

**Federal Aviation Administration
and
National Park Service**

**NATIONAL PARKS OVERFLIGHTS ADVISORY GROUP (NPOAG) AVIATION
RULEMAKING COMMITTEE (ARC) MEETING MINUTES**

March 18 & 19, 2004

Federal Register Announcement of Meeting

The meeting was announced in the *Federal Register* on February 27, 2004 (69 FR 9422) and was held at the Hacienda Hotel, Highway 93, Boulder City, NV.

Attendance

The NPOAG ARC is made up of 10 members. Nine of the ten members were present: Germaine White, CSKT; Richard Deertrack, Tribal Rep, Taos, NM; Sue Gunn, the Wilderness Society; Chip Dennerlein, Booz Allen Hamilton; Charles Maynard, Great Smoky Mountains National Park; Steven Bosak, National Parks Conservation Association; Alan Stephen, Grand Canyon Airlines; Heidi Williams, Aircraft Owners and Pilots Association; Lash Larew, Era Aviation/HAI. David Chevalier, Blue Hawaiian Helicopters, substituted for David Kennedy, formerly from National Air Transportation Association. Approximately 24 additional persons attended the meeting. A list of attendees is attachment 1.

Opening Statements and Remarks

Barry Brayer, FAA Executive Staff, Western Pacific Office, and Chair for the meeting, opened the meeting and welcomed everyone, noting that although it is not a public meeting, there should be some time at the end of the meeting for public comments. Attendees introduced themselves. Barry noted that the FAA has published a notice in the *Federal Register* to solicit a new member to replace David Kennedy as representing aviation interests. (69 FR 11697; March 11, 2004; applications are due by April 12, 2004) Barry also noted that several members have requested that meetings last at least 2 days and that this will be taken into consideration in planning the next meeting. A handout containing documents such as the agenda, the Order establishing the ARC, scoping documents, etc., was provided to members.

Bill Withcombe, FAA Regional Administrator, Western Pacific Region, noted that the NPOAG ARC has committed to a large task, one that requires an expenditure of major funds in the planning of ATMP's for 107 identified parks. The FAA and NPS have scheduled 9 parks for this year, and planning and scoping have already begun in 6 Hawaii parks. He also noted that a previous hurdle, the signing of the MOU, has been completed. A copy of the MOU is in the handout. Bill noted the letter of March 10 signed by some members of the ARC and addressed to the Administrator, FAA and

Director, NPS, and said that the substance of the letter would be addressed in subsequent briefings and discussions of this meeting.

Chris Shaver, Manager, Air Resources Division, NPS, also welcomed the members of the group by noting the success of a previous meeting in Washington, DC in January 2004. Chris noted the climate of willingness of each interest group to address the issues of the other. She observed that the FAA and NPS have mutually shared interests and common ground, despite related political and economic issues that intervene. Chris urged the ARC members to be succinct and address the issues of the group.

Howie Thompson, for NPS, commented that the notes of the last meeting in Jackson Hole, WY in October, 2003, are included in the handout and urged members to send him any comments within 2 weeks. Comments will be vetted through the two co-chairs and revised notes sent out to the ARC.

Report from the Chair

Barry Brayer reported that scoping has been initiated at 6 Hawaii park units. He stated that the notice of intent was published in the *Federal Register* on February 27, and that local newspapers, resource agencies, and interested participants were notified. Information on the scoping process is available on the ATMP website: www.atmp.faa.gov. The FAA established Docket No. FAA-2004-171742 for receiving comments on issues related to the scoping process in these parks. Public meetings are scheduled for March 24-30, 2004.

Three parks in the continental United States are also scheduled for the scoping process: Lake Mead in late April and Badlands and Mt. Rushmore in early May. The scoping notice should be published in the *Federal Register* around April 9.

Special efforts have been made under the Section 106 process by sending interested Section 106 groups invitations by letter. The Oglala Sioux, whose lands abut the Badlands, are invited to be a cooperating agency under the NEPA process. Richard Deertrack questioned that tribes would be able to participate in the ATMP process, even though their lands are not “abutting” a park. The scoping process should accommodate all interested persons. Germaine White asked how the group plans to consult. Both representatives of tribal interests were encouraged to give the group advice on the consultation process. It was noted that both FAA and NPS have had experience in this area.

Barry also covered the NPS/FAA Elevation Meeting of January 22, 2004, in Washington, DC which resulted in the two agencies agreeing on a purpose and need statement, establishing a “Significant Impact” working group, reaching agreement on the Federal Interagency Committee on Aviation Noise (FICAN) statement of work, signing an Memorandum of Understanding, and establishing a KSN (knowledge sharing) website to share draft documents. Documents related to these activities (as appropriate) are contained in the handout.

Barry closed out certain items from the last meeting:

- Tribal issues are placed up front on the agenda for this meeting.

- Issues raised in the Fran Mainella letter were assumed to be included in the March 10 letter to the Administrator and Director.
- Legal issues around “clustering” of parks are still being worked.
- Report on Hawaii data collections is in the handout.
- FAA/NPS will work closely with Germaine and Richard to ensure appropriate communication with the tribes
- Audience speakers’ requests: The rancher’s concerns have been addressed. Dick Hingson’s, Sierra Club, request for interim operating authority (IOA) applications may be addressed by a later brief on IOA’s; the FAA will respond to his letter.

Report from the Vice Chair

Karen Trevino, NPS Natural Sounds Program and Vice Chair for the meeting, commented that the January 22 meeting in Washington, DC was a “new day” for the two agencies, one in which CEQ had pointed out that we are in this process together. She said that the FAA has learned what “impairment” is and has agreed to mitigate less than significant impacts. Karen also commented that the NPS should defer to the FAA on safety; that the FAA should defer to the NPS on environmental impact. Karen noted agreement on the FICAN process, which will involve about 3 months to test changes to both noise models.

Karen informed the group that she will be the lead negotiator in the administrative dispute resolution currently ongoing for the Grand Canyon. Steve Bosak asked when the public would be brought into the dispute resolution process. Karen and Lynne Pickard (FAA, Office of Energy and Environment) agreed that the stakeholders will be brought into the process when the FAA and NPS have developed more of a framework and direction. Other members expressed the usefulness of bodies like the ARC for avoiding dispute and noted the spillover of issues concerning ATMP’s. Alan Stephen noted, for example, definitions of “quiet day” vs. “average day” and other issues may be concerns.

The Legislative Process

Ann Choiniere, consultant to the Department of Transportation Volpe Center and former General Counsel to the Senate Commerce Committee, spoke to the ARC about her role in drafting the Air Tour Management Act of 2000 and described her impressions of the intent of the Committee at that time. She noted that the Act was the result of the resolution of the tension between aviation interests and environmental concerns with an emphasis on getting a result, getting something done. She also commented that the Act did not address all of the issues; that is why the NPOAG was included in the legislation. Ann urged the members not to become bogged down with IOA issues, but rather focus on completing the ATMP’s, the real intent of the rule. The Act was a combination of interests: valuable visitor experiences at parks, quiet technology, competition (including business opportunities), and Native American rights. She noted that the Committee did not want to increase noise; however, if an ATMP was not finalized in 2 years, the FAA and NPS should consider new entrants. A discussion between members of the ARC followed on issues such as competition, the “hoarding” and misrepresentation of flights on IOA’s, whether the Committee had a full NEPA process in mind, comparison with

slots at airports, recounting the “annual allocation”, etc. Ann emphasized that she believes the Committee saw IOA’s as an interim process and urged the ARC to expend its resources on ATMP’s rather than IOA’s. Karen Trevino noted that if the ATMP process is not more efficient, IOA’s may become the *de facto* ATMP for a park.

Wilderness Briefing

Sue Gunn, the Wilderness Society, informed the ARC on the concept of wilderness. With the 1964 Act, wilderness is imposed over all public lands. More than a place, wilderness is a state of mind, resources set apart. It is a place to enjoy nature with no intrusion by way of roads, aircraft, or vehicles; wilderness areas may not be developed by logging, mining, etc. Wilderness areas fall into three areas: they may be designated, proposed, or potential. They make up more than 71% of park lands. Sue noted that tribes also have wilderness areas. Lash Larew pointed out that Alaska, with the majority of the wilderness areas, is not subject to the ATMP process. Richard Deertrack noted that his tribe had asked for 300,000 acres to be designated as wilderness; however, they were only given 45,000. This area is only used for gathering. He also noted that measuring noise in a wilderness area is contradictory; there is no noise, only wind and water sounds. Alan Stephen asked how this wilderness concept would be applied to ATMP’s. Karen Trevino commented that the purpose for which the area was intended would be addressed in the ATMP.

Native American Tribal Issues

Rory Majenty, from the Hualapai Nation, Peach Springs, AZ, addressed the group on issues important to Native Americans. He noted that his tribe lives in two worlds. They seek both to preserve the traditions of their ancestors and maintain an economy to support themselves. Although the Hualapai is the leading tribe in tourism, they do not have gambling. The Hualapai tour operation at Grand Canyon West employs 55 people. He reported that the average salary for the tribe is \$18,000 per year and noted that while a majority of children growing up in the United States expect a college education, their children anticipate only a high school education. The scarcity of water is a problem. For their tour business, which has an average of 80 visitors per day in season, they have 18 helicopters under contract. These flights must be carefully staged so that they do not fly over sacred grounds. He noted that the accident of September ’03 resulted in the shutting down of a canyon; this is now considered a sacred burial ground.

Discussion was opened to members on tribal issues. Alan Stephen asked about the extent to which the agencies must consult with everyone. Richard Deertrack noted that tribes are varied and that one region may have many tribes with different political organizations. Germaine White commented that it is important to meet early on, that a letter to a tribal leader may mean little if the counsel meets only quarterly. She encouraged face-to-face meetings and for the agencies to be cognizant of the tension between economic development and tribal traditions. The group agreed that because of the differences in tribes, they cannot expect Germaine and Richard to represent all tribes; consultations will be individual and specific. Chip Dennerlein suggested regional

meetings, where each tribe could hear the concerns of the other. Germaine responded that regional meetings could be useful on global issues, such as the bison issue in Yellowstone that drew wide comment. Bill Withycombe reminded the group of the FAA's policy as established in Order 2110.20 – that “each Assistant or Associate Administrator Organization will consult with tribes before taking any actions that may significantly or uniquely affect them.” Karen Trevino noted that the NPS wears two hats in this arena; it is their mission to serve both as advisors and representatives of tribal interests. She expressed that information should be freely shared without concern for misuse, that consultations should be a “safe place.”

At this point, Sue Gunn informed the group of a Freedom of Information Action (FOIA) filed by the Wilderness Society for IOA information on the 31 parks that had been identified as negatively impacted by overflights.

Environmental Issues

Lynne Pickard, FAA Senior Advisor for Environmental Policy, Office of Energy and Environment, spoke about the FAA's noise policy as it relates to national parks. She recognized the NPS policy of “natural sounds” and said this leads to many questions on how the FAA measures noise. For the FAA, this spills over into other areas, such as airports. And, although the agency has been able to “borrow” intelligence from other sources in the past, the measurement in parks requires that the FAA measure sounds lower than it has ever done before. It must take into consideration variations in landscape, different types of aircraft, wildlife effects, vibration, and combined general and commercial aviation effects. Lynne distinguished between *detectability* (what it is possible for the ear to hear) and *audibility* (or noticeability, what the human ear would notice). She stated that the updated INM model, traditionally used by FAA, and the NPS noise model are now being evaluated by the FICAN, a process that is expected to take 3 months. Lynne also noted that the FAA is willing to work to mitigate less than significant noise effects if the environmental benefits are commensurate with the mitigations effects.

Discussion following Lynne's presentation centered on finding an agreeable medium considering both qualitative and quantitative data. Chris Shaver proposed that if, in the spectrum of a noise scale, both extremes are eliminated (inconsequential noise and extremely adverse noise), then the agencies could focus on the middle of the spectrum.

Interim Operating Authority (IOA) Issues

Kent Stephens provided a list of operators who have applied for and been granted IOA. He asked the ARC for recommendations on dealing with issues of renewing IOA's and accepting new entrants. Kent also asked the NPS for a definitive listing of the units of the National Park System to assist in eliminating any operator who has incorrectly asked for such authority. He reported that 74 operators have applied for IOA, the majority of these are Part 135 operators (small aircraft, fewer than 10 seats). In a breakdown of parks, Lake Mead, Grand Canyon, Bryce/Zion, Canyonlands, and Hawaii Volcanos had the most operators. Eleven operators have asked for increases/changes in

operations; this number changes weekly. Five applications were received for parks that currently have no air tour operations. There followed a general discussion on how operations are counted, that is, an operation from A to B to C to A. Is this one operation or three? Some of the higher numbers entered by operators would indicate that these are being counted as multiple operations. The counting of operations is considered to be critical to IOA policy.

Karen Trevino presented a plan (in 3 parts) to revisit the number of allocations allotted to each interim operator. 1) The FAA/NPS would publish a *Federal Register* notice asking each operator to reconsider its original submission and make corrections, if necessary. If some numbers still seem questionable, the FAA could investigate. 2) The FAA/NPS would then publish, for comment, the corrected numbers. 3) The FAA/NPS would then publish a final list of allocations. Karen noted that the notice (1) would spell out in detail how the operations were to be counted. In addition to publication in the FR, the notice would also be sent by certified mail to each operator to ensure notification. Lash Larew commented that a standard team should brief each Flight Standards District Office to ensure that inspectors maintain consistency. Karen will prepare the *FR* notice and coordinate with FAA representatives, as appropriate.

In the discussion of the plan, Bill Withycombe warned that an operator's numbers are his/her livelihood, and that the FAA performs its enforcement functions only under the legal parameters of due process. Dave Chevalier noted that the ARC needs the "doing business as" (DBA) of each operator. Kent Stephens assured members that the FAA can provide this list.

Next Meeting Agenda

Barry Brayer again noted members' request for a second day of meeting, and offered that FAA and NPS representatives are willing to return to the meeting Friday afternoon following the Hualapai tour experience Friday morning. Details and logistics were to be worked out later.

Barry noted that the action on determining actual numbers for IOA's is the first priority. Karen will use email and teleconferencing to reach agreement on the plan.

Barry also announced action items for the ARC. He asked for volunteers to lead each action; volunteers' names are indicated after the item. Initially, subgroups will post issue/white papers on the KSN for comment by other members of the ARC:

- 1) Tribal issues – Steve Bosak, Germaine White, Richard Deertrack, Chip Dennerlein.
- 2) Prevention and mitigation of significant adverse environmental impacts – Charles Maynard, Sue Gunn, Chip Dennerlein, Lash Larew, Germaine White.
- 3) Modifications to interim operating authority – Chip Dennerlein, Alan Stephan, Steve Bosak, Dave Chevalier.
- 4) New entrant operators and increased operations for existing operators – Sue Gunn, Heidi Williams.
- 5) Quiet technology – Alan Stephan, Lash Larew, Chip Dennerlein.

- 6) Competitive process – Steve Bosak, Dave Chevalier (Barry will provide information on slots/Karen will provide information on concessionaires).

Comments from the Public

Dick Hingson, Sierra Club, Recreation Issues Committee, stated that his letter of October 27 remains unanswered. He had requested a copy of all IOA applications. There was some discussion as to whether the list distributed at the meeting would suffice, or the results of the FOIA would be shared with the group. Lynne Pickard responded to Dick that he would receive a response to his letter from the FAA.

John Dillon, Grand Canyon Airlines, expressed appreciation for the work of the group and offered to help by providing the group any needed information.

Jim McCarthy, Sierra Club, Flagstaff, commented that the ARC should recommend no new operators; that these operators should have to wait until the ATMP is completed. Jim expressed that if new entrants are allowed to operate for 2-3 years, they will feel “grandfathered”. Members of the ARC commented that there will be lawsuits either way. Karen Trevino commented that the Act gives clear direction on this issue. Finally, Jim urged the ARC to proceed cautiously in allowing new entrants.

Friday, March 19, Hualapai Experience

The members of the ARC, and NPS and FAA representatives, took a fixed wing air tour from Boulder City Airport to Grand Canyon West via Scenic Airlines and a rotor wing air tour into the Grand Canyon via Papillon Airways. The Hualapai Nation provided members a river raft experience on the Colorado River. Following a ground tour at Bat Caves Overlook and barbeque lunch hosted by the Hualapai, the members returned to Boulder City Airport via Scenic Airlines. Members of the ARC and NPS and FAA representatives expressed gratitude to the Hualapai Nation for their hospitality and the opportunity to better understand their tourism industry. Participants also thanked Scenic Airlines and Papillon Airways for providing scenic transportation for the experience.

Submitted by Linda Williams, Office of Rulemaking, FAA
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ATTACHMENT 1

NATIONAL PARKS OVERFLIGHTS ADVISORY GROUP AVIATION RULEMAKING COMMITTEE MEMBERS PRESENT AT THE MEETING

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Kezia Nielson, NPS		
Art Jones, FAA		
Bob Rossman, NPS		
Roland McKee, FAA		
Tom Busker, FAA, Northwest Mountain Region		
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MEMBERS OF THE PUBLIC PRESENT AT THE MEETING

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Dick Hingson, Sierra Club		
Jim McCarthy, Sierra Club		
Steve Bassett, U.S. Air Tour Association		
Jay Piper		
Ron Williams, Airstar Helicopters		
Ann Carroll, Helicopter Association International		
John Hiatt, Red Rock Audubon Society		
John Dillion, Grand Canyon Airlines		

