

**Federal Aviation Administration
and
National Park Service**

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

September 9 & 10, 2004

Federal Register Announcement of Meeting

The meeting was announced in the *Federal Register* on August 13, 2004 (69 FR 50233) and was held at the Wilderness Society, 1615 M Street, Washington, DC.

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, **Friends of** Great Smoky Mountains National Park; Alan Stephen, Grand Canyon Airlines; Heidi Williams, Aircraft Owners and Pilots Association; Lash Larew, Era Aviation/HAI, and Elling Halverson, Papillon Airways. Don Barger, National Parks Conservation Association, substituted for Steve Bosak. Approximately 15 additional persons attended the meeting.

Paul Hoffman, Deputy Assistant Secretary for Interior, visited briefly and remarked on soundscape and 'visitor experience' as being appropriate to each particular park. He also acknowledged that NPS needs the allocation of funds to pay their share of ATMP expenses. John Block, Deputy Administrator for Regions and Centers, also visited and expressed his appreciation for the work of the group.

Opening 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 thanked Sue Gunn and the Wilderness Society for the excellent meeting room and refreshments. Minor changes were made to the minutes of the meeting of March 18 and 19, 2004; those minutes were then approved, with changes.

Updates from the Chair/Vice Chair

Barry reviewed the progress of previous meetings, noting that there are 107 parks with air tour operations, with 91 operators reporting operations over park lands. Barry reported that there are 9 ongoing ATMP projects: 6 in Hawaii plus the Badlands, Mt. Rushmore and Lake Mead projects. Letters have been sent out to Native American tribes to begin the 106 consultation process, and initial meetings have been held with **the** Hawaiian kupuna (Hawaiian elders) groups. The teams **will be** ~~are now~~ developing alternatives for these parks **within the next several months**. Baseline noise monitoring is also being conducted in 4 parks (Glacier, Canyon de

Chelly, Petrified Forest, and Navajo). Barry stated that the FAA has funded 100% of the analyses thus far, with more than \$20 million allocated for the ATMP process to date. Karen Trevino, NPS Natural Sounds Program and Vice Chair, limited her comments due to the ambitious schedule for the meeting, but noted that the co-chairs were responsive to the group's need to be better utilized. Karen thanked the group for contributions since the last meeting and noted the sense of a shared mission.

Several members commented on their participation in the Senate hearings held in July 2004; the testimony given at those hearings is posted on the web.



ATMP Progress Report

Brian Armstrong, Western Pacific Region, and Bob Rossman, NPS Natural Sounds Program, presented a briefing on the ATMP progress to date. Brian noted that they had recently briefed interested parties ranging from management to field level on how scoping comments would be handled; the development of alternatives under NEPA; and the review process. Brian and Bob answered questions from ARC members on definitions of “proposed action” and “preferred alternative.” They also clarified that the consultation process with Native American tribes is a vital part of the beginning of the planning process. FAA Order 1210.20, January 2004, gives guidance on which tribes are Federally recognized. Germaine White reminded the members that the affected tribes are “cooperating agencies and should be consulted on tribal cultural resources.” Brian noted that sometimes the team may select the preferred alternative, and that the process must not give the impression to the public that a decision has already been made. Bob added that this is a tiered process, that out of a range of alternatives, 3-5 may be selected for public comment. The team must consider a myriad of factors: where the operator wants to operate, the resources of the park, potential growth, visitor experience, etc. Politics should not play a role; rather all factors should come together for the public benefit. **The protection and/or restoration of park soundscapes is stated in NPS Management Policies and referenced in several NPS laws. However, Barry and Alan stated that it is not a requirement of the Act, but it is important and soundscape data has been collected.** ~~The soundscape process may be used as a broad policy standard for the resources of a park, but members commented that it should not be the single determining methodology since it is a directive, rather than law.~~ Although early on in the ATMP process, both agencies agreed that the starting methodology would be an EA, all members agreed that at any time, the agencies could move to an EIS.

FAA Order 1050.1E

Lynne Pickard, Senior Advisor for Environmental Policy, Office of Environment and Energy, gave a briefing on the relevant changes to FAA Order 1050.1E. Lynne noted that the order is “paperless” and can be found on the web at www.aee.faa.gov/aee-200/1050-1E.htm. Lynne inted out the highlights of changes such as the 30-day review of a FONSI (Finding of No Significant Impact) before making a final decision; the optional procedure of publishing a ROD (Record of Decision) in the Federal Register for comment; and additional guidance for consideration of natural settings and noise sensitive areas where previous noise guidance (Part 150 and DNL 65) may not be sufficient for national parks and other areas). ARC members Alan Stephen and

Sue Gunn asked if wilderness areas are included. Lynn responded in the affirmative: areas with “wilderness characteristics” may be treated in the same manner as Congressionally designated wilderness areas. ARC member Chip Dennerlein commented that this is commendable as it puts the proactive emphasis on the ATMP process. In response to a question from Karen Trevino, Lynn explained the differences between some of the various legislation, DOT policies, etc. The FAA has traditionally used the policy of “avoid the use of” in considering transportation impacts to the extent possible. Parks represent a special consideration in that they may have impacts not represented by transportation usage, and thus require special consideration of defined terms such as “significant impact” or “substantial impairment.” The distinction between “air transportation” and an “air tour” was noted. Barry Brayer noted that for FAA planning purposes if an area has been “proposed” as a wilderness area, it will be taken into consideration. Brian Armstrong noted that the new 1050.1E process has been used in all 9 of the parks currently undergoing a preliminary ATMP process.

Interim Operating Authority (IOA)

ARC members Alan Stephen and Chip Dennerlein had provided papers to the ARC for comment prior to the meeting. These papers outlined the details of a *Federal Register* notice to notify IOA operators that they would have a certain timeframe to “self correct” the numbers of commercial air tour flights that they had originally stated on their application for operating authority. The notice would be clear that this is not an enforcement action, but rather an effort by the FAA and NPS to verify actual numbers, given that there may have been some confusion over the counting process. FAA would then reissue the IOA’s based on its own verification of these numbers, based on reasonable evidence. Operators would be put on notice through the FR publication that they may be challenged by the numbers that they verify. A letter should also be sent, via registered mail, to each operator holding IOA, as well as to Flight Standards field offices, telling them of the process to ensure as wide a dissemination of the process as possible. Guidance would be included as to the definition of a commercial air tour, how to count individual air tours (including “circuit routes”), the types of information the FAA is looking for to verify the actual numbers, and the opportunity to explain any extenuating circumstances. Members agreed with the work done by the work group but expressed frustration that the IOA information seems to be incorrect, that members have not been provided all needed information on the number of operators, and that the process to correct the numbers is not going forward as planned.

Kent Stephens presented statements on the status of IOA’s to the ARC, presenting a letter that he had prepared but that had not been circulated to the ARC members. Members requested a copy of the letter, and later commented on the content. Members expressed disappointment in the delay in publishing the notice and sending out the letter. Members agreed that the tone of the letter should be changed, and that the letter should present three cogent points: 1) why we need new, corrected information; 2) how to count flights (to include any special date, maps, etc., as needed); 3) what will happen if submitted information is not correct (FAA will initially verify numbers, numbers will be published in FR for public comment, operators may lose ops specs if incorrect data is provided). From a legal perspective, in case of a law suit, it was noted that the court would look to the process used.

Karen Trevino offered to draft the letter and submit it to ARC members for review. Finally, the point was made that the both agencies have an obligation to present the correct number of operations. Several members spoke of the need for individual parks to receive an updated list of those commercial air tours flying over them.

New Entrants

Heidi Williams, Aircraft Operators and Pilots Association, briefed on the work of the subgroup for new entrant operations. She noted that the process requires the approval of both the FAA and NPS – the FAA evaluates the airspace for compliance with safety regulations and the NPS must evaluate, with the input from Native Americans, the impact on park resources. To accomplish this, the group recommended using existing methodologies of orders, policies, or regulations rather than invent new ones. Although section 803(c)(2) of the Act allows for new entrants or increase in operations if the modification “improves the protection of natural park resources and values and of tribal lands,” the paper presented to the group suggests several ways in which increases could improve protection, e.g., quieter aircraft or diversion of routes. The environmental assessment used to determine the environmental affect on a park may be an abbreviated document that does not employ all of the details as normally employed under NEPA. That is, it may not require an EA, but whatever methodology is needed would be used. This topic needs more discussion because less than NEPA is a concern with ramifications that could result in legal action.

There has been no conclusive work done on competition; however, the work group suggested that it would be difficult to justify adding new entrants to a park that has 2 or more operators. ARC member Alan Stephen, however, suggested that a park with 2 fixed wing operators, but no helicopter operator, may have not resolved the competition issue. Carol Toth, attorney for FAA, commented that competition is a complex issue and each park may be different. There may be several markets in each park (for example, the east and west markets in GCNP). The size of the operator must be considered, as well as where they operate and the length of the tour. Carol emphasized that competition is but one part of the equation for new entrants; the other parts - safety and environmental impact - are equally important. Don Barger, NPCA and substituting ARC member, commented that competition within a park is a unique concept, and that it must be set in the context of the overall plan for the park.

Update on Federal Interagency Committee on Aviation Noise (FICAN)

Tom Connor, Office of Environment and Energy, FAA, gave an update on the work with FICAN to evaluate the FAA, NPS, and DOD noise models. When compared to FAA’s INM model, the DOD’s NMSIM model performed better in regards to modelling audibility. We have now asked FICAN to look at the validation study to determine a broader application for audibility in GCNP. Tom also talked about the Noise Model Demonstration Workshop where noise definitions and park parameters were put together. The capabilities of each model were tested in terms of contour and output. The source certification data for commercial aircraft were then translated to a point on the ground. The test used 150 commercial aircraft types and their noise certification data, as measured against microphones set at certain levels. Using information supplied by operators, this data could then be used in a formula to compute actual audibility levels. Three measures will be considered: what it does,

the output, and the sensitivity of the source. A Model Sensitivity Analysis was conducted for certain parameters, considering the use of quiet technology, number of operations, and flight corridors. Ground rules were: the substantial restoration of **natural quiet** at the GCNP, the **use of the two acoustical metrics of 2-zone system** (detectability and audibility), and quiet technology as defined by FAA. Tom presented a matrix showing how combinations of factors might result in substantial restoration. The deadline for NPS and FAA to give FICAN recommendations to review is Oct 15. This deadline will also affect the ongoing GCNP Alternate Dispute Resolution process and its timelines. In response to a question of this methodology being used only for GCNP, Tom responded that some **of** its application may be transferable to other parks.

Tom also reported that the final rule, Noise Limitations in GCNP, which would define quiet technology aircraft is now in the Office of the Secretary for review. It will then go to OMB. The FAA's deadline for this rule is January 05. The FAA also plans to issue an Advisory Circular on noise levels. Barry Brayer pointed out that the legislative mandate for the use of quiet technology in the GCNP is advice and recommendations from the NPOAG; for the ATMPs the mandate is that each plan will include consideration of quiet technology. Alan Stephen commented that the SNPRM contains an excellent discussion of the various alternatives for using quiet technology for **the substantial restoration of natural quiet.**

Tribal Issues

Germaine White, CSKT, presented to the ARC the principles for consultation:

- ✓ respect the standards **and nation sovereignty** of the tribes
- ✓ involve traditional authorities
- ✓ expect oral consultation – talk to as many as possible – go there, field trips are good
- ✓ expect complications – differences in language may lead to confusion – use the right language (“consulting nation”, “trust relationships”)
- ✓ respect the tradition and culture that has endured over the millennia and has sustained its people
- ✓ be honest
- ✓ there will be a natural mistrust of Federal agencies – those who went before you did not build trust – arrogance means you're hiding something
- ✓ be prepared to negotiate/be flexible
- ✓ respect death – nothing takes precedence over this – it's the tribe's chief way to show respect for a friend or family
- ✓ expect that negotiations will take time – you may not be their only job – out of respect they want to give you their best answer
- ✓ develop points of contact, consider working groups
- ✓ formal agreements make some nervous
- ✓ confidentiality is important – some things are sensitive (money, for example)
- ✓ there is a difference between the indigenous (oral and visual, stories, truths) and the scientific (best of science, formal education process, written)

Richard Deertrack, Taos, talked about his experiences growing up with traditional values. The four cornerstones of every heritage are love, faith, charity and respect. He emphasized some of the same experiences to be expected in consultations: that tribes must be treated as sovereign nations, that sovereign rights will be asserted. Sacred sites must be preserved, yet there is a reluctance to identify them because of

lose and looting in the past. Sites will be identified generally, not specifically. Richard also urged regional offices to become educated in tribal affairs. There are 19 pueblos in New Mexico but they are all different. Richard stated that we must protect their sacred sites from the ground and air. Tribes are really concerned about flights over sacred areas for profit – can't put a dollar value on space. Lynne Pickard wanted to know how you protect sacred sites without getting specific. Richard responded that by providing the general area instead of the specific site. Germaine stated that there is tribal reticence on providing specific sites based on a history of desecration of sacred sites. Brian Armstrong described the general parameters that have been used thus far to establish initial contacts with affected tribes under the 106 consultation process. The FAA will follow up the letters with contacts and phone calls. Karen pointed out that it is very important to know the person to contact and questioned the disposition of the list of appropriate persons. All members of the ARC and visitors, too, expressed their appreciation for the educational benefit of the presentation by Germaine and Richard.

Significant Adverse Impacts

There was no paper to review on this issue, but discussion ensued on the definition and usage. Barry Brayer noted that the Act speaks to “adverse impacts” in the context of the FAA’s authority. Lynne Pickard commented that the FAA can mitigate for less than “significant” adverse impacts when it does not disrupt transportation. One member questioned what the agencies do when the law conflicts with another law – one being more stringent than the other. Carol Toth answered that both laws would have to be read together in the context of the intent of each. Karen Trevino noted that sometimes the language reads “notwithstanding any other law.”

Brian Armstrong and Bob Rossman commented on the teams’ work in trying to pin down “significant impacts”, noting that although neither agency has a definition, both have guidance. Adverse impact analysis that is conducted should meet both agencies needs as per 1050.1E, DO-12, DO-2, etc. More than temporary noise impacts need to be analysed. Bob Rossman stated that we need to look at overall impacts to wildlife, park visitors, and park soundscapes. Alan Stephens wanted to make sure that impacts to air tour visitors are analyzed because these visitors are also a part of the park visitor experience. Germaine White commented that some areas have special needs and have an expectation of no aircraft noise. Lash Larew suggested that the agencies should begin with parks that we know have significant impacts. Don Barger commented that NEPA requires an agency to look at potential adverse affects, that the mitigation must be clear. Barry Brayer noted that the purpose of NEPA is to identify impacts, usually negative, though they may also be socio-economic. Carol Toth noted the differences between the legislative mandate for GCNP and other national parks, in that the Congress requires the substantial restoration of natural quiet at GCNP.

The process for identifying the correct numbers of IOA flights was revisited, and members agreed that the plan would involve the following steps:

- (1) sending out the letter to operators asking them to verify numbers with specific instruction on how to count flights and some indication of the consequences of incorrect numbers. However the NPOAG could not recommend sending out the letter as presently drafted. It was recommended that Carol Toth or a NPOAG subgroup redraft the letter and;

- (2) then submit it as a notice in the Federal Register of what the agencies are doing and why;
- (3) conduct regional meetings to explain process to operators;
- (4) park managers need an updated list of commercial air tour overflights for their particular park.

EA vs EIS

Lynne Pickard stated that the FAA has selected an EA/FONSI approach for the ATMPs due to the uncertainty of the controversial nature of the impacts, and that we can proceed w/ an EIS if deemed necessary. However Bob expressed concern that stating up front that we are going to develop an EA/FONSI is a bad legal precedent. Karen also stated that a mitigated FONSI is difficult to defend legally.

New Business

Barry Brayer asked for volunteers for a new issue/working group on the “open competitive process” addressed in the legislation. It was noted that the process will include consideration of the General Management Plan for each park, for example, how the park managers consider concessionaires. Members volunteering for this work group are Chip Dennerlein, either Germaine White or Richard Deertrack, Sue Gunn, Heidi Williams, and Elling Halverson.

Barry Brayer noted that the next meeting of the ARC would probably not take place until after the beginning of the year because of fiscal/budget considerations. One recommended site for the next NPOAG meeting is the new Native American Museum in Washington, D.C.

Several members of the audience made comments: Dick Hingson from Sierra Club reminded members that paragraphs (F) and (I) of the statute for the granting of IOA speak to protection of national park resources and improving protection of park resources. He expressed interest in how the ARC will address these issues. He also noted that it has been 10 ½ months since he asked for the 30 applications (later modified to 3 in April 2004).

John Dillon, GC Airlines, thanked the group and offered any assistance that his company could provide.

Maria Lurie from the Solicitor’s Office, NPS, introduced herself to the ARC.

Meeting was adjourned at approximately 4:30.

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