off-highway uses at a time when other landowners and other federal and state agencies are reducing similar recreational access to their lands. The conflict between interests may be escalating, in part because of the lack of past efforts to regulate OHV use.<sup>90</sup>

Conflicts also 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.<sup>91</sup> Concerns typically focus on the impacts of oil and gas development on wildlife-related recreation, and the difficulties for interests other than the energy industry to 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.<sup>92</sup>

## Legislative Activity

For FY2010, Congress provided \$285.1 million for Recreation, Heritage, and Wilderness management within the National Forest System, a \$7.5 million (3%) increase from FY2009. The Administration has requested \$293.2 million for FY2011, an \$8.1 million (3%) increase from FY2010, for this program. For Trails (construction and maintenance), Congress provided \$85.4 million for FY2010, \$4.4 million (5%) more than for FY2009. For FY2011, the Administration has requested \$83.1 million, a decline of \$2.3 million (3%) from FY2010.

<sup>87</sup> 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>.

<sup>88</sup> See <http://www.fs.fed.us/recreation/programs/ohv/Summary2008.pdf>.

<sup>89</sup> *Ibid.*

<sup>90</sup> Adams and McCool, "Finite Recreation Opportunities."

<sup>91</sup> 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](http://www.sportsmen4responsibleenergy.org/images/stories/S4RED_Recommendations_Final-3.pdf); and Natural Resources Defense Council, *Broad Coalition Sends Message to BLM: Do Oil & Gas Right*, at <http://www.nrdc.org/media/pressreleases/040204.asp>.

<sup>92</sup> U.S. Government Accountability Office, *Oil and Gas Development: Challenges to Agency Decisions and Opportunities for BLM to Standardize Data Collection*, GAO-05-124 (Washington, DC: Nov. 2004).

In the 111<sup>th</sup> Congress, the Omnibus Public Land Management Act of 2009 (P.L. 111-11) contained several provisions addressing recreation in specific FS areas. These provisions primarily were contained in Title I of the law, entitled “Additions to the National Wilderness Preservation System.” Additional bills have been introduced concerning recreation in specific FS areas, such as H.R. 192 (the Central Idaho National Forest and Public Land Management Act) and S. 1470 (the Forest Jobs and Recreation Act of 2009). Further, House and Senate companion bills—H.R. 3749 and S. 1170—seek to support, promote, and enhance recreational fishing, hunting, and shooting on federal lands, as discussed above under “Motorized Recreation on BLM Land.”

No general legislation on OHV activities in the national forests was introduced in the 110<sup>th</sup> Congress, although various bills addressed recreation in specific areas. Most such area-specific provisions were included in bills that would designate wilderness areas. The 110<sup>th</sup> Congress 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 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.

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