

**Federal Aviation Administration
and
National Park Service**

**NATIONAL PARKS OVERFLIGHTS ADVISORY GROUP (NPOAG) MEETING
MINUTES**

October 20 & 21, 2003

Federal Register Announcement of Meeting

The meeting was held at The Wort Hotel, Jackson Room, Jackson, Wyoming on October 20, 2003. The dates, location, and times of the meeting were announced in the Federal Register on September 22, 2003 (68 FR 55075) with a subsequent correction on October 3, 2003 (68 FR 57505) to announce the meeting was being held on Monday, October 20th instead of Tuesday, October 21st.

Attendance

The NPOAG consists of 10 members. Nine of the ten members were present, and there was a substitute for the one member who was absent. Refer to the attached attendee list. (Attachment 1)

Opening Statements and Remarks

A notebook of NPOAG background materials was provided to each of the advisory group members and the Chairman and Vice Chairman of the meeting. The notebook contained a report on the NPS Natural Sounds Program Office progress in 2003, and copies of the National Parks Air Tour Management Act of 2000, the FAA National Parks Air Tour Management; Final Rule, 14 CFR Parts 91 and 136 (final rule), the joint FAA/NPS draft Memorandum of Understanding, and the NPOAG Charter. A letter addressed to NPS Director Fran Mainella from three NPOAG members that expressed the underutilization of the NPOAG was distributed by Sue Gunn to the rest of the advisory group and FAA and NPS staff.

Chairperson Karen Trevino called the meeting to order and provided the NPOAG members with a synopsis of her professional background as a lawyer, lobbyist, and Senior Counselor in both the Office of the Secretary, Department of Interior and the Office of the Director of the National Park Service. Karen noted in the chairperson's report that the format of the meeting is changing from one of just providing information to the NPOAG members to one of utilizing the expertise of the advisory group to provide advice and recommendations to the FAA and NPS as intended by the act. Karen also stated that the joint FAA/NPS Memorandum of Understanding (MOU) is in the respective agencies' headquarters for approval signatures, that there is a better working relationship between the FAA & NPS, and that our office is working diligently to procure additional air tour management plan (ATMP) funding. NPOAG member Chip Dennerlein wanted to know how the advisory group would assist in addressing issues raised in the letter to the NPS Director. Karen Trevino proposed to list and prioritize the letter issues. The proposed motion was carried.

Karen Trevino in her opening remarks recommended that a greater number of NPOAG meeting should be held each year – perhaps three annually. She said we do not want to lose the

momentum in the program. Karen also stressed that the meeting format will be modified to encourage greater NPOAG participation and to foster both agencies in stretching more and thinking outside of the box.

The agenda was distributed and approved by NPOAG members, and the minutes from the NPOAG meeting last year was reviewed and approved with the comment that the spelling of Alan Stephen's name would be corrected.

Vice Chairman Barry Brayer in his report mentioned that the meeting was for the NPOAG members. He also provided a status report of the accomplishments and directions of the past year that included publication of the final rule on October 25, 2002 with an implementation date of January 23, 2003, approval of the NPOAG charter, discussion of the application process for commercial air tour operators to obtain operating authority (OA) to continue or initiate park overflights, and the change in the rate of conducting ATMPs. Barry mentioned that some of the air tour operators are already at their Interim Operating Authority (IOA) caps and have requested FAA approval of a greater number of flights per year. In addition, new entrant applications have not been approved thus prohibiting park overflights to these operators. The FAA, in response to receiving approximately twice the anticipated number of operating authority (OA) applications, initially proposed to initiate a large number of ATMPs in Fiscal Year 2003 & 2004. However, that decision has been revised to direct resources and energies to a smaller number of parks – six in Hawaii plus Badlands, Mt. Rushmore, and Lake Mead – in order to achieve ATMP milestones and products in those ATMPs prior to undertaking the other plans.

Chip Dennerlein recommended clustering of ATMP parks to enhance the analysis and planning efficiency, and to maximize funding. Chip requested a discussion on the topic.

Sue Gunn wanted to know what was the FAA verification process for OA applications, what is the status of soundscape management plans for FY03 ATMP parks, how noise impact levels would be determined in the ATMPs, and how did wilderness enter into the process. Sue strongly recommended more frequent communication from the FAA and NPS on the ATMP planning progress. Sue suggested monthly updates to NPOAG members and increasing the number of NPOAG meetings – perhaps three a year. Alan Stephen noted that there is a vehicle in place for communicating in regards to modifications to the part 135 rule. NPOAG members can log on to the FAA website and find the docket and use the KSN (knowledge sharing network) to provide comments, ask questions, etc.

FAA Western Pacific Regional Administrator Bill Withycombe in his opening remarks encouraged more involvement and advice from the NPOAG now that the ATMP process is underway. Bill mentioned that the FAA is working in partnership with the NPS and that the joint FAA/NPS Memorandum of Understanding was about to be signed by the Administrator. He stated that numerous ATMPs have been initiated this year even though the regulation was established only nine months ago. Bill said that he is pleased with the program progress to date. He emphasized that the number one mission of the FAA is safety and that is the agency's bottom line for the ATMPs. He also stated that the NPS has a role to preserve and protect the parks. In regards to clustering ATMPs, he stated that each park is different, but in the planning process we may be able to combine the environmental documents. He noted that the Grand Canyon work is separate from the ATMP process. Bill welcomed Karen and said he is looking forward to working with her.

Legislative Background

Chip Dennerlein stated that both agencies and NPOAG need to anticipate questions concerning the intent of components of the act (e.g., part 91) and formulate answers to inform the public throughout the process as issues arise. Chip recommended the development of white papers, perhaps by NPOAG subcommittees, to address legislative history and intent questions that may arise from the various publics. Chip also stated that the underlying theme in developing NPOAG recommendations that were incorporated in the act regarding operating authority was not to become overly regulatory, but to limit potential abuse. Example – if it looks like a tour, it probably is and should be considered in the planning process. Chip also wanted to know what progress has been made on quiet technology. The NPOAG in their recommendations wanted incentives for development and use of quiet technology aircraft by providing “points” for net noise level decreases relative to park impacts. Chip noted that there should be no difference in consideration of adverse impacts versus significant adverse impacts, because if we’ve lost magnitudes of opportunity for natural quiet in national parks from the 1960s to now, that appears to be important as a starting point for air tour planning.

Alan Stephen said that the legislation was too specific and thus is tying the hands of the regulatory agencies and hampering NPOAG from applying or acting as an agent for continuity.

Lash Larew emphasized that NPOAG, as a group, should function to deal with ATMP issues of national scope, as opposed to becoming involved in regional or park-specific issues.

ATMP Park Priority Strategy

Howie Thompson and Steve May provided an overview of the ATMP park priority strategy. Howie distributed a list of the initial ATMP park priorities that was developed in consultation with park superintendents and key staff in the summer of 2000. A list of 11 criteria were developed and discussed with management of the identified parks. Points were applied to each of the criteria and totaled to arrive at the ATMP park priority. It was estimated at the time that 56 parks had commercial air tour operations and thus would require ATMPs. Steve May provided a power point presentation and accompanying handout that listed factors considered in prioritization (i.e., new entrant, level of activity, geographic location, availability of acoustical data, and tribal lands). His presentation had three tables that illustrated the Fiscal Year 2003 & 2004 ATMP parks that were or scheduled to be started, and the revised scaled back approach now being implemented (refer to Vice Chairman’s Report for rationale for modification of approach).

Chip Dennerlein suggested that the two agencies incorporate park resources/visitor experience sensitivity into prioritization matrix and reiterated that ATMP cluster analysis be pursued, not just cluster timing. Barry tentatively agreed with changing the priority matrix and liked the idea of clustered analysis but believes there is a legal issue in this approach. Karen will work with Barry in exploring the issue of clustered analysis.

Acoustical Data Acquisition and Analysis

Skip Ambrose of the NPS Natural Sounds Program Office provided an acoustic primer power point presentation that discussed terminology, metrics, park data acquisition and analysis, methodologies, and park sound environments and acoustic zones and how they are affected by certain human noise. Cynthia Lee of the Department of Transportation (DOT) Volpe Center provided a power point presentation and handout on Volpe acoustic support to the FAA. After the acoustic briefings, Sue Gunn requested a report or briefing on the Hawaiian parks data

collections and analysis. Sue also wanted to know if the park ambient soundscape used for the ATMPs is the same as that used in the park Soundscape Management Plans. Skip assured her they were the same.

Quiet Technology and Federal Interagency Committee on Aviation Noise (FICAN)

Ida Klepper of the FAA Department of Rulemaking stated that the agency quiet technology report was scheduled to be published in September 2004. Barry said that FICAN was requested by the FAA and DOI to provide advice on matters related to the measurement and assessment of the effects of aircraft noise due to overflights of units of the National Park System. An analysis of the recently completed Noise Model Validation Study is a component of the analysis. A draft scope of work has been developed and FICAN is reviewing it and will make a determination of the appropriateness of their involvement in the project in the near future. Various NPOAG members voiced several concerns about the FICAN review most notably:

- 1) How it would affect the substantive results of ongoing ATMP's
- 2) How it would affect the timing of all other ATMPs given the two years time frame
- 3) The impacts to air tour operators in need of IOA
- 4) Dollars taken away from ATMPs
- 5) Impact on Grand Canyon Alternative Dispute Resolution process

Status and Process of Air Tour Management Planning

Bob Rossman and Sarah Creachbaum of the NPS Natural Sounds Program Office and Steve May and Brian Armstrong of the FAA Executive Resource staff provided each agency's perspective on the ATMP status and process. One of the main issues that the two agencies are attempting to resolve is the extent to which park resources and values should be reflected in the purpose and need section of the plan. The FAA has concerns about "values" terminology and inclusion of park purposes, feeling that it would make the range of alternatives far too broad whereas FAA would prefer to limit the scope from onset. The NPS believes the purpose and need is extremely important because it sets the scope of analysis and range of alternatives to be considered. NPS has concerns about not including NPS mandates, directives, park purposes, objectives, and resources and values because these are the desired conditions which should be part of the context in which alternatives should be formulated. NPS stated that existing conditions regarding the potential impacts of air tours on national parks should be the starting point for alternative development. This is our chief issue because it is so critical to the process and crosswalks into other issue areas listed. NPS asserts that both NPS and FAA needs under the act and other pertinent mandates should be part of the purpose and need for action.

The NPS role as a cooperating agency and NPS signatory authority and responsibility were discussed by Brian and Bob. The legislation clearly points out that the FAA is the lead agency in the development of the ATMPs, but the act also provided dual agency signature authority in the approval of the ATMP decision document. The NPS is concerned about its vulnerability as a signatory if its process needs and park mandates, objectives, etc. are not met as part of the analysis beginning with purpose and need. How can NPS sign an environmental document and decision or plan that is/are not consistent with NPS mandates and policies and not be vulnerable? The basis for NPS as a cooperating agency, is that it has special expertise and jurisdiction in law for National Park Service lands.

In defining thresholds of impact significance the FAA has a number of threshold criteria. However, noise is an exception, and the FAA is concerned about how significant noise impacts are to be determined. The NPS believes the context for determining impact significance is related to park resources and values (see remarks under purpose and need). Air tours, which operate under FAA jurisdiction, represent the source of aircraft noise impacts, while potential impacts occur on national park lands and resources that are within NPS jurisdiction. Impacts should be considered within the context of park mandates, etc, as set in purpose and need. The National Environmental Policy Act (NEPA) approaches differ in that the FAA determines significance up front and confines its analysis accordingly, whereas the NPS normally evaluates and discloses the magnitude, intensity and duration of direct, indirect and cumulative impacts while leaving it to the decision maker to determine significance at the end of the process. For both agencies to approve the ATMP record of decision, the differences in approach to significant impact determination need to be resolved so that both agencies' requirements are met.

In determining levels of noise impacts, the FAA believes that differences exist between models (i.e., Noise Model Simulation - NMSIM vs modified Integrated Noise Model - INM) and metrics used to determine the ambient sound environments and noise intrusions. However, the NPS is largely in agreement conceptually with models and methodologies used by the FAA, but the differences are primarily a function of policy.

There is also a difference in justification for mitigation of adverse impacts between the two agencies. The Air Tour Management Act of 2000 stipulates that any restrictions on air tour operators must be justified and documented. The FAA says that any mitigation for "significant" adverse impacts must be justified. However, the NPS refers to NEPA which states that mitigation for any adverse impacts should be considered. Based on purpose and need a range of alternatives that addresses issues about impacts on national parks should be evaluated. The resource impact trade-offs represent suitable justification for mitigation. If the NPS only considers "significant" adverse impacts on park resources and visitor experiences, the agency is vulnerable to law suits due to conflicts with the Organic Act, Redwoods Act, Reauthorization Act, NEPA and CEQ regulations, etc.

Interim Operating Authority (IOA)

Kent Stephens of the FAA Office of Flights Standards Service provided to the NPOAG members a briefing on the IOA procedure and status. Kent said that to date 71 IOAs have been issued to existing air tour operators and that a number of new entrant operators had requested IOAs to initiate flightseeing operations at national parks. There was some discussion about the assumption that the actual requests or applications are not a good indication of what the existing levels are because several air tour operators either "padded" their numbers as placeholders for the future or did not understand specifically what was expected from them. He also stated that a number of existing operators had requested an increase in the number of annual flights they conduct over parks. The FAA cannot issue those IOAs unless the NPS determines that there will not be a noise problem at the parks with increased commercial air tour flights or new entrant flights. Kent said that a decision needs to be made on how these IOAs will be processed. However, the NPS cannot render a noise problem determination unless it receives adequate flight information on the proposed commercial air tour operations and conducts the appropriate NEPA analysis. There was further discussion by the group about the need for verification of the information on the applications. Karen and Barry agreed to address this issue further at the Volpe meeting 10/30/03.

In response to Kent's briefing, on behalf of all the members of the Advisory Group, Heidi Williams submitted the following written requests to Kent:

- How many existing operators have applied for IOAs? Under what classification (Part 91, 121, & 135). Please provide a breakdown by park.
- How many of those existing applicants have received IOAs?
- How many requested increases?
- How many applicants are new entrants and for which parks?
- Of those new entrant applicants how many are for parks where there are currently no existing air tour operations?

It was agreed at that time that Kent Stephens would provide the information to FAA and NPS first so it could be used the following week at the strategy planning meeting at the Volpe Center in Cambridge.

Tribal Participation

Brian Armstrong provided a power point presentation to the NPOAG regarding the FAA Section 106 process of the National Historic Preservation Act (NHPA) and the approach to involving the various Native American tribes as cooperating agencies in the ATMP process who have lands abutting or included within units of the National Park System. The FAA proposes to use a Section 106 process that focuses on the overall impact to cultural landscapes or encompasses looking at the affects on all of the significant cultural resources instead of an analysis of each significant cultural artifact, structure, or site. An approach that deals with impacts on the cultural environment holistically under NEPA will be more effective, and more efficient, than one that seeks to comply with each of the cultural resource laws, executive orders, rules, and regulations in isolation from one another. However, if this does not prove to be satisfactory to the affected tribes and parks, the more standard Section 106 process will be implemented.

Brian stated that consultation letters had been sent to the tribal council presidents and tribal historic preservation offices of affected tribes inviting them to participate in the ATMP process as a cooperating agency. However, none of the tribes have provided a response to date. Germaine White replied that tribal councils and governments are inundated on a daily basis with various requests and are not able to respond quickly due to their workload. She suggested that they follow up with another letter and telephone call to tribes who have not responded. Germaine and Richard Deertrack said that face-to-face meetings with the tribal chairs as well as with the tribal cultural leaders would be more effective in initiating tribal consultation under Section 106 of the NHPA. They also stated that tribes understand the issue of sovereignty and that it would be important to send a representative of the agency to meet with tribal leaders. In addition, it was recommended that when consultation letters are transmitted by the FAA that they be co-signed by the NPS since tribes are much more used to working with NPS and therefore it would increase the likelihood of a timely response. It was decided that the FAA should work closely with Germaine and Richard to help facilitate communication with the various tribes.

Richard and Germaine also requested that if ATMPs are clustered, tribal concerns need to be included, and in considering ATMP priorities, factor in park and tribal critical cultural and natural resources. When developing park ATMPs with abutting or included tribal lands or tribal ATMPs, impose limited or no noise intrusions at sacred sites during appropriate times of the year.

Other follow up action items are:

- Send Germaine and Richard a copy of the FAA letter to the Advisory Council on Historic Preservation and the Tribal Historic Preservation Offices and
- Place the Tribal Consultation discussion early in the agenda at the next NPOAG meeting with sufficient time to discuss details including the issue of disclosure.

Questions and Comments from the Audience

Dick Hingson of the Sierra Club, Utah Chapter addressed his concern to the NPOAG and FAA regarding verification of the Operating Authority applications for existing and new entrant operators. He noted that the NPS had requested copies of the applications and had, as of this date, not received such copies. In light of the fact that double the number of parks was reported in the applications to have commercial air tour operations near or over units of the National Park System than in the NPS park survey conducted in 2000, it seemed appropriate to exam the applications for the types of information provided. Dick requested that the FAA provide him and the co-chairs of the NPOAG with application copies for the 30 parks listed in Chris Shaver's April 4, 2003 letter to FAA Regional Administrator Bill Withycombe by January 23, 2004 (this date being the first anniversary of the effective date of the final FAA rule implementing the National Parks Air Tour Management Act of 2000). Most of these parks were listed in the 1995 National Park Service Report to Congress regarding "Effects of Overflights on Units of the National Park System", and nine of these parks are in Utah. Information that should be provided on the applications is routes, altitudes, #s and types of aircraft, frequency, and time of day. Bill Withycombe asked Dick to send him a letter requesting copies of the OA applications. Dick agreed to do so in the near future.

A local horse outfitter and rancher in the Grand Teton NP area expressed grave concern for the safety of the helicopter air tour operations. He mentioned that seven commercial air tour helicopters had crashed within the last decade – one in Grand Canyon and a couple in the Hawaiian parks recently. He requested that the FAA determine the reasons for the accidents before initiating the ATMPs for Yellowstone and Grand Teton National Parks.

John Dillon of Grand Canyon Airlines requested copies of the roster of attendees of the meeting. He then asked that the FAA publish the results of the OA applications in the Federal Register. He also stated that the number of air tours applied for (over 200,000) was extremely overstated. And therefore the playing field is actually much smaller than appears. He explained that the numbers were so inflated due to a few different reasons but mainly: 1) confusion/misunderstanding, 2) intentional place markers, and 3) 2 different operators putting in for the same route.

Closing Remarks

Karen Trevino thought that the meeting had been very successful, and that additional meetings would be conducted in the future to more actively engage the NPOAG in the ATMP process. Karen requested closeout comments from the NPOAG members. Their comments are as follows:

- This meeting was more open and provided a forum for a greater level of NPOAG participation. It also provided new members' perspectives. Presentations were informative. Recommend using the website for viewing presentations.
- Email the attendance sheet. Barry will send a message to all members requesting addresses.
- Conduct more than one meeting annually, especially since the ATMPs have been initiated. Dates for the next two meetings should be set within the next couple of weeks.

- Develop interactive papers (white papers), perhaps by NPOAG subcommittees, to address legislative history and intent questions that may arise from the various publics and that could be topics of discussion for the next NPOAG meeting (e.g., competition, length of time for IOAs, Part 91 operators, noise impacts standards).
- Spend more time on tribal issues and concerns at the next meeting. Place the “Tribal Consultation” discussion early in the agenda. Provide more time for the topics to allow discussion by NPOAG members. Also provide more breaks and set up a 1½ to 2 day meeting. Transmit information and presentations to NPOAG members in advance so that NPOAG members are prepared. Include time on the agenda to discuss the NPOAG membership and rotation of members. If possible, coordinate the location and time of the next meeting with the HAI Convention, air tour operators’ meeting(s), or near a tribal reservation.
- Concern is expressed for the length of time to complete the ATMPs and the length of time the IOAs will be active. Both agencies need to make progress on implementing new entrant IOAs and IOAs for existing air tour operator who are requesting an increase in their number of flights.
- Concern was expressed that noise impact thresholds have not been set and that a number of ATMPs have already been initiated.
- Keep the NPOAG informed of the status and progress of the ATMPs. Perhaps the FAA & NPS should provide a monthly update to the NPOAG members.
- Simplify the technology issues and don’t use acronyms unless explained or defined.
- When the MOU is approved by both agencies, send copies to NPOAG members.
- A question was raised about whether the Co-Chairs will accept the NPOAG advice and how the group will reach closure on issues?
- The NEPA process disagreement between the two agencies needs to be resolved.
- The noise impact standards and noise models need to be a mix of audibility and technical acoustical measurements.

Additional Action Items and Recommendations

- List and prioritize the issues raised in the letter to Fran Mainella from three of the NPOAG members.
- Barry and Karen will check on the legal ramifications of clustering of ATMPs
- Provide a report or briefing to the NPOAG on the Hawaiian parks data collections and analysis.
- Kent Stephens provides a response in writing to Heidi Williams’ request for OA application information (refer to aforementioned questions).
- The FAA/NPS should set up face-to-face meetings with the tribal chairs as well as with the tribal cultural leaders in initiating tribal consultation under Section 106 of the NHPA.
- The FAA/NPS should work closely with Germaine and Richard to help facilitate communication with the various tribes.
- The FAA/NPS should send Germaine and Richard a copy of the FAA letter to the Advisory Council on Historic Preservation and the Tribal Historic Preservation Offices.
- The FAA/NPS will address the concerns and requests of the three audience speakers.

Experiential Walk

Early Tuesday morning on October 21st NPOAG members and FAA and NPS officials met at the Taggart Lake Trailhead to conduct a three and one half mile loop hike to the lake to experience a

backcountry area at Grand Teton National Park and to have the opportunity to hear natural sounds in this portion of the park. The group spent 20 minutes to one half hour at the lake with five minutes of that time set aside for everybody to just listen to the quiet and natural sounds. It was an interesting experience with group members able to hear several natural sounds, such as birds chirping and the wind in the trees. A couple of high altitude air carriers were also detected.

Jackson Hole Airport

Late Tuesday morning the group visited Jackson Hole Airport to observe and hear commercial and general aviation aircraft land and depart from the airport and to receive a briefing from the airport officials. The briefing focused on the measures that airport officials, in consultation with the park and the town of Jackson, have taken to mitigate aircraft noise to adjacent lands. Mitigation measures include alteration of flight paths into and out of the airport and curfews on late and early morning flights.

ATTACHMENT 1
NATIONAL PARKS OVERFLIGHTS ADVISORY BOARD MEMBERS PRESENT AT
THE MEETING

<u>Name</u>	<u>Telephone Number</u>	<u>Email Address</u>
Alan Stephen	(702) 648-8837	arstephen@aol.com
Lash Larew	(907) 248-4422	rlarew@eraaviation.com
Hope Sieck	(406) 586-1593	hsieck@greateryellowstone.org
Sue Gunn	(202) 429-2627	sue_gunn@tws.org
Heidi Williams	(301) 695-2227	Heidi.Williams@aopa.org
Charles Maynard	(423) 913-2192	smokycwm@aol.com
Richard Deertrack	(505) 758-4803	deer@laplaza.org
Germaine White	(406) 883-2888 x 7299	germainew@cskt.org
Chip Dennerlein	(907) 351-4658	cdennerlein@msn.com
Karen Trevino, Chairman	(303) 225-3563	Karen_Trevino@nps.gov
Barry Brayer, Vice Chairman	(310) 725-3800	Barry.Brayer@faa.gov

ATTACHMENT 2
AIR TOUR MANAGEMENT PLANNING DOCUMENT

Some of you may have seen a document titled “Air Tour Management Planning and Acoustic Data Collection for National Park Units” originally dated March 2003. Please note that document was a draft document sent to the FAA for comments and was intended to stimulate discussion with FAA in order to facilitate the development of mutually agreed upon guidance for moving forward with Air Tour Management Plans.

Please note that this document was never intended as a statement of NPS policy in and of itself. Notwithstanding, we have been made aware that there are people both within NPS and outside that may not have seen the transmittal letter accompanying the document and therefore, have been inappropriately relying on this document in varying capacities. Consequently, the purpose of this notice is to advise that the document remains a draft and therefore should not be copied, quoted, cited, duplicated, distributed or otherwise referred to or relied on in any way.