

**National Park Overflights Advisory Group Meeting  
May 16, 2012  
Hilton Garden Inn  
815 E. Mall Drive  
Rapid City, South Dakota, 57701**

The National Park Overflights Advisory Group (NPOAG) met May 16<sup>th</sup>, 2012 at the Hilton Garden Inn in Rapid City, South Dakota. The purposes of the meeting was threefold: to hear an overview of the National Parks Air Tour program from Federal Aviation Administration (FAA) Deputy Assistant Administrator Carl Bureson and National Park Service (NPS) Associate Director Bert Frost; to review and discuss new proposed and enacted legislation; and to receive updates on specific parks.

This summary provides a general overview of the meeting topics and discussion. While topics are provided in chronological order, some have been consolidated to represent discussion as a whole even though some topics may have received comments at different times during the day.

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## 1. Action Items

1. Barry Brayer intends to continue sending monthly email updates to NPOAG members
2. Barry Brayer will post openings in NPOAG membership via the Federal Register
3. NPOAG members should contact Barry regarding their interest in NPOAG membership nominations or renewals
4. Barry Brayer or Karen Trevino will update NPOAG members regarding Petrified Forest exemption
5. Barry Brayer will update NPOAG on scheduling a future NPOAG meeting in calendar year 2012
6. Karen Trevino will investigate and report on conflict between potential 'air tour fees' and recreational use fees
7. Karen Trevino will report to NPOAG which parks currently have pending Interim Operating Authority (IOA) modification requests
8. Karen Trevino will report to NPOAG on whether or not Mount Rushmore National Memorial is in a state of impairment

## 2. Introductions

NPOAG Chair Barry Brayer began the day with introductions from those present, announced that there would be time for public comment during the meeting, and mentioned that some attendees would depart at lunch.

Introductions included:

### NPOAG Members

- Alan Stephen, NPOAG member representing Air Tour Operators, Grand Canyon Airlines.
- Chip Dennerlein, NPOAG member representing environmental interests, Siskiyou Project (via phone).
- Dick Hingson, NPOAG member representing environmental interests, Sierra Club.
- Edward Dee, alternate to NPOAG member Ray Russell representing tribal concerns, Navajo Nation Parks and Recreation Department.
- Greg Miller, NPOAG member representing environmental interests, President and CEO American Hiking Society.
- Heidi Williams, NPOAG member representing General Aviation, Aircraft Owners and Pilots Association.
- John Becker, alternate to NPOAG member Elling Halvorson representing Air Tour Operators, Papillon Airways.
- Kirk Shaffer, alternate to NPOAG member Matthew Zuccaro representing Air Tour Operators, Senior Council from Crowell & Moring.

### Federal Aviation Administration

- Barry Brayer, Air Tour Program Senior Program Manager.
- Carl Burleson, Deputy Assistant Administrator, Policy, International Affairs, and Environmental Analysis.
- Lynne Pickard, Deputy Director, Office of Environment and Energy.
- Dick Bown, Manager, Rapid City Flight Standards District Office.
- Greg French, Aviation Safety Inspector, 135 Air Carrier Operations.

- Helen Serassio, Senior Attorney, US Department of Transportation (DOT).
- Keith Lusk, Air Tour Management Plan Program Manager.
- Lisa Holden, Attorney for ATMPs.
- Lorraine Herson-Jones, Attorney (via phone).
- Paul Joly, National Air Tour Safety Specialist, Las Vegas Flight Standards District Office (via phone).

#### National Park Service

- Karen Trevino, Chief, Natural Sounds and Night Skies Division (NSNSD).
- Bert Frost, Associate Director, Natural Resource Stewardship and Science
- Frank Turina, Manager, Policy, Planning and Compliance, NSNSD and Air Tour Management Plan Project Manager for Badlands National Park and Mount Rushmore National Memorial, NPS.
- Carla Mattix, General Council, Solicitor's Office, Department of the Interior (DOI).
- Eric Brunnemann, Superintendent, Badlands National Park.
- John Rollens, Chief, Aviation Management.
- Lelaina Marin, Planner, NSNSD (via phone).
- Megan McKenna, Acoustic Specialist, NSNSD
- Steve Thede, Deputy Superintendent, Badlands National Park.

#### Members of the Public

- Ann Carol, Helicopter Association International.
- Mark Francis, Red Tail Aviation.
- Mike Jacob, Black Hills Aerial Adventures owner.
- Gerard Baker, Former Superintendent, Mount Rushmore National Memorial.

#### Facilitation Staff

- Alan Foster, Triangle Associates.
- Bob Wheeler, Facilitator, President of Triangle Associates.
- Cherie Shantau-Wheeler, Director of Programs, US Institute for Environmental Conflict Resolution.

### **3. Welcoming Statement** **NPOAG Chair, Barry Brayer**

Barry Brayer, Senior Program Manager for the Federal Aviation Administration (FAA) welcomed everyone present and expressed gratitude for their attendance. Barry said that this was a very important meeting for FAA and NPS for implementation of the National Parks Air Tour Management Act and that the agencies value input from the NPOAG members present in the room and calling in over the phone. He reported that NPS and FAA have been working diligently over the last two years, are working together to find ways to move forward, and have made progress. This would be discussed later in the meeting when reviewing the recently-enacted FAA Modernization and Reauthorization Act of 2012 (FAA Reauthorization Act).

Barry noted that NPOAG members had previously identified jurisdictional issues as a major roadblock for the agencies and that the meeting would discuss the primary way that FAA and NPS are trying to

remove that roadblock. Barry then welcomed Carl Burluson, FAA Deputy Assistant Administrator, and Bert Frost, NPS Associate Director, Natural Resource Stewardship and Science to the meeting and announced that they would each give welcoming remarks, comments, and respond to questions.

Barry reported that federal agencies are operating under a tight budget, which will affect how many in-person NPOAG meetings can be held. Barry intends to continue to send monthly NPOAG updates throughout the year.

#### NPOAG Membership

Barry welcomed Rory Majenty for another term, Dick Hingson to his first official NPOAG meeting, and Kristen Brengel who has replaced Bryan Faehner. He also welcomed Edward Dee (alternate for Ray Russell) and John Becker (alternate for Elling Halvorson).

Barry reported that several NPOAG memberships would end later in 2012, specifically those of Ray Russell, Alan Stephen, Matt Zuccaro, Greg Miller, Chip Dennerlein, and Heidi Williams. Nominations for replacement or renewal of NPOAG membership can be sent directly to Barry.

#### Brief Update on National Parks Progress

Barry noted that since the last NPOAG meeting, public meetings for ATMPs for Haleakala, Hawaii Volcanoes and Mount Rainier National Parks have occurred. A Kapuna group meeting for the Hawaii Parks was held, as well as a tribal consultation for Mount Rainier. An ATMP scoping meeting and ATMP alternatives development meeting was held for Golden Gate National Park, where ATMP alternatives will go to public review this summer. A tribal consultation was held for Petrified Forest National Park and a meeting was held for Big Cypress National Preserve to develop alternatives.

#### **Steve Thede, Badlands National Park Deputy Superintendent**

Barry recognized Badlands Deputy Superintendent Steve Thede. Steve welcomed everyone on behalf of himself and Badlands Superintendent, Eric Brunnemann. Steve told the group that they are proud to support and be part of South Dakota tourism and that the Badlands National Park is one of the protected areas in South Dakota, along with Mount Rushmore, Wind Cave and Jewel Cave. Badlands National Park employees look at air tour management in terms of providing services to park visitors: some visitors want to see the park by air. Problems arising from this are a conflict between user groups: some visitors want to visit the park by air, while others who want to visit the park by foot may be impacted by air visitors. Because there is only one helicopter air tour operator flying over Badlands, the Park and the operator have been able to agree on a voluntary arrangement. When one party in the arrangement has a problem, they are able to simply call the other and talk it through.

Steve thanked everyone and hoped everyone would have a chance to visit the Badlands.

#### **4. Logistics Review**

##### **Bob Wheeler**

Facilitator Bob Wheeler reviewed the meeting logistics, ground rules, wireless network information, and meeting agenda. Bob asked that cell phones be turned off and announced that the meeting would be audio-taped for record-keeping purposes only. Bob asked those participating by phone to announce themselves when they had a question or comment, stated that he would recognize them to speak, and asked participants in the room to speak clearly for phone participants. Bob noted that Carl Burluson and Lynne Pickard would have to leave at lunch but that there would be opportunities to ask them questions

before noon. He reminded those present that there would be a tour of Mount Rushmore National Memorial after the meeting. Lastly, he reminded NPOAG members that one of their top priorities in their strategic plan is to make progress on jurisdictional issues, which would be the topic of much of this meeting.

## 5. Opening Comments

- Carl Burleson, FAA Deputy Assistant Administrator, Policy, International Affairs, and Environment
- Bert Frost, NPS, Associate Director, Natural Resource Stewardship and Science

### **Bert Frost**

#### **Associate Director for Natural Resource Stewardship and Science, NPS**

Bert Frost welcomed attendees and expressed gratitude for the opportunity to work with NPOAG in person. Bert told the group that he works in many diverse areas, so it is important for him to hear, firsthand, the group's concerns and hear how the group feels that air tour management can move forward for both the parks and individual NPOAG member interests. NPOAG has been working for many years and to date there have been few successes in trying to produce a final and implemented Air Tour Management Plan (ATMP). For that reason Carl and Bert agreed to become more actively involved in finding ways to move forward.

Bert explained that over the past year, FAA and NPS met in Washington D.C. several times. The meetings were held primarily to investigate the possibility of finding administrative solutions to longstanding roadblocks (such as jurisdictional issues), so the two agencies could finalize an ATMP while meeting their respective statutory obligations. Two and one-half meetings focused on this issue. After six months of deliberations, agency lawyers finally decided that within current legislation, there is no administrative solution that the agencies can implement that will meet their respective statutory obligations.

Bert informed the group that Senators Alexander and Wyden approached FAA and Department of Interior (DOI) requesting help drafting Senate Bill 1813 (the Alexander-Wyden Amendment). Simultaneously, the FAA Modernization and Reauthorization Act had passed. This Act includes provisions that will be discussed later in the meeting that could help FAA and NPS move forward with developing air tour agreements in small and medium sized parks.

Bert summarized that Congress has given FAA and NPS a job to do with air tours over national parks, but due to the respective agency obligations and legal constraints they are unable to accomplish that job. The FAA Reauthorization Act will allow the agencies to enter into 'voluntary agreements' with operators, and will allow certain parks to be exempt from the requirement to have an ATMP. Voluntary agreements with some smaller parks will show evidence that the agencies, with advice from NPOAG, are capable of accomplishing their tasks.

Bert acknowledged concern over how agency jurisdictional issues are handled in the Alexander-Wyden Amendment, and said some people have expressed concern that NPS will be able to create overly strict overflight rules that could jeopardize air tour operator business models. Bert stated that NPS has no interest in shutting down air tour businesses and that flying over national parks is an important way for visitors to experience parks. There are a variety of ways to visit parks and NPS wants to preserve all of them. Bert stated that NPS wants productive working relationships with air tour operators.

Bert reminded the group that NPS has a large number of business relationships and businesses operating in and around national parks now, including situations similar to air tours. There are over 575 different concession contracts and 6000 commercial use authorizations. The Alexander-Wyden Amendment will allow air tour operators to enter into a commercial use authorization letting them operate in a park, just like other park vendors. Bert acknowledged that this is a new concept and some concern exists about the change. He reiterated that he attended the meeting with air tour representatives to talk through these changes face to face.

### **Carl Burleson**

#### **Deputy Assistant Administrator for Policy, International Affairs and Environment, FAA**

Carl thanked those in attendance for their participation and affirmed that FAA and NPS want to ensure that all parties' interests are met. Carl explained that the meetings between FAA and NPS had started because Secretary Salazar had spoken with Secretary LaHood and was concerned that the ATMP process had not been working optimally. The meetings between FAA and NPS consisted of full and frank discussion to try and find common ground from which to make progress.

Carl acknowledged that FAA and NPS have different ways of viewing and managing processes and problems, but that the FAA Reauthorization Act has provided new tools, such as voluntary agreements, to help them move forward. If parks and operators can come together to create voluntary agreements on how to make management plans, this would be a great step forward and would save time and tax dollars. Carl noted that the IOA modification in the FAA Reauthorization Act was originally proposed in a NPOAG meeting. The Alexander-Wyden Act may also provide powerful leverage in how FAA and NPS reconcile large issues.

Carl noted that some people have seen the Alexander-Wyden Amendment as FAA walking away from its safety mission. He stressed that FAA is not walking away from any safety issues at all. In the section of the Act on Responsibilities and Authorities of the FAA Administrator (Administrator), it reads, *'nothing in this section shall be construed to exclude or limit or abdicated the Administrator's authority to ensure the safety and efficiency of the national airspace system'*. Carl affirmed that the FAA's role regarding safety and efficiency of the airspace system would not change.

Carl elaborated that the FAA has an entire department dealing with airport noise and that they work with airports to ensure that both economic and environmental concerns are met. Carl indicated that FAA is in a good position to tackle the same issues for air tours over national parks. FAA is open to ideas on how to move forward and understands that they don't have all the answers. Often, local communities are able to arrive at solutions faster than Washington D.C., and FAA is trying to help foster local discussions to allow that to continue.

Carl also pointed out that the Alexander-Wyden Amendment had not passed Congress so it is not clear yet how the bill will move forward. However, this shouldn't stop NPOAG, FAA, NPS and individual parks from having the kind of dialogue the bill is designed to create. Carl concluded that he hoped the dialogue would move forward based on advice from NPOAG.

### **Questions and Responses**

Bert and Carl responded to questions and comments from NPOAG members.

**Q:** Dick Hingson asked if FAA and NPS had talked about jurisdictional conflicts between them regarding the assessment of noise impacts. He noted that this was a major sticking point at the previous NPOAG meeting and one that had held up NEPA processes for years.

**A:** Bert replied that FAA and NPS had addressed this early in their meetings and agreed that there was no administrative solution available. Because of that, they felt a legislative solution was needed. Bert also explained that noise impact analysis (an area of disagreement between FAA and NPS that has held up ATMPs in the past) is part of the NEPA process. Because the FAA Reauthorization Act provides for parks with 50 or fewer overflights per year to be exempt from the ATMP process, those parks will not need to have a NEPA process. Bert explained that parks that employ voluntary agreements would also be able to bypass the NEPA process. Noise impacts would still be considered with voluntary agreement approaches or for parks that are exempt; however, the difference in agency NEPA processes which has held up ATMP agreements in the past would be circumvented. Bert noted that these two options, exemption and voluntary agreements, could be solutions for small and medium sized parks. For larger parks, Bert said, there needs to be more legislative aid to help sort out jurisdictional conflicts, and the Alexander-Wyden Amendment will provide that help.

**A:** Carl also replied that NPS and FAA have different science and data information that the agencies do not agree on. However, both NPS and FAA are required to agree in a NEPA process. For both NPS and FAA to agree during a NEPA process, one agency or the other would have to abandon their science and data. The FAA Reauthorization Act provides a solution to this impasse for small and medium size parks; the Alexander-Wyden Amendment may provide a framework for dealing with larger parks.

**Q:** Greg Miller noted that he appreciated the good faith effort put forward by FAA and NPS and asked if there has been explicit acknowledgment of the different cultures and different ways of serving constituencies between FAA and NPS. He explained that FAA has good experience dealing with people living around an airport in a permanent and sedentary long-term community, but that is very different than the NPS mandate to serve the American people as a whole to ensure that a quality natural and cultural experience will be achieved. This puts a large responsibility on both agencies to understand each other's limitations and responsibilities. Greg asked if FAA and NPS will recognize each other's mandates because that is where he felt trust needs to be built. He also specified that trust is a major requirement for voluntary agreements.

**A:** Carl responded that FAA and NPS have had very frank discussions and that there is a clear recognition that some issues will be difficult to address with the existing situation. Neither agency is saying that one of their mandates is more important than the other's. Carl said he understood skepticism after twelve years of NPATMA and NPOAG working on issues with little result, but that at this point there is a real possibility to make substantive progress.

**Q:** Chip Dennerlein noted that in previous meetings he had heard multiple terms used such as impacts, long term impacts, adverse impacts, and significant adverse impacts. Now there is a new term, 'compromising airspace safety', and Chip wondered if there was any possibility that the group would get stuck on definitions and semantics and, as a result, cease forward progress?

**A:** Carl replied that he was unaware of anyone referring to comprising airspace safety and he noted that the other terms Chip pointed out are typically terms used in NEPA and not in the 'safety world'. Carl also

state that he hopes the legislative steps taken will reassure all sides that FAA and NPS are working in good-faith collaboration.

## **6. Review of Senate Bill 1813, Alexander-Wyden Amendment Lynne Pickard**

Lynne Pickard reviewed key takeaways from pertinent pages in Senate Bill 1813, the Alexander-Wyden Amendment. As of the May 16, 2012 NPOAG meeting, this bill is pending.

### Key Takeaways by Section/Page - Senate Bill 1813

#### *Page 1647*

- Separates authority and responsibility between NPS and FAA.
- Gives authority to NPS, though very much in collaboration with FAA.
- Air tour permits would become the mechanism for ATMPs.
- Voluntary agreements are recognized.

#### *Page 1648*

- Ensures the authority of the Administrator.
- Confirms that the Administrator has authority to ensure that no action adversely affects aviation safety or the management of the national air space system.
- Eliminates the competitive bidding section in the original NPATMA because the same details are covered in other parts of the act.

#### *Page 1649*

- Note – the NPS Director (Director), *'in consultation of the Administrator, shall develop an air tour management plan'*. Lynne noted, by this section, FAA is not being taken out of the process.
- The Director has the lead role in consultation with FAA. Karen Trevino noted that relationships between FAA and NPS would continue, but NPS would take the lead role. The Bill language keeps as much of the original act as possible while streamlining the ATMP process.

#### *Page 1651*

- Provides exceptions for national parks with 50 or fewer flights each year. (This is also included in the recently enacted FAA Reauthorization Act.)

#### *Pages 1652, 1653*

- Exception applied to Crater Lake National Park. (This is also included in the recently enacted FAA Reauthorization Act.)

### Commentary on pages 1652 and 1653

Lynne explained that the current NPATMA gave FAA the 'lead agency' role and NPS a 'cooperating agency' role under NEPA for doing environmental reviews and determinations for ATMPs. There is case law surrounding the responsibilities for a 'lead agency' and 'cooperating agency', and with the existing law there is a sticking point surrounding noise determinations. Because in the existing law FAA is the lead agency, and because of disagreements with noise determinations, FAA is not in a position to use scientific information from another agency in a NEPA document. To develop a NEPA document based

only on NPS analysis poses ramifications for FAA when they address other NEPA processes for issues such as airport development and the rest of the airspace system.

A way to remove this conflict is to take FAA out of a lead role for NEPA compliance for air tours over national parks. The Bill proposes to do that, with the provision, *'The national park service director shall comply with the NEPA'* and no mention of FAA. It also provides a firewall between any determinations in the hands of the Director and aviation world by saying, *'any environmental threshold analysis impact determinations and conditions prepared or used by the Director to establish an air tour management plan or issue a permit under this section shall have no broader application or be given deference beyond this section.'* The intent is that what occurs for ATMPs under specific environmental conditions for air tours over national parks will apply only to national parks, not the rest of the aviation system.

*Pages 1654, 1655*

- FAA will cooperate in planning as noted, with language that plans *'may not have been found to have adverse effects on aviation safety or the management of the national airspace system by the Administrator'*.
- The Director must *'consult with the Administrator with respect to effects on aviation safety and the management of the national airspace system'*.
- More on consultation: *'The Director shall consult with the Administrator to ensure that any such amendments or revocations will not adversely affect aviation safety or the management of the national airspace system'*.

Lynne noted that the purpose of these is to ensure that the amendments don't negatively affect safety in the national airspace system.

*Page 1656*

- Specifies voluntary agreements, such as in the FAA Reauthorization Act.

*Page 1658*

- Regarding interim operating authority, *'Interim operating authority granted by the Administrator under this subsection, shall be known as an interim operating permit and be administered by the Director in accordance with the conditions of this subsection.'*

*Page 1663*

- Gives NPS authority to determine and assess fees for bringing air tours over national parks.

*Pages 1664, 1665, 1666, 1667*

- Because NPS will become the 'lead agency,' enforcement roles are adjusted. There are new provisions for civil penalties and enforcement.

Commentary on pages 1664, 1665, 1666, 1667

Karen Trevino noted that the language for penalties and enforcement was borrowed from other, currently-working laws. Presently, NPS has no ability or recourse for enforcement other than a long and complex process involving the Department of Justice. Adjustment of enforcement roles will make this less resource and time intensive.

Pages 1667, 1668

- Regarding authority of the Administrator, “nothing in this section shall be construed to limit or abrogate the Administrator’s authority to ensure the safety and efficiency of the national airspace system.”

Page 1672

- Authorizes the Director to retain NPOAG.
- Adds native Hawaiians to be represented on NPOAG.
- Resides chairmanship of NPOAG with NPS (instead of FAA/NPS alternating yearly), though FAA is retained as a member of NPOAG.

#### **Comments and questions on pages 1652 and 1653**

**Q:** Dick Hingson asked how the ‘firewall’ mentioned prevents impacts that go beyond a park.

**A:** Karen replied saying that the firewall does not extend to other lands per se; it goes to a half mile outside a park boundary. This legislation only targets air space over national parks for air tours, not other areas of aviation. This wouldn’t apply to anything other than airspace over national parks.

**Q:** Greg Miller commented that this legislation is a good development and asked what FAA and NPS will do if the legislation does not become law.

**A:** Carl replied that at this point there are no alternate plans.

**Q:** Chip Dennerlein noted that FAA takes enforcement seriously and asked if FAA would be reluctant to enforce ATMP conditions based on environmental determinations that FAA didn’t agree with, and if so how would NPS respond?

**A:** Lynne responded saying that there are specific provisions for penalties for enforcement and non-compliance.

#### **Comments and questions on page 1663 – Assessing Fees**

Karen explained that the Park Service underwrites the cost of developing ATMPs with FAA. Due to the Budget Reconciliation Act of 1993, only three units of the national park system can collect fees for air tours: Grand Canyon, Haleakala, and Hawaii Volcanoes. Those fees have not increased since 1993. With air tours now possible for most national parks, this provision was added to level the playing field for other parks that are seeing impacts from air tours.

**Q:** Alan Stephen stated that the new legislation looks as if air tour fees will be collected in addition to the recreational use fee that the Grand Canyon operators already pay. From his understanding, because Grand Canyon, Haleakala and Hawaii Volcanoes National Parks have not been excluded in the new legislation they will be assessed two fees. He also noted that there will be ATMPs for each individual park and that some air tour flights fly over multiple parks in a single flight. Would the operator pay a fee for each park?

**A:** Karen replied that NPS understood this fee to supersede the recreational use fee; however, NPS lawyers will review the matter. Karen reiterated that the NPS would work with parks, NPOAG, and air tour operators to make sure that fee collection is thoughtful and considerate.

**A:** Bert commented that this part of the bill allows NPS to collect fees. However, NPS has no intention of 'doubling' fees anywhere. There is a cost to creating ATMPs and managing tours over parks, which is paid for through normal park funds. This part of the legislation is an attempt to recoup that cost without creating undue burden on any user group. Fees would pay for ATMPs and managing tours over parks.

Alan Stephen suggested these kinds of issues could already have been addressed had NPOAG been brought into the process earlier. Karen noted that involving NPOAG would have been ideal, but having been asked to help draft this legislation by members of Congress it was impossible to involve stakeholders. However, the legislation itself is flexible and anticipates that NPOAG would be involved in sorting out specifics.

Kirk Shaffer agreed it is true that when a member of Congress asks for help drafting a bill, there is no way to engage stakeholders. However, he felt this legislation, and the provisions within it, are unfair because of the degree to which they have surprised and the impacts to the air tour industry. Kirk felt that NPOAG should have been discussing these issues before they were considered for inclusion in legislation.

Greg Miller asked if exempt parks would be subject to fees and how this relates to national park 'units.' Karen explained there are seventeen different designations for national parks, while they are all national park 'units' regardless of designation. The Alexander-Wyden Amendment applies to all national park 'units' and exempt parks are exempt from the whole act (not just ATMPs), so fees would not apply to them.

### **General Comments and Discussion**

Alan Stephen stated that he appreciated the good faith efforts and promises made by FAA and NPS, but that he does not support the Alexander-Wyden Amendment. He explained that in the Grand Canyon National Park, air tour operators have struggled with increasing restrictions on air tours for many years. Over several years, restoration goals went from fifty percent of the park to sixty seven percent to eighty percent. Alan stated that future FAA and NPS managers would not be beholden to promises and intentions voiced during the May 16<sup>th</sup>, 2012 NPOAG meeting. Further, FAA and NPS structure of NPOAG had provided a "check and balance" aspect that allowed for open ideas and discussion among NPOAG members. Alan agreed the NPOAG process had not worked optimally; but that he felt from the air tour operator point of view the Alexander-Wyden Amendment presents a setback, not advancement. Alan felt that FAA has not stood up for air tour operators in the past, so he has no confidence in FAA standing up for air tour operators in a reduced role.

Heidi Williams stated she had serious concerns also, and felt the Alexander-Wyden Amendment ceded FAA authority. Heidi felt that moving from a cooperating authority to a sole authority was a detrimental adjustment for NPATMA and that more air tour operators would be negatively impacted. Heidi expressed concern that if FAA's only role is safety, there will be no assurance of next generation air tour operators. Heidi felt that NPOAG needs to be utilized more in its advising capacity.

Alan Stephen expressed concern over how enforcement would move to NPS and how operating authority could be transferred under a commercial use permit. Karen replied that FAA and NPS want suggestions on how to improve violation enforcement, and any other suggestions NPOAG members have.

Kirk Shaffer commented that if the Alexander-Wyden Amendment is enacted as written, beginning with the Crater Lake exemption, it would result in a patchwork of different procedures (per park) across the country. With airports, he explained, an airport owner has almost no proprietary rights on and around that airport – this is to ensure operators know there are consistent rules across the whole airspace system. The Alexander-Wyden Amendment will create the opposite for operators flying over national parks. Kirk also wondered how FAA will be responsible for safety while divorcing safety from the regulation of routes and schedules, which are FAA and DOT expertise. Lastly, Kirk supported FAA's ability to analyze impacts from air traffic.

Lynne replied to Kirk, indicating she respected his views and heard what he said. She noted that Crater Lake is exempted in the FAA Reauthorization Act, which is now law. The Alexander-Wyden Amendment only repeats what is already enacted with regard to Crater Lake. She also noted that FAA has not regulated airline schedules since the Airline Deregulation Act, though FAA would still have authority to impact routes based on safety concerns. Lynne also commented that FAA has lost litigation surrounding analyzing impacts from airport projects affecting noise in national parks, and that courts have sometimes suggested that FAA should use NPS recommended analysis.

Karen Trevino also commented that not only has FAA lost some litigation with regard to national parks, but NPS has won many lawsuits in the same arena. The lawsuits that NPS has lost, Karen noted, were due to NPS not attempting to protect national parks aggressively enough. Park staff and FAA safety staff would create the route structure that would allow air tours to operate in a way that would not impact the park. First and foremost, those routes are determined by FAA.

Chip Dennerlein agreed there were questions and uncertainties about the legislation that need to be answered. He stated that he expects the NPS will issue some form of policy regarding fee collection that NPOAG will review and comment on. Chip also noted that Karen and Lynne have worked very hard on this legislation and he believed the legislation maintains the core intent of the original working group and NPATMA while also addressing some of NPOAG's key concerns. Chip stated that NPOAG's goal, which he paraphrases as '*a workable coordinated framework for tours over national parks,*' will be a fiction unless a new system is used to produce results.

#### **Public Comment**

Mark Francis (member of the public and Red Tail Aviation Owner) expressed appreciation for all the people working on these issues and for his relationships with both FAA and NPS. However, he felt the Alexander-Wyden Amendment is too vague for a business owner to feel comfortable. NPS has a dual mandate, protection and promotion of the national park, while FAA's dual mandate is safety and promotion of aviation. Mark felt that the Alexander-Wyden Amendment removes FAA's mandate to promote aviation.

Carl thanked Mark for his comments and noted that the FAA mandate was changed in 1996 to remove promotion of aviation. FAA's sole mandate is safety and efficiency. Carl commented that the Alexander-Wyden Amendment does not impact FAA's mandate for safety and efficiency and does not impact next generation operators as had been suggested. He also elaborated that FAA has dealt with the separation

of commercial aviation and private aviation since 1969 and that FAA has successfully managed and regulated the system for safety and efficiency without being involved in commercial relationships.

Bert commented that while aviation is unique, and NPS works with a lot of different interests such as cruise ships and concessioners that have some similarities to the air tour industry. He reported that NPS takes both preservation and visitor use very seriously, but if in conflict, resource preservation is more important. Visitor use has to be at the right location at the right times. Bert expressed understanding that national parks will be here for hundreds of years so planning now must incorporate a long-term vision.

## **7. Presentation on NPATMA Amendment Provisions Enacted in the FAA Modernization and Reauthorization Act of 2012**

### **Lynne Pickard**

Lynne Pickard reviewed a presentation that summarized portions of the recently enacted FAA Modernization and Reauthorization Act of 2012 that apply to NPATMA. This legislation is now law. *(Please see Attachment E for the complete presentation.)*

The topics covered in the presentation were:

1. Exemptions for Parks with 50 or Fewer Annual Flights
2. Voluntary Agreements
3. IOA Modifications
4. Operator Reports
5. Crater Lake National Park Exception

### **1) Exemptions for Parks with 50 or Fewer Flights**

Key takeaways from the legislative text include:

- Statutory exemption from NPATMA for national parks with 50 or fewer annual flights.
- The Director may withdraw the exemption for a park if the Director determines that an ATMP or voluntary agreement is necessary to protect park resources and values or park visitor use and enjoyment.
- The Director must inform the Administrator in writing of each determination to withdraw an exemption.
- The Director and Administrator must jointly publish a list of exempted parks each year.
- Air tour operators conducting tours at exempted parks must report each year to the Administrator and the Director on the number of air tour operations they conducted at the park during the preceding 1-year period.
- The current list of Exemptions for Parks with 50 or fewer flights per year is:

| <b>National Park</b>                    | <b>IOA</b> |
|---|------------|
| Big Bend National Park, TX              | 5          |
| Coronado National Memorial              | 5          |
| Fort Bowie National Historic Site, AZ   | 5          |
| Fort Davis National Historic Site, TX   | 5          |
| Hohokam Pima National Monument, AZ      | 5          |
| Organ Pipe Cactus National Monument, AZ | 5          |

|   |    |
|---|----|
| Rio Grande Wild and Scenic River                | 5  |
| Tumacacori National Historic Park, AZ           | 5  |
| Casa Grande Ruins National Monument, AZ         | 6  |
| Black Canyon of the Gunnison Nat'l Park         | 7  |
| Dinosaur National Monument, UT/CO               | 9  |
| Sequoia & Kings Canyon National Parks           | 10 |
| Lake Roosevelt National Recreation Area (T)     | 12 |
| Saguaro National Park                           | 12 |
| Capulin Volcano National Monument, NM           | 13 |
| Mojave National Preserve                        | 15 |
| Great Sand Dunes National Park and Preserve     | 16 |
| Salinas Pueblo Missions National Monument, NM   | 17 |
| Carlsbad Caverns National Park, NM              | 18 |
| Guadalupe Mountains National Park, NM           | 18 |
| San Juan Island National Historical Park        | 20 |
| Devils Tower National Monument                  | 22 |
| Gila Cliff Dwellings National Monument          | 26 |
| Pipe Spring National Monument                   | 26 |
| Hubbell Trading Post National Historic Site, AZ | 27 |
| Fort Union National Monument, NM                | 32 |
| Pecos National Historic Park, NM                | 32 |
| El Malpais National Monument                    | 43 |
| El Morro National Monument                      | 43 |
| Petroglyph National Monument, NM                | 45 |
| Petrified Forest National Park                  | 46 |
| Wupatki National Monument                       | 46 |
| Walnut Canyon National Monument                 | 49 |

NPS is developing internal criteria for withdrawing a park from exemption. Parks may be subtracted from this list not only because they exceed the 50 annual flight limit, but also for specific protection reasons.

Flights per year will be calculated from October 1<sup>st</sup> through September 30<sup>th</sup> of the following year.

## 2) Voluntary Agreements

Key takeaways from the legislative text include:

- A voluntary agreement is a discretionary alternative to an ATMP - it is not a requirement.
- The Director and Administrator may enter into a voluntary agreement with an air tour operator with current IOA or a new entrant operator.
- A voluntary agreement shall address management issues necessary to protect park resources and visitor use, without compromising aviation safety or the air traffic control system.
- A voluntary agreement may include provisions that could also be included in an ATMP.
- A voluntary agreement may include provisions to ensure the stability of, and compliance with, the agreement.
- A voluntary agreement may provide for fees.

- The Director and Administrator shall provide an opportunity for public review of a proposed voluntary agreement and consult with any Indian tribe whose lands may be overflowed. After this opportunity for public review and consultation, the voluntary agreement may be implemented without further administrative or environmental process.
- A voluntary agreement may be terminated at any time at the discretion of the Director if the Director determines the agreement is not adequately protecting park resources or visitor experiences; or by the Administrator, if the Administrator determines that the agreement is adversely affecting aviation safety or the national aviation system.
- If a voluntary agreement is terminated, operators shall conform to IOA until an ATMP for the park is in effect.

### 3) IOA Modifications

This introduces more flexibility in how the agencies approach requests for IOA modifications, both for existing operators and new entrants.

Key takeaways from the legislative text include:

- Modifications to IOA for existing operators and new entrants may be allowed without NEPA review.
- Modifications may be allowed if: adequate information regarding existing and proposed operations is provided to the Administrator and Director; the Administrator determines there would be no adverse impact on aviation safety or the air traffic control system; and the Director agrees with the modification, based on professional expertise of the Director regarding the protection of the resources, values, and visitor use and enjoyment of the park.

These amendments do not eliminate specific qualifications that are currently in NPATMA. IOA as a whole must still meet the NPATMA statutory test of promotion and protection of park resources, visitor experience, and tribal lands, as well as promote safe air tour operations.

Karen noted there are currently several IOA modification requests pending. These requests were received over a number of years and will be signed by Bert Frost.

Dick Hingson asked which parks have IOA modification requests; Karen will respond to this separately after the meeting.

### 4) Operator Reports

Key takeaways from the legislative text include:

- Each air tour operator conducting a tour over a national park under IOA, an ATMP, or a voluntary agreement is required to submit a report to the Administrator and Director of the number of air tour operations over each park in addition to other information the Administrator and Director may request in order to administer the air tour program.
- The Administrator and Director shall jointly issue an initial request for reports no later than 90 days after the date of enactment of FAA Reauthorization Act.
- Reports shall be submitted with a frequency and in a format prescribed by the Administrator and Director.

Notes for Operators Reports include:

- ◇ A May, 2012 Federal Register notice details reporting requirements.
- ◇ The first quarter of data collection begins Oct 1, 2012 and ends Dec 31, 2012.
- ◇ Reports are due to FAA and NPS no later than 30 days after reporting period closes (first report due Jan 30, 2013).
- ◇ Information requested for each flight includes date and time of departure, "N" number, aircraft make / model / series, departure airport / helipad, route, and park overflown.
- ◇ Quarterly reporting requirement and details do not apply to operators at exempt parks. They need only report on an annual basis the number of operations they conducted in preceding year.
- ◇ An Excel spreadsheet reporting template has been developed (example below).
- ◇ Operators can download the report template from FAA or NPS websites.
- ◇ Operators enter data into the Excel spreadsheet template and submit concurrently to FAA and NPS via email.

A possible report template could look like:

|  |                |            |                     |                           |              |                                    |            |
|--|----------------|------------|---------------------|---------------------------|--------------|------------------------------------|------------|
| Operator/Company Name:<br>dba (doing business as):<br>Certificate Designator:<br>Reporting Period: July 1 to September 30 Year: 2012 |                |            |                     |                           |              | <b>FAA and NPS Information</b>     |            |
|  |                |            |                     |                           |              | Name of Assigned POI:              |            |
|  |                |            |                     |                           |              | Name of Assigned FSDO:             |            |
|  |                |            |                     |                           |              | FSDO Phone No.:                    |            |
|  |                |            |                     |                           |              | National Park Service Unit(s):     |            |
| <b>Notes</b>   |                |            |                     |                           |              |                                    |            |
| 1  |                |            |                     |                           |              | <b>Departure Airports/Helipads</b> |            |
| 2  |                |            |                     |                           |              |                                    |            |
| 3  |                |            |                     |                           |              |                                    |            |
| 4  |                |            |                     |                           |              |                                    |            |
| 5  |                |            |                     |                           |              |                                    |            |
| 6  |                |            |                     |                           |              |                                    |            |
| <b>Data Submission</b>   |                |            |                     |                           |              | <b>Routes Flown</b>                |            |
| For Each Operation, Fill in the Requested Information Below<br>NOTE: Mouse-over below for further guidance                           |                |            |                     |                           |              | Code                               | Route Name |
| Departure Date   | Departure Time | "N" Number | Aircraft Make/Model | Departure Airport/Helipad | Flight Route |                                    |            |
|  |                |            |                     |                           |              |                                    |            |
|  |                |            |                     |                           |              |                                    |            |
|  |                |            |                     |                           |              |                                    |            |

**5) Crater Lake National Park Exemption**

Key takeaway from the legislative text:

- An application to begin commercial air tour operations at Crater Lake National Park may be denied by the Director of NPS, without the establishment of an ATMP, if the Director determines that such operations would adversely impact park resources or visitor experiences.

Crater Lake National Park Exemption notes:

- ◇ NPS has sole jurisdiction with respect to this provision.
- ◇ One such application has been received from Leading Edge Aviation, Inc. for 300 operations annually.
- ◇ NPS is in the process of making a determination.

**NPOAG Comments:**

Dick Hingson noted that exemptions are a process wherein the agency and public can decide together whether commercial air tours are appropriate. Because of this, decisions that are inappropriate could potentially be made. Dick asked who has final authority in this matter.

Barry replied that the Director can revoke an exemption.

Karen Trevino commented that Petrified Forest is being considered and its exemption may be revoked because several issues have been brought forward. However, no decision has been made. Karen clarified that withdrawing the park's exemption would not result in a ban; it would result in the park requiring an ATMP or voluntary agreement.

**Public Comments:**

Mark Francis expressed concerns about a voluntary agreement because it can be terminated at any time, while an ATMP provides more stability. He wondered why an owner or operator would be motivated to participate in a voluntary agreement if it provided less certainty than an ATMP.

Karen Trevino replied that there would be nothing precluding a voluntary agreement from becoming an ATMP other than moving through NEPA. Lynne Pickard also responded saying that statutory language protects an exit strategy for both operators and the agency. For practical purposes, Lynne felt that all parties included in a voluntary agreement would want that agreement to work and be sustainable. Addressing business certainty, the existing statutory language that protects an exit strategy for both operators and the agency exists for both voluntary agreements and ATMPs, so there is no difference in that regard.

Mark Francis noted that other concession permits add value to people's businesses in that they provide some amount of certainty, assuming the business owner continues to meet certain requirements.

Lynne Pickard responded that voluntary agreements would work in the same way. Bert also responded saying that if an owner sold the business or stopped complying, the agreement could be terminated by either the agency or the operator. However, termination would be used under very rare circumstance.

**Questions regarding Reporting:**

Karen Trevino commented that NPS is open to finding new ways to make reporting easier for air tour operators. NPS is open to any suggestions on how to obtain reported information so that air tour operators wouldn't be required to use the Excel format reporting discussed above. For example, there are types of electronic reporting, such as GPS reporting, that could automate data collection.

Alan Stephen commented that GPS versions of data reporting generate a lot of data depending on the ping rate and that it could simply be too much data to manage effectively. Alan also explained that with GPS-pinged data, NPS would only have information about specific coordinates where a ping occurs but that would not account for a plane flying in a specific arc. Further, GPS communication is frequently used more for safety reasons than anything else.

John Becker noted that satellite GPS tracking can cost up to seven cents per ping, which could easily result in higher costs than filing a report every three months.

Mark Francis commented that his planes fly over much more than national parks, which would cause complications for automated data collection and reporting.

Heidi Williams commented that smaller operators wouldn't have the technology for automated reporting and some flights leave transponder range.

Jon Rollins noted that federal planes and park service aircraft have good transponder equipment. However, that equipment is expensive and smaller operators probably do not have it.

John Becker noted that some flights travel in areas outside of satellite communications, which could result in less information being collected instead of more.

## **8. Review of Categorical Exclusion Process for ATMPs**

### **Keith Lusk and Frank Turina**

Keith Lusk and Frank Turina reviewed a presentation on the Categorical Exclusion (CE) Process for ATMPs. Each agency will have separate responsibilities. This presentation included the:

- CE Process
- ATMP Rulemaking
- FAA's CE Process
- NPS's CE Process

CE is separate from the legislative exemption for parks with 50 or fewer flights. (*Please see Attachment F for the complete presentation.*)

Keith explained that FAA and NPS investigated a CE process as a means to conserve FAA and NPS resources. The agencies believe this would target low-activity parks. However, with FAA Reauthorization Act exempting parks with fewer than 50 flights per year, the agencies can look at applying a CE process to other parks.

Presentation Highlights:

#### The Categorical Exclusion Process

- A CE is a category or kind of action that has no significant individual or cumulative effects on the quality of the human environment.
- FAA and NPS jointly developed a Categorical Exclusion (CE) guidance document using each agency's respective NEPA guidance.
- Each agency independently determines if a proposed ATMP qualifies for a CE using its own NEPA guidance.
- If agencies agree that the proposed ATMP can be categorically excluded, FAA will prepare an environmental decision document that is co-signed by FAA and NPS.
- NPS will propose candidate parks for a CE process.
- FAA and NPS will form an interdisciplinary team (IDT) with various program staff and appropriate subject matter experts.
- IDT will hold a kick off meeting.
- IDT will conduct internal scoping to gather information about existing conditions, define issues, and define data needs.

- IDT will develop an outreach strategy to include how and when to consult with affected agencies, and/or tribes, stakeholders, and interested public.
- At least one public meeting must be held to meet requirements of NPATMA.
- FAA and NPS will jointly develop the description of the proposed ATMP.
- Air tour operators may submit applications for Operating Authority (OA) to request a different allocation or different total OA for the ATMP. Applications for OA should include information regarding the relevant factors for competitive bidding as required under NPATMA.
- FAA Flight Standards reviews the proposed ATMP to determine if it meets regulatory standards.
- FAA and NPS will each follow their respective agency's guidance to determine if the proposed ATMP qualifies for a CE.
- Upon satisfaction that both FAA and NPS can support a CE, FAA will develop an environmental decision document in coordination with NPS that meets both agencies' needs, acknowledging each agency's independent NEPA review without deferring to agency-specific criteria.
- The environmental decision document will be signed by FAA and NPS.

Lynne explained that the CE environmental document does not have to include the same type of detailed environmental analysis used in other processes, because the agencies can conclude that there are not potentially significant impacts. This avoids the conflict the agencies have experienced under NEPA where FAA cannot support NPS noise analysis, and NPS cannot support FAA noise analysis, yet both agencies have to sign the same document. Instead, there is only enough information that both agencies independently explored in order to affirm that the level of detail required under NEPA is not necessary.

#### ATMP Rulemaking and Implementation

- FAA will publish a Notice of Proposed Rulemaking (NPRM) for the proposed ATMP. The NPRM will include the CE determinations and regulatory language.
- FAA will draft the NPRM and proposed ATMP in coordination with NPS, assuring that drafting does not change terms of the proposed ATMP.
- FAA will publish the NPRM with a 45 (or 60) day comment period. The NPRM will include the proposed ATMP.
- FAA will consider NPRM comments in consultation with NPS. Changes to the proposed ATMP will be reviewed by both agencies for continued applicability of the CE. ATMP changes must be acceptable to both agencies.
- FAA will publish the Final Rule with the final ATMP in the Federal Register that reflects the final agreed upon ATMP.
- FAA amends air tour operators' Operational Specifics/Letter of Authorization to reflect ATMP.

#### FAA Categorical Exclusion Process Responsibilities

- FAA will use categorical exclusion 312f for regulatory actions identified in FAA Order 1050.1E, *'Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment).'*
- A determination of whether a proposed action, that is otherwise categorically excluded, requires an environmental analysis (EA) or environmental impact statement (EIS) depends on whether the proposed action involves extraordinary circumstances.
- Extraordinary circumstances exist when the proposed action (1) involves any of the following circumstances\* and (2) may have a significant effect. Both conditions (1) and (2) must be present to preclude use of a CE.

- \* includes adverse effects on cultural resources, impact on noise levels of noise-sensitive areas, impact on natural, ecological, or scenic resources of Federal, Tribal, State, or local significance, etc.

#### NPS Categorical Exclusion Process Responsibilities

- NPS will use an environmental screening form (ESF) to ascertain the important environmental issues and determine if exceptional circumstances exist.
- NPS will contact federal, state, and local agencies and interested and affected public to obtain input.
- A categorical exclusion form (CEF) will include that no exceptional circumstances exist. The CEF will identify the CE used and the ESF will be attached.
- Several CE's may apply but most applicable is 3.4.A.8.
  - 3.4.A.8 states, "*Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:*
    - a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,*
    - b. Introduce non-compatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it,*
    - c. Conflict with adjacent ownerships or land uses, or*
    - d. Cause a nuisance to adjacent owners or occupants."*
- An EA must be prepared if extensive mitigation is required to avoid triggering an exceptional circumstance.

#### Questions and Comments:

Alan Stephen asked why FAA or NPS is qualified to manage the CE process when every national park has its own local constituency.

Bert replied that it's the National Park Service's job to promote the CE process and that the goal is to find parks where a CE process will be feasible.

Kirk Shaffer asked how the two agencies would find agreement on a CE process when the two agencies are at an impasse regarding noise analysis methodology.

Karen Trevino replied that a CE process would not require the detailed noise analysis that a NEPA process would. She elaborated that the noise impasse is at two points. FAA uses a community noise standard that NPS doesn't feel is appropriate. NPS wants a mission driven methodology and FAA is not comfortable with NPS data and standards and the implications of agreeing with NPS data and standards. Karen noted that if a park needed a deep level of detail in noise analysis it would move from a CE process to an EA process.

Barry Brayer explained that if FAA and NPS do a CE process, they will not do an analysis of the noise. Instead, all the two agencies need to agree on is that a park in question fits the categorical exclusion category.

At this point in the day Carl Burlison, Lynne Pickard, and Helen Serassio departed for the day. Carl expressed appreciation for everyone's views. He stated that he understands that some interests are not thrilled about what has been discussed today. He wants to hear more from NPOAG members about

their concerns and interests. Carl stated that he has an open door policy and NPOAG members can contact him. He expressed his belief that they FAA and NPS are working to define a good path forward and he reiterated his own commitment to moving forward over the next several years.

Barry thanked Carl, Lynne and Helen for attending and providing valuable input into the meeting and for responding to comments and questions. Due to the departure, the meeting adjourned for lunch.

## **9. ATMP Park Updates Presentation**

### **Keith Lusk**

Keith Lusk presented an overview and update on recent park activities. *(Please see attachment G for the complete presentation.)*

#### **Mount Rushmore National Memorial (MORU)**

- Internal review of preliminary draft ATMP EA is on hold pending resolution of higher level agency issues.
- FAA and NPS are meeting to discuss the possibility of a voluntary agreement.

#### **Comments**

Karen Trevino thanked everyone for their hard work and stated that the work done at MORU is a model that can be replicated nation-wide.

Dick Hingson asked if NPS considers MORU in a state of impairment. Karen replied that the park superintendent makes that decision. Bert commented that NPS has some analysis that shows concern, but any impairment documentation was always in draft form. Karen indicated she would investigate whether MORU is considered impaired or not and will update NPOAG.

#### **Badlands National Park (BADL)**

- ATMP was on hold for South Unit General Management Plan largely due to concerns expressed by the Oglala Sioux Tribe.
- FAA and NPS met with the park and Oglala Sioux Tribe last year to discuss options to move forward.
- FAA and NPS will discuss the possibility of a voluntary agreement.

#### **Haleakala (HALE)**

- HALE preliminary draft alternatives were released for public review and comment from April to June of 2011.
- FAA and NPS are preparing refinements to preliminary alternatives based on public comments.

#### **Hawaii Volcanoes (HAVO)**

- HAVO preliminary draft alternatives were released for public review and comment from April to June of 2011.
- FAA and NPS preparing refinements to preliminary alternatives based on public comments.

Both HALE and HAVO are proceeding with EIS's and the public is vetting the range of alternatives moving forward. Public meetings were held and public comments received; less than 150 comments were received between both parks.

### **Death Valley (DEVA)**

- Preliminary alternatives have been developed and sent to the Aviation Rulemaking Committee.
- Work has started on an environmental document.
- DEVA is a candidate for Categorical Exclusion.
- DEVA actual annual operations might come in under 50.

#### **Comments**

Karen Trevino commented that it is unfortunate that DEVA became problematic and that a voluntary agreement should be considered if a CE cannot be done.

Dick Hingson asked if banning overflights is an option for DEVA.

Karen Trevino thought that if there is a voluntary agreement then a ban would not be an option. The superintendent of the park has previously said that a ban would have been feasible; however, there may currently be uses for some flights. A quasi-voluntary agreement was started before the FAA Reauthorization Act was approved and some stakeholders have already been included in discussions.

### **Mt Rainier (MORA)**

- Preliminary alternatives were released for public review and comment in March of 2011.
- Public meetings and a tribal meeting were conducted in April of 2011.
  - 311 comments received.
- MORA is moving forward with a traditional ATMP.
- Next steps include:
  - Holding follow-up teleconference with FAA/NPS to refine alternatives.
  - Developing an environmental document.
- IOA is at 114 flights per year.

### **Acadia (ACAD)**

- ACAD is a potential candidate park for a voluntary agreement.
- A kickoff meeting is tentatively scheduled in the fall of 2012.

#### **Comments**

Frank noted there has been little activity with ACAD and that there are only two operators. The park is on good terms with the operators; however, the mayor of Bar Harbor (a small City intertwined with Acadia itself) has expressed concerns about air tours and their impacts on Bar Harbor itself.

### **Statue of Liberty (STLI) / Governors Island (GOIS)**

- A kickoff meeting was held on October 15, 2009
- FAA and NPS met with Congressman Jerrold Nadler's office on November 18, 2010.

- FAA and NPS will discuss development of separate ATMPs for Statue of Liberty and Governors Island National Monuments.

#### **Golden Gate / Point Reyes / Muir Woods / SF Maritime (GOGA / PORE / MUWO / SAFR)**

- A kickoff meeting and field trip was held on September 16-18, 2010.
- Scoping took place from July 28 to October 21, 2011.
- Public meetings were held on August 16-17, 2011.
  - 340 comments were received.
- An Alternatives Development Meeting was held on February 13-14, 2012.
- Next steps include:
  - An FAA/NPS team will develop preliminary alternatives based on public input and internal scoping.
  - Public comment on alternatives is tentatively scheduled for October and November of 2012.

#### **Petrified Forest (PEFO)**

- Preliminary alternatives have been developed.
- Tribal meetings with Navajo, Zuni, & Hopi, to brief them on alternatives, were held in February and April of 2012.
- PEFO is exempt from ATMP (46 IOA) per the FAA Reauthorization Act.
- NPS is looking at multiple options to move forward.

#### **Big Cypress (BICY)**

- Preliminary alternatives have been developed.
- BICY is moving forward with a potential voluntary agreement.
- Next Steps include:
  - Setting up a meeting with operators to discuss the contents of a voluntary agreement.
  - Consultation with tribes regarding a voluntary agreement.
  - A public review and comment (including public meetings) regarding a voluntary agreement.
- There are potentially two tribes to consult with.

### **10. Additional Topics Identified by FAA, NPS, NPOAG**

- FAA identified no additional topics.
- NPS identified no additional topics.
- NPOAG identified no additional topics.

Review and acceptance of the 2011 Orlando NPOAG meeting:  
The 2011 NPOAG meeting summary was approved by consensus.

### **11. Public Comment**

The NPOAG meeting was opened to public comment:

Mark Francis commented that he has concerns regarding the Alexander-Wyden Amendment and that he will talk with his representatives about them. He also stated the CE process removes part of the group's obligations and that the voluntary agreement process would remove even more the group's obligations. ATMPs are a thorough and ground-truthing process involving work from both agencies. CEs and voluntary agreements remove much of the work done in an ATMP process. They change many of the agency's' responsibilities.

Karen Trevino thanked Mark for his honesty and stated that she did not want anyone left with the impression that NPS and FAA are ducking any responsibilities or hard work. Currently the agencies are targeting 'low-hanging fruit,' but the agencies will continue to work harder to resolve issues as well. Karen explained that for many years NPOAG and others were suggesting that the jurisdictional issue was the most significant issue and the item that was preventing ATMPs from being adopted. Now there is legislation to address the jurisdictional issue.

Greg Miller commented that what was heard at this meeting was exceptional and thanked Bert and Carl for their open candor. He expressed hope that much of the recent progress would help the agencies and NPOAG turn a corner. He stated that he understood that there are both business and environmental concerns to work out but that the process is moving in the right direction.

Alan Stephens stated that NPATMA came from experience with Grand Canyon National Park. NPATMA and other legislation state that, regarding air tours over national parks, NPS will propose solutions and FAA will implement them. In these pieces of legislation we've talked about today, Alan stated, FAA has given up every element of any role including enforcement. FAA would be passive and the process from here is ill defined. There is a lot of work that needs to be on this before the agencies will find comfort from the air tour interests in this process.

Karen Trevino responded that FAA was never going to have any major role in enforcing ATMPs and that FAA doesn't have enough regulators. Karen suggested that the Alexander-Wyden Amendment is a solution to this problem.

## **12. Closing Comments**

Bert commented that he had been working in Washington D.C. for seven years and with NPOAG for several years as well. In Washington there are many intractable issues, but with NPOAG he expressed the hope that there could be a longstanding fix. While issues remain, he indicated his hope that these can be resolved and committed to working until resolution is reached. There are issues with the Alexander-Wyden Amendment; however, it can be used not as an impediment but as a tool to move us forward.

Barry Brayer closed the meeting by thanking those in attendance. He commented that until the agencies had some of the new tools created in the FAA Reauthorization Act, they had been kicking the problem down the road with regard to the jurisdictional issue discussed during the meeting. There would be a Federal Register update regarding the exempt parks and reporting requirements and time will tell how the agencies manage with the new tools. Barry expressed his sense of optimism and stated that the agencies will continue to need NPOAG input.

Barry also stated that he hoped everyone in attendance learned something new and valuable during the meeting. The agencies have come a long way and NPOAG has been a vital component of that progress. NPOAG is always free to communicate with their representatives (as individuals, not as NPOAG members). Barry said he takes to heart the concerns of the industry, environmental, and tribal interests and that there are many stakeholders with many concerns. Ultimately the agencies would like to find a mutually agreeable solution with the entire community that serves the entire community. Barry stated that this is FAA's goal and asked NPOAG to please continue to assist both agencies. FAA and NPS will continue to work together and Barry said that he looks forward to continued collaboration.

Barry stated that he had not scheduled another meeting yet but that he intends to continue sending monthly updates to NPOAG members throughout the year. At the appropriate time, another NPOAG meeting will be held either in person or via conference call. Barry reminded everyone that a tour of Mount Rushmore was scheduled after the meeting that he hoped everyone would have a chance to participate.

The meeting adjourned at 4:00 p.m.

### **13. Attachments**

- a. May 2012 NPOAG Meeting Agenda
- b. Attendance List
- c. Pages from Senate Bill 1813
- d. Redline changes to NPATMA from Senate Bill 1813
- e. Presentation slides on NPATMA Amendments in FAA Reauthorization Act
- f. Presentation Slides on Categorical Exclusion Process for ATMPs
- g. Presentation Slides on Park Updates

**National Park Overflights Advisory Group Meeting**  
**May 16, 2012**  
**Hilton Garden Inn**  
 (Garden Pavilion C)  
**815 E. Mall Drive**  
**Rapid City, South Dakota, 57701**

**Purpose:**

The purpose of this National Park Overflights Advisory Group (NPOAG) meeting is to hear an overview of the National Parks Air Tour program from FAA Deputy Assistant Administrator Carl Burleson and NPS Associate Director Bert Frost; review and discuss new proposed and enacted legislation; and receive updates on specific parks.

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**(All Times – Mountain Daylight Time)**
**May 16, 2012**

- |          |  |
|----------|--|
| 8:00 am  | Welcome and Introductions (Barry Brayer, Karen Trevino)<br>(Eric Brunnemann, Superintendent, Badlands National Park)   |
| 8:15 am  | Overview of FAA/NPS Cooperative Approach to Air Tour Program<br><br>Carl Burleson<br>Deputy Assistant Administrator for Policy, International Affairs and Environment, FAA<br><br>Bert Frost<br>Associate Director for Natural Resource Stewardship and Science, NPS<br><br>Question and Response period       |
| 9:00 am  | Senators Alexander and Wyden Proposed NPATMA Amendments (Lynne Pickard/Karen Trevino)<br><br>Question and Response period  |
| 9:30 am  | Break  |
| 9:45 am  | NPATMA Amendment Provisions Enacted in FAA Reauthorization (Lynne Pickard/Lisa Holden/Karen Trevino/Carla Mattix) <ul style="list-style-type: none"> <li>• Exempted parks</li> <li>• Voluntary agreements</li> <li>• IOA modifications</li> <li>• Operator reports</li> <li>• Crater Lake provision</li> </ul> |
| 11:00 am | Categorical exclusion process for ATMPs (Keith Lusk, Frank Turina)   |

- 11:30 am Additional Questions and Response
- 12:00 noon Lunch
- 1:30 pm Review and acceptance of Orlando NPOAG meeting summary
- 1:45 pm Park Updates
- Mt Rushmore (MORU)
  - Badlands (BADL)
  - Hawaii Volcanoes (HAVO)
  - Haleakala (HALE)
  - Death Valley (DEVA)
  - Mt Rainier (MORA)
  - Acadia (ACAD)
  - Statue of Liberty (STLI) / Governors Island (GOIS)
  - Golden Gate / Point Reyes / Muir Woods (GOGA / PORE / MUWO)
  - Petrified Forest (PEFO)
  - Big Cypress (BICY)
- 2:45 pm Additional Topics as identified by FAA or NPS
- Potential Break
- Public Comment (preliminarily scheduled for 4:15 pm, may be moved earlier if FAA and/or NPS have no additional topics)
- 5:00 pm Adjourn (meeting may adjourn earlier depending on additional topics)

**National Park Overflights Advisory Group  
May 16, 2012**

**Attachment B  
Meeting Attendee List**

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|  | <b>Name</b>           | <b>Affiliation</b>  | <b>Email</b>   |
|--|-----------------------|---|--|
| <b>NPOAG MEMBERS</b>                   |                       |   |  |
| 1                                      | Alan Stephen          | Fixed-Wing Air Tour Operator Representative   | alan.stephen@papillion.com                                 |
| 2                                      | Chip Dennerlein       | Environmental Interests   | cdennerlein@me.com   |
| 3                                      | Dick Hingson          | Sierra Club   | dhingson@infowest.com                                      |
| 4                                      | Edward Dee            | Navajo Nation Parks and Recreation  | edee77@gmail.com   |
| 5                                      | Gregory Miller        | American Hiking Society   | gmiller@americanhiking.org                                 |
| 6                                      | Kirk Shaffer          | Helicopter Association International  | kshaffer@crowell.com                                       |
| 7                                      | Kristen Brengel       | National Parks Conservation Association   | kbrengel@nps.gov   |
| 8                                      | Heidi Williams        | Aircraft Owners and Pilots Association  | heidi.williams@aopa.org                                    |
| <b>FEDERAL AVIATION ADMINISTRATION</b> |                       |   |  |
| 9                                      | Barry Brayer          | Air Tour Program Senior Program Manager<br>NPOAG Chair, 2012                                      | barry.brayer@faa.gov                                       |
| 10                                     | Carl Burleson         | Deputy Assistant Administrator, Policy,<br>International Affairs, and Environmental<br>Analysis   | carl.burleson@faa.gov                                      |
| 11                                     | Lynne Pickard         | Deputy Director, Office of Environment and<br>Energy  | lynne.pickard@faa.gov                                      |
| 12                                     | Dick Bown             | Local Area Flight Standards District Officer  | dick.bowen@faa.gov   |
| 13                                     | Greg French           | Air Carrier Division  | gregory.french@faa.gov                                     |
| 14                                     | Helen Serassio        | Senior Attorney, US Department of<br>Transportation   | helen.serassio@dot.gov                                     |
| 15                                     | Keith Lusk            | Air Tour Management Plan Program Manager  | keith.lusk@faa.gov   |
| 16                                     | Lisa Holden           | Attorney for ATMPs  | lisa.holden@faa.gov  |
| 17                                     | Lorraine Herson Jones | Attorney  | lorraine.herson-jones@faa.gov                              |
| 18                                     | Paul Joly             | Las Vegas Flight Standards District Office  | paul.a.joly@faa.gov  |
| 19                                     | Larry Tonish          | Air Tour Management Program   | larry.tonish@faa.gov                                       |
| <b>NATIONAL PARK SERVICE</b>           |                       |   |  |
| 20                                     | Karen Trevino         | Division Chief for Natural Sound and Night Skies<br>Division                                      | karen_trevino@nps.gov                                      |
| 21                                     | Bert Frost            | Associate Director for Natural Resource Division  | <a href="mailto:bert_frost@nps.gov">bert_frost@nps.gov</a> |
| 22                                     | Frank Turina          | Policy Manager, Project Manager for Badlands<br>National Park and Mount Rushmore National<br>Park | frank_turina@nps.gov                                       |
| 23                                     | Carla Mattix          | General Council, Solicitor's Office, Department<br>of Interior                                    | carla.mattix@sol.doi.gov                                   |
| 24                                     | Eric Brunnemann       | Superintendent, Badlands National Park  | eric_brunnemann@nps.gov                                    |
| 25                                     | Gerard Baker          | Former Superintendent at Mount Rushmore<br>National Park  | gerard_baker@nps.gov                                       |

|           |                |   |                       |
|-----------|----------------|---|-----------------------|
| <b>26</b> | John Rollins   | Aviation Branch Chief                         | john_rollins@nps.gov  |
| <b>27</b> | Lelaina Marin, | Natural Sounds and Night Skies Division       | lelaina_marin@nps.gov |
| <b>28</b> | Megan McKenna  | Natural Sounds and Night Skies Division       | megan_mckenna@nps.gov |
| <b>29</b> | Steve Thede    | Deputy Superintendent, Badlands National Park | steve_thede@nps.gov   |

#### MEMBERS OF THE PUBLIC

|           |               |                                      |                           |
|-----------|---------------|--------------------------------------|---------------------------|
| <b>30</b> | Ann Carol     | Helicopter Association International | ann.carroll@rotor.com     |
| <b>31</b> | Mark Frances  | Red Tail Aviation                    | markf@redtailaviation.com |
| <b>32</b> | John Becker   | Papillion Airways                    | john@papillion.com        |
| <b>33</b> | Michael Jacob | Badlands National Park operator      |                           |

#### FACILITATION STAFF

|           |                                     |   |                                 |
|-----------|-------------------------------------|---|---------------------------------|
| <b>34</b> | Alan Foster                         | Triangle Associates                                     | afoster@triangleassociates.com  |
| <b>35</b> | Cherie Shanteau-Wheeler<br>(USIECR) | U.S. Institute for Environmental Conflict<br>Resolution | shanteau@ecr.gov                |
| <b>36</b> | Robert (Bob) Wheeler                | Triangle Associates                                     | rwheeler@triangleassociates.com |

1 (11) in subsection (d), by inserting “involving  
 2 money laundering, and shall notify, in writing, the  
 3 Committee on Finance of the Senate and the Com-  
 4 mittee on Ways and Means of the House of Rep-  
 5 resentatives of any such action involving United  
 6 States tax enforcement” after “such action”.

7 **DIVISION G—AIR**  
 8 **TRANSPORTATION**

9 **SEC. 100301. TECHNICAL CORRECTIONS RELATING TO**  
 10 **OVERFLIGHTS OF NATIONAL PARKS.**

11 (a) IN GENERAL.—Section 40128 of title 49, United  
 12 States Code, is amended to read as follows:

13 **“§ 40128. Overflights of national parks**

14 “(a) IN GENERAL.—

15 “(1) GENERAL DELINEATION OF RESPONSIBIL-  
 16 ITIES.—

17 “(A) AUTHORITY OF DIRECTOR.—The Di-  
 18 rector has the authority to establish air tour  
 19 management plans, issue air tour permits for  
 20 commercial air tour operations conducted in ac-  
 21 cordance with an air tour management plan,  
 22 enter into a voluntary agreement with a com-  
 23 mercial air tour operator, and issue interim op-  
 24 erating permits under subsection (c).

1           “(B) AUTHORITY OF ADMINISTRATOR.—  
2           The Administrator has the authority to ensure  
3           that any action taken under this section does  
4           not adversely affect aviation safety or the man-  
5           agement of the national airspace system.

6           “(2) GENERAL REQUIREMENTS.—A commercial  
7           air tour operator may not conduct commercial air  
8           tour operations over a national park or tribal lands,  
9           as defined by this section, except—

10                   “(A) in accordance with this section;

11                   “(B) in accordance with conditions and  
12                   limitations prescribed for that operator; and

13                   “(C) in accordance with any applicable air  
14                   tour management plan or voluntary agreement  
15                   developed under subsection (b) for the park or  
16                   tribal lands.

17           “(3) APPLICATION FOR OPERATING AUTHOR-  
18           ITY.—

19                   “(A) APPLICATION REQUIRED.—Before  
20                   commencing commercial air tour operations  
21                   over a national park or tribal lands, a commer-  
22                   cial air tour operator shall apply to the Director  
23                   for authority to conduct the operations over the  
24                   park or tribal lands.

1           “(B) NUMBER OF OPERATIONS AUTHOR-  
2           IZED.—In determining the number of author-  
3           izations to issue to provide commercial air tour  
4           operations over a national park, the Director  
5           shall take into consideration the provisions of  
6           the air tour management plan, the number of  
7           existing commercial air tour operators and cur-  
8           rent level of service and equipment provided by  
9           any such operators, and the financial viability  
10          of each commercial air tour operation.

11          “(C) CONSULTATION WITH FAA.—Before  
12          granting an application under this paragraph,  
13          the Director, in consultation with the Adminis-  
14          trator, shall develop an air tour management  
15          plan in accordance with subsection (b) and im-  
16          plement such plan.

17          “(D) TIME LIMIT ON RESPONSE TO ATMP  
18          APPLICATIONS.—The Director shall make every  
19          effort to act on any application under this para-  
20          graph and issue a decision on the application  
21          not later than 24 months after it is received or  
22          amended.

23          “(E) PRIORITY.—In acting on applications  
24          under this paragraph to provide commercial air  
25          tour operations over a national park, the Direc-

1           tor shall give priority to an application under  
2           this paragraph in any case in which a new en-  
3           trant commercial air tour operator is seeking  
4           operating authority with respect to that na-  
5           tional park.

6           “(4) EXCEPTION.—Notwithstanding paragraph  
7           (2), commercial air tour operators may conduct com-  
8           mercial air tour operations over a national park  
9           under part 91 of the title 14, Code of Federal Regu-  
10          lations, if—

11                   “(A) such activity is permitted under part  
12                   119 of such title;

13                   “(B) the total number of operations under  
14                   this exception is limited to not more than five  
15                   flights in any 30-day period over a particular  
16                   park; and

17                   “(C) the operator complies with the condi-  
18                   tions under which the operations will be con-  
19                   ducted as established by the Director, in con-  
20                   sultation with the Administrator.

21           “(5) SPECIAL RULE FOR SAFETY REQUIRE-  
22           MENTS.—Before receiving a permit issued under this  
23           section, a commercial air tour operator shall have  
24           obtained the appropriate operating authority as re-  
25           quired by the Administrator under part 119, 121, or

1 135 of title 14, Code of Federal Regulations, to con-  
2 duct operations under this section.

3 “(6) EXEMPTION FOR NATIONAL PARKS WITH  
4 50 OR FEWER FLIGHTS EACH YEAR.—

5 “(A) IN GENERAL.—A national park that  
6 has 50 or fewer commercial air tour operations  
7 over the park each year shall be exempt from  
8 the requirements of this section, except as pro-  
9 vided in subparagraph (B).

10 “(B) WITHDRAWAL OF EXEMPTION.—If  
11 the Director determines that an air tour man-  
12 agement plan or voluntary agreement is nec-  
13 essary to protect park resources and values or  
14 park visitor use and enjoyment, the Director  
15 shall withdraw the exemption of a park under  
16 subparagraph (A).

17 “(C) LIST OF PARKS.—The Director shall  
18 maintain a list each year of national parks that  
19 are covered by the exemption provided under  
20 this paragraph.

21 “(b) AIR TOUR MANAGEMENT PLANS.—

22 “(1) ESTABLISHMENT.—

23 “(A) IN GENERAL.—The Director, in con-  
24 sultation with the Administrator, shall establish  
25 an air tour management plan for any national

1 park or tribal land for which such a plan is not  
2 in effect whenever a person applies for author-  
3 ity to conduct a commercial air tour operation  
4 over the park. The air tour management plan  
5 shall be developed by means of a public process  
6 in accordance with paragraph (4).

7 “(B) OBJECTIVE.—The objective of any  
8 air tour management plan shall be to develop  
9 acceptable and effective measures to mitigate or  
10 prevent the significant adverse impacts, if any,  
11 of commercial air tour operations upon the nat-  
12 ural and cultural resources, visitor experiences,  
13 and tribal lands.

14 “(C) EXCEPTION.—An application to begin  
15 commercial air tour operations at Crater Lake  
16 National Park may be denied without the estab-  
17 lishment of an air tour management plan by the  
18 Director of the National Park Service if the Di-  
19 rector determines that such operations would  
20 adversely affect park resources or visitor experi-  
21 ences.

22 “(2) ENVIRONMENTAL DETERMINATION.—In  
23 establishing an air tour management plan and  
24 issuing a permit for a commercial air tour operator  
25 under this section, the Director shall comply with

1 the National Environmental Policy Act of 1969 (42  
2 U.S.C. 4321 et seq.). Any environmental thresholds,  
3 analyses, impact determinations, and conditions pre-  
4 pared or used by the Director to establish an air  
5 tour management plan or issue a permit under this  
6 section shall have no broader application or be given  
7 deference beyond this section.

8 “(3) CONTENTS.—An air tour management  
9 plan for a national park—

10 “(A) may prohibit commercial air tour op-  
11 erations over a national park in whole or in  
12 part;

13 “(B) may establish conditions for the con-  
14 duct of commercial air tour operations over a  
15 national park, including commercial air tour  
16 routes, maximum or minimum altitudes, time-  
17 of-day restrictions, restrictions for particular  
18 events, maximum number of flights per unit of  
19 time, intrusions on privacy on tribal lands, and  
20 mitigation of noise, visual, or other impacts;

21 “(C) shall apply to all commercial air tour  
22 operations over a national park that are also  
23 within  $\frac{1}{2}$  mile outside the boundary of a na-  
24 tional park;

1           “(D) shall include incentives (such as pre-  
2           ferred commercial air tour routes and altitudes,  
3           relief from caps and curfews) for the adoption  
4           of quiet aircraft technology by commercial air  
5           tour operators conducting commercial air tour  
6           operations over a national park when prac-  
7           ticable;

8           “(E) shall provide for the initial allocation  
9           of opportunities to conduct commercial air tour  
10          operations over a national park if the plan in-  
11          cludes a limitation on the number of commer-  
12          cial air tour operations for any time period;

13          “(F) may not have been found to have ad-  
14          verse effects on aviation safety or the manage-  
15          ment of the national airspace system by the Ad-  
16          ministrator; and

17          “(G) shall justify and document the need  
18          for measures taken pursuant to subparagraphs  
19          (A) through (F).

20          “(4) PROCEDURE.—In establishing an air tour  
21          management plan for a national park or tribal lands,  
22          the Director shall—

23                 “(A) hold at least one public meeting with  
24                 interested parties to develop the air tour man-  
25                 agement plan;

1           “(B) publish a notice of availability of the  
2 proposed plan in the Federal Register for notice  
3 and comment and make copies of the proposed  
4 plan available to the public;

5           “(C) comply with the regulations set forth  
6 in parts 1500 through 1508 of title 40, Code of  
7 Federal Regulations;

8           “(D) solicit the participation of any Indian  
9 tribe whose tribal lands are, or may be,  
10 overflowed by aircraft involved in a commercial  
11 air tour operation over the park or tribal lands  
12 to which the plan applies, as a cooperating  
13 agency under the regulations referred to in sub-  
14 paragraph (C); and

15           “(E) consult with the Administrator with  
16 respect to effects on aviation safety and the  
17 management of the national airspace system.

18           “(5) JUDICIAL REVIEW.—An air tour manage-  
19 ment plan developed under this subsection shall be  
20 subject to judicial review pursuant to chapter 7 of  
21 title 5, United States Code.

22           “(6) AMENDMENTS AND REVOCATIONS.—The  
23 Director may make amendments to an air tour man-  
24 agement plan and any permits issued pursuant to an  
25 air tour management plan, and may revoke permits.

1 The Director shall consult with the Administrator to  
2 ensure that any such amendments or revocations will  
3 not adversely affect aviation safety or the manage-  
4 ment of the national airspace system. Any such  
5 amendments and revocations shall be published in  
6 the Federal Register for notice and comment. A re-  
7 quest for amendment of an air tour management  
8 plan or permit shall be made in such form and man-  
9 ner as the Director may prescribe.

10 “(7) VOLUNTARY AGREEMENTS.—

11 “(A) IN GENERAL.—As an alternative to  
12 an air tour management plan, the Director may  
13 enter into a voluntary agreement with a com-  
14 mercial air tour operator (including a new en-  
15 trant commercial air tour operator and an oper-  
16 ator that has an interim operating permit) that  
17 has applied to conduct commercial air tour op-  
18 erations over a national park to manage com-  
19 mercial air tour operations over such national  
20 park.

21 “(B) PARK PROTECTION.—A voluntary  
22 agreement entered into under subparagraph (A)  
23 shall protect the national park resources, val-  
24 ues, and visitor experience without compro-

1 mising aviation safety or the management of  
2 the national airspace system and may—

3 “(i) include provisions such as those  
4 included in the content of an air tour man-  
5 agement plan;

6 “(ii) include provisions to ensure the  
7 stability of, and compliance with, the vol-  
8 untary agreement; and

9 “(iii) provide for fees for such oper-  
10 ations.

11 “(C) PUBLIC REVIEW.—The Director shall  
12 provide an opportunity for public review of a  
13 proposed voluntary agreement under this para-  
14 graph and shall consult with any Indian tribe  
15 whose tribal lands are, or may be, flown over by  
16 a commercial air tour operator under a vol-  
17 untary agreement under this paragraph. After  
18 such opportunity for public review and consulta-  
19 tion, the voluntary agreement may be imple-  
20 mented without further administrative or envi-  
21 ronmental process beyond that described in this  
22 subsection.

23 “(D) TERMINATION.—

1           “(i) IN GENERAL.—A voluntary agree-  
2           ment under this paragraph may be termi-  
3           nated at any time at the discretion of—

4                   “(I) the Director, if the Director  
5                   determines that the agreement is not  
6                   adequately protecting park resources  
7                   or visitor experiences; or

8                   “(II) the Administrator, if the  
9                   Administrator determines that the  
10                  agreement is adversely affecting avia-  
11                  tion safety or the national airspace  
12                  system.

13           “(ii) EFFECT OF TERMINATION.—If a  
14           voluntary agreement with respect to a na-  
15           tional park is terminated under this sub-  
16           paragraph, the operators shall conform to  
17           the requirements for an interim operating  
18           permit under subsection (c) until an air  
19           tour management plan for the park is in  
20           effect.

21           “(c) INTERIM OPERATING AUTHORITY.—

22                   “(1) IN GENERAL.—Interim operating authority  
23                   granted by the Administrator under this subsection,  
24                   as in effect on the day before the date of the enact-  
25                   ment of the Moving Ahead for Progress in the 21st

1 Century Act, shall, on and after such date of enact-  
2 ment, be known as an interim operating permit and  
3 be administered by the Director in accordance with  
4 the conditions of this subsection.

5 “(2) REQUIREMENTS AND LIMITATIONS.—An  
6 interim operating permit—

7 “(A) shall maintain the same annual au-  
8 thorizations as provided for interim operating  
9 authority under this subsection, as in effect on  
10 the day before the date of the enactment of the  
11 Moving Ahead for Progress in the 21st Century  
12 Act; and

13 “(B) may not provide for an increase in  
14 the number of commercial air tour operations  
15 over a national park conducted during any time  
16 period by the commercial air tour operator  
17 above the number that the air tour operator  
18 was granted unless such an increase is ap-  
19 proved by the Director in consultation with the  
20 Administrator;

21 “(C) may be revoked by the Director for  
22 cause;

23 “(D) shall terminate 180 days after the  
24 date on which an air tour management plan is  
25 established for the park or tribal lands;

1           “(E) shall promote protection of national  
2 park resources, visitor experiences, and tribal  
3 lands;

4           “(F) shall promote safe commercial air  
5 tour operations;

6           “(G) shall promote the adoption of quiet  
7 technology, as appropriate; and

8           “(H) may allow for modifications of the in-  
9 terim operating permit without further environ-  
10 mental review beyond that described in this  
11 subsection, if—

12           “(i) adequate information regarding  
13 the existing and proposed operations of the  
14 operator under the interim operating per-  
15 mit is provided to the Director;

16           “(ii) the Director agrees with the  
17 modification, based on the professional ex-  
18 pertise of the Director regarding the pro-  
19 tection of the resources, values, and visitor  
20 use and enjoyment of the park; and

21           “(iii) the Director receives advice in  
22 writing from the Administrator that there  
23 would be no adverse impact on aviation  
24 safety or the national airspace system.

1           “(3) MODIFICATIONS AND REVOCATIONS.—Any  
2           modification or revocation of an interim operating  
3           permit shall be published in the Federal Register to  
4           provide notice and opportunity for comment.

5           “(4) NEW ENTRANT AIR TOUR OPERATORS.—

6           “(A) IN GENERAL.—The Director, in con-  
7           sultation with the Administrator, may grant an  
8           interim operating permit under this paragraph  
9           to an air tour operator for a national park or  
10          tribal lands for which that operator is a new en-  
11          trant air tour operator without further environ-  
12          mental process beyond that described in this  
13          paragraph, if—

14                  “(i) adequate information on the pro-  
15                  posed operations of the operator is pro-  
16                  vided to the Director by the operator mak-  
17                  ing the request;

18                  “(ii) the Director agrees, based on the  
19                  Director’s professional expertise regarding  
20                  the protection of park resources and values  
21                  and visitor use and enjoyment; and

22                  “(iii) the Director receives advice in  
23                  writing from the Administrator that there  
24                  would be no adverse impact on aviation  
25                  safety or the national airspace system.

1           “(B) SAFETY LIMITATION.—The Director  
2           may not grant an interim operating permit  
3           under subparagraph (A) if the Administrator  
4           determines that it would create a safety prob-  
5           lem at the park or on the tribal lands, or the  
6           Director determines that it would create a noise  
7           problem at the park or on the tribal lands.

8           “(d) COMMERCIAL AIR TOUR OPERATOR RE-  
9           PORTS.—

10           “(1) REPORT.—Each commercial air tour oper-  
11           ator conducting a commercial air tour operation over  
12           a national park under an interim operating permit  
13           granted under subsection (c) or in accordance with  
14           an air tour management plan or voluntary agree-  
15           ment under subsection (b) shall submit to the Direc-  
16           tor a report regarding the number of commercial air  
17           tour operations over each national park that are con-  
18           ducted by the operator and such other information  
19           as the Director may request in order to facilitate ad-  
20           ministering the provisions of this section.

21           “(2) REPORT SUBMISSION.—The Director shall  
22           issue a request for reports under this subsection.  
23           The reports shall be submitted to the Director with  
24           a frequency and in a format prescribed by the Direc-  
25           tor.

1       “(e) COLLECTION OF FEES FROM AIR TOUR OPER-  
2 ATIONS.—

3           “(1) IN GENERAL.—The Director shall deter-  
4 mine and assess a fee under paragraph (2) on a  
5 commercial air tour operator conducting commercial  
6 air tour operations over a national park, including  
7 the Grand Canyon National Park.

8           “(2) AMOUNT OF FEE.—In determining the  
9 amount of the fee assessed under paragraph (1), the  
10 Director shall collect sufficient revenue, in the ag-  
11 gregate, to pay for the expenses incurred by the  
12 Federal Government to develop and enforce air tour  
13 management plans for national parks.

14           “(3) EFFECT OF FAILURE TO PAY FEE.—The  
15 Director may assess a civil penalty against or revoke  
16 the interim operating permit or air tour permit,  
17 whichever is applicable, of a commercial air tour op-  
18 erator conducting commercial air tour operations  
19 over any national park, including the Grand Canyon  
20 National Park, that has not paid the fee assessed by  
21 the Director under paragraph (1) by the date that  
22 is 180 days after the date on which the Director de-  
23 termines the fee shall be paid.

24           “(4) FUNDING FOR AIR TOUR MANAGEMENT  
25 PLANS.—The Director shall use the amounts col-

1 lected to develop and enforce air tour management  
2 plans for the national parks the Director determines  
3 would most benefit from such a plan.

4 “(f) CIVIL PENALTIES.—

5 “(1) IN GENERAL.—Any person who violates  
6 any provision of this section or any regulation or  
7 permit issued under this section may be assessed a  
8 civil penalty by the Director of not more than  
9 \$25,000 for each such violation.

10 “(2) KNOWING VIOLATIONS.—Any person who  
11 knowingly violates any provision of this section or  
12 any regulation or permit issued under this section  
13 may be assessed a civil penalty by the Director of  
14 not more than \$50,000 for each violation.

15 “(3) PROCEDURES.—A penalty may not be as-  
16 sessed under this subsection on a person unless the  
17 person is given notice and opportunity for a hearing  
18 with respect to the violation for which the penalty is  
19 assessed. Each violation of this section or a regula-  
20 tion or permit issued under this section shall be a  
21 separate offense. Any civil penalty assessed under  
22 this subsection may be remitted or mitigated by the  
23 Director. Upon any failure by a person to pay a pen-  
24 alty assessed under this subsection, the Director  
25 may request the Attorney General to institute a civil

1 action in a district court of the United States for  
2 any district in which the person is found, resides, or  
3 transacts business to collect the penalty and such  
4 court shall have jurisdiction to hear and decide any  
5 such action. The court shall hear such action on the  
6 record made before the Director and shall sustain  
7 his action if it is supported by substantial evidence  
8 on the record considered as a whole.

9 “(4) ADMINISTRATIVE PROCEEDINGS.—Hear-  
10 ings held during proceedings for the assessment of  
11 civil penalties under this subsection shall be con-  
12 ducted in accordance with section 554 of title 5,  
13 United States Code. The Director may issue sub-  
14 poenas for the attendance and testimony of wit-  
15 nesses and the production of relevant papers, books,  
16 and documents, and administer oaths. Witnesses  
17 summoned shall be paid the same fees and mileage  
18 that are paid to witnesses in the courts of the  
19 United States. In case of contumacy or refusal to  
20 obey a subpoena served upon any person pursuant to  
21 this paragraph, the district court of the United  
22 States for any district in which such person is found  
23 or resides or transacts business, upon application by  
24 the United States and after notice to the person,  
25 shall have jurisdiction to issue an order requiring

1 the person to appear and give testimony before the  
2 Director or to appear and produce documents before  
3 the Director, or both, and any failure to obey the  
4 order of the court may be punished by such court as  
5 a contempt thereof.

6 “(g) ENFORCEMENT.—The provisions of this section  
7 and any regulations or permits issued under this section  
8 may be enforced by the Director or the Administrator, as  
9 appropriate. The Director may utilize by agreement, with  
10 or without reimbursement, the personnel, services, and fa-  
11 cilities of any other Federal agency or any State agency  
12 for purposes of enforcing this section. The decisions of the  
13 Director under this subsection shall not have broader ap-  
14 plication or be given deference beyond this section. The  
15 Administrator shall retain enforcement authority over  
16 matters involving the safety and efficiency of the national  
17 airspace system.

18 “(h) EXEMPTIONS.—This section shall not apply to—

19 “(1) the Grand Canyon National Park; or

20 “(2) tribal lands within or abutting the Grand  
21 Canyon National Park.

22 “(i) LAKE MEAD.—This section shall not apply to  
23 any air tour operator while flying over or near the Lake  
24 Mead National Recreation Area, solely as a transportation  
25 route, to conduct an air tour over the Grand Canyon Na-

1 tional Park. For purposes of this subsection, an air tour  
2 operator flying over the Hoover Dam in the Lake Mead  
3 National Recreation Area en route to the Grand Canyon  
4 National Park shall be deemed to be flying solely as a  
5 transportation route.

6 “(j) SEVERABLE SERVICES CONTRACTS FOR PERI-  
7 ODS CROSSING FISCAL YEARS.—

8 “(1) IN GENERAL.—For purposes of this sec-  
9 tion, the Director may enter into a contract for pro-  
10 curement of severable services for a period that be-  
11 gins during one fiscal year and ends in the next fis-  
12 cal year if (without regard to any option to extend  
13 the period of the contract) the period of the contract  
14 does not exceed 1 year.

15 “(2) OBLIGATION OF FUNDS.—Funds made  
16 available for a fiscal year may be obligated for the  
17 total amount of a contract entered into under the  
18 authority of paragraph (1).

19 “(k) RESPONSIBILITIES AND AUTHORITIES OF AD-  
20 MINISTRATOR.—

21 “(1) IN GENERAL.—The Administrator shall  
22 advise the Director in writing of any adverse effects  
23 on aviation safety and or management of the na-  
24 tional airspace system for any proposed action taken  
25 under this section.

1           “(2) AMENDMENTS TO AUTHORIZATION FOR  
2           COMMERCIAL AIR TOUR OPERATORS.—The Adminis-  
3           trator, in consultation with the Director, may amend  
4           any authorization for a commercial air tour operator  
5           to include conditions set forth in any permit issued  
6           under this section or to address any adverse effect  
7           on aviation safety.

8           “(3) RULE OF CONSTRUCTION.—Nothing in  
9           this section shall be construed to limit or abrogate  
10          the Administrator’s authority to ensure the safety  
11          and efficiency of the national airspace system.

12          “(1) DEFINITIONS.—In this section, the following  
13          definitions apply:

14                 “(1) COMMERCIAL AIR TOUR OPERATOR.—The  
15                 term ‘commercial air tour operator’ means any per-  
16                 son who conducts a commercial air tour operation  
17                 over a national park.

18                 “(2) EXISTING COMMERCIAL AIR TOUR OPER-  
19                 ATOR.—The term ‘existing commercial air tour oper-  
20                 ator’ means a commercial air tour operator that was  
21                 actively engaged in the business of providing com-  
22                 mercial air tour operations over a national park at  
23                 any time during the 12-month period ending on the  
24                 date of the enactment of this section.

1           “(3) NEW ENTRANT COMMERCIAL AIR TOUR  
2 OPERATOR.—The term ‘new entrant commercial air  
3 tour operator’ means a commercial air tour operator  
4 that—

5           “(A) applies for an interim operating per-  
6 mit or air tour permit as a commercial air tour  
7 operator for a national park or tribal lands; and

8           “(B) has not engaged in the business of  
9 providing commercial air tour operations over  
10 the national park or tribal lands in the 12-  
11 month period preceding the application.

12           “(4) COMMERCIAL AIR TOUR OPERATION OVER  
13 A NATIONAL PARK.—

14           “(A) IN GENERAL.—The term ‘commercial  
15 air tour operation over a national park’ means  
16 any flight, conducted for compensation or hire  
17 in a powered aircraft where a purpose of the  
18 flight is sightseeing over a national park, within  
19 ½ mile outside the boundary of any national  
20 park (except the Grand Canyon National Park),  
21 or over tribal lands (except those within or  
22 abutting the Grand Canyon National Park),  
23 during which the aircraft flies—

24           “(i) below a minimum altitude, deter-  
25 mined by the Administrator in cooperation

1 with the Director, above ground level (ex-  
2 cept solely for purposes of takeoff or land-  
3 ing, or necessary for safe operation of an  
4 aircraft as determined under the rules and  
5 regulations of the Federal Aviation Admin-  
6 istration requiring the pilot-in-command to  
7 take action to ensure the safe operation of  
8 the aircraft); or

9 “(ii) less than 1 mile laterally from  
10 any geographic feature within the park  
11 (unless more than  $\frac{1}{2}$  mile outside the  
12 boundary).

13 “(B) FACTORS TO CONSIDER.—In making  
14 a determination of whether a flight is a com-  
15 mercial air tour operation over a national park  
16 for purposes of this section, the Administrator  
17 may consider—

18 “(i) whether there was a holding out  
19 to the public of willingness to conduct a  
20 sightseeing flight for compensation or hire;

21 “(ii) whether a narrative that referred  
22 to areas or points of interest on the sur-  
23 face below the route of the flight was pro-  
24 vided by the person offering the flight;

25 “(iii) the area of operation;

1           “(iv) the frequency of flights con-  
2           ducted by the person offering the flight;

3           “(v) the route of flight;

4           “(vi) the inclusion of sightseeing  
5           flights as part of any travel arrangement  
6           package offered by the person offering the  
7           flight;

8           “(vii) whether the flight would have  
9           been canceled based on poor visibility of  
10          the surface below the route of the flight;  
11          and

12          “(viii) any other factors that the Ad-  
13          ministrators and the Director consider ap-  
14          propriate.

15          “(5) NATIONAL PARK.—The term ‘national  
16          park’ means any unit of the National Park System.

17          “(6) TRIBAL LANDS.—

18                 “(A) IN GENERAL.—The term ‘tribal  
19                 lands’ means Indian country (as that term is  
20                 defined in section 1151 of title 18) that is with-  
21                 in or abutting a national park.

22                 “(B) ABUTTING.—For purposes of sub-  
23                 paragraph (A), the term ‘abutting’ means lands  
24                 within 1/2 mile outside the boundary of a na-  
25                 tional park.

1           “(7) ADMINISTRATOR.—The term ‘Adminis-  
2           trator’ means the Administrator of the Federal Avia-  
3           tion Administration.

4           “(8) DIRECTOR.—The term ‘Director’ means  
5           the Director of the National Park Service.

6           “(9) AIR TOUR PERMIT.—The term ‘air tour  
7           permit’ means a permit issued by the Director, in  
8           accordance with this section, to a commercial oper-  
9           ator to conduct commercial air tour operations over  
10          a national park or tribal lands.”.

11          (b) AMENDMENTS TO NATIONAL PARKS AIR TOUR  
12          MANAGEMENT ACT OF 2000.—

13               (1) ADVISORY GROUP.—Section 805 of the Na-  
14               tional Parks Air Tour Management Act of 2000 (49  
15               U.S.C. 40128 note) is amended—

16                       (A) by striking subsection (a) and insert-  
17                       ing the following:

18           “(a) IN GENERAL.—The Director of the National  
19           Park Service may retain the advisory group established  
20           pursuant to this section, as in effect on the day before  
21           the date of the enactment of the Moving Ahead for  
22           Progress in the 21st Century Act, to provide continuing  
23           advice and counsel with respect to commercial air tour op-  
24           erations over and near national parks.”;

25                       (B) in subsection (b)—

1 (i) in paragraph (1)(A)(iv), by insert-  
2 ing “or Native Hawaiians” after “Indian  
3 tribes”; and

4 (ii) by striking paragraph (3) and in-  
5 serting the following:

6 “(3) CHAIRPERSON.—The representative of the  
7 National Park Service shall serve as chairperson of  
8 the advisory group.”; and

9 (C) in subsection (d)(2), by striking “The  
10 Federal Aviation Administration and the Na-  
11 tional Park Service shall jointly” and inserting  
12 “The National Park Service shall”.

13 (2) REPORTS.—Section 807 of the National  
14 Parks Air Tour Management Act of 2000 (49  
15 U.S.C. 40128 note) is repealed.

16 (3) METHODOLOGIES USED TO ASSESS AIR  
17 TOUR NOISE.—Section 808 of the National Parks  
18 Air Tour Management Act of 2000 (49 U.S.C.  
19 40128 note) is amended by striking “a Federal  
20 agency” and inserting “the Director of the National  
21 Park Service”.

**National Park Overflights Advisory Group  
May 16, 2012**

**Attachment D  
Changes to NPATMA from Senate Bill 1813**

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**National Parks Air Tour Management Act of 2000**

**CHANGES FROM SENATE BILL 1813**

TITLE <<NOTE: National Parks Air Tour Management Act of 2000.>> VIII-- NATIONAL PARKS AIR TOUR MANAGEMENT

**SEC. 801. <<NOTE: 49 USC 40128 note.>> SHORT TITLE.**

This title may be cited as the ``National Parks Air Tour Management Act of 2000''.

**SEC. 802. <<NOTE: 49 USC 40128 note.>> FINDINGS.**

Congress finds that--

- (1) the Federal Aviation Administration has sole authority to control airspace over the United States;
- (2) the Federal Aviation Administration has the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on public and tribal lands;
- (3) the National Park Service has the responsibility of conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations;
- (4) the protection of tribal lands from aircraft overflights is consistent with protecting the public health and welfare and is essential to the maintenance of the natural and cultural resources of Indian tribes;
- (5) the National Parks Overflights Working Group, composed of general aviation, commercial air tour, environmental, and Native American representatives, recommended that the Congress enact legislation based on the Group's consensus work product; and
- (6) this title reflects the recommendations made by that Group.

**SEC. 803. <<NOTE: 49 USC 40128 note.>> AIR TOUR MANAGEMENT PLANS FOR NATIONAL PARKS.**

(a) **In General.--Chapter 401**

(as amended by section 706(a) of this Act) is further amended by adding at the end the following:  
``Sec. 40128. Overflights of national parks

``(a) **In General.**—

- ``(1) General requirements.--A commercial air tour operator may not conduct commercial air tour operations over a national park or tribal lands except--  
``(A) in accordance with this section;

“(B) in accordance with conditions and limitations prescribed for that operator by the Administrator; and

“(C) in accordance with any applicable air tour management plan for the park or tribal lands.

“(2) Application for operating authority.--

“(A) Application required.--Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands.

“(B) Competitive bidding for limited capacity parks.--Whenever an air tour management plan limits the number of commercial air tour operations over a national park during a specified time frame, the Administrator, in cooperation with the Director, shall issue operation specifications to commercial air tour operators that conduct such operations. The operation specifications shall include such terms and conditions as the Administrator and the Director find necessary for management of commercial air tour operations over the park. The Administrator, in cooperation with the Director, shall develop an open competitive process for evaluating proposals from persons interested in providing commercial air tour operations over the park. In making a selection from among various proposals submitted, the Administrator, in cooperation with the Director, shall consider relevant factors, including--

“(I) the safety record of the person submitting the proposal or pilots employed by the person;

“(II) any quiet aircraft technology proposed to be used by the person submitting the proposal;

“(III) the experience of the person submitting the proposal with commercial air tour operations over other national parks or scenic areas;

“(iv) the financial capability of the person submitting the proposal;

“(v) any training programs for pilots provided by the person submitting the proposal; and

“(vi) responsiveness of the person submitting the proposal to any relevant criteria developed by the National Park Service for the affected park.

“(C) Number of operations authorized.--In determining the number of authorizations to issue to provide commercial air tour operations over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.

“(D) Cooperation with nps.--Before granting an application under this paragraph, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with subsection (b) and implement such plan.

“(E) Time <<NOTE: Deadline.>> limit on response to atmp applications.--The Administrator shall make every effort to act on any application under this paragraph and issue a decision on the application not later than 24 months after it is received or amended.

“(F) Priority.--In acting on applications under this paragraph to provide commercial air tour operations over a national park, the Administrator shall give priority to an application under this paragraph in any case in which a new entrant commercial air tour operator is seeking operating authority with respect to that national park.

“(3) Exception.--Notwithstanding paragraph (1), commercial air tour operators may conduct commercial air tour operations over a national park under part 91 of the title 14, Code of Federal Regulations if--

“(A) such activity is permitted under part 119 of such title;

“(B) the operator secures a letter of agreement from the Administrator and the national park superintendent for that national park describing the conditions under which the operations will be conducted; and

“(C) the total number of operations under this exception is limited to not more than five flights in any 30-day period over a particular park.

“(4) Special <<NOTE: Deadlines.>> rule for safety requirements.--Notwithstanding subsection (c), an existing commercial air tour operator shall apply, not later than 90 days after the date of the enactment of this section, for operating authority under part 119, 121, or 135 of title 14, Code of Federal Regulations. A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park or tribal lands. The Administrator shall make every effort to act on any such application for a new entrant and issue a decision on the application not later than 24 months after it is received or amended.

“(b) **Air Tour Management Plans.--**

“(1) Establishment.--

“(A) In general.--The Administrator, in cooperation with the Director, shall establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (4).

“(B) Objective.--The objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

“(2) Environmental determination.--In establishing an air tour management plan under this subsection, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) which may include a finding of no significant impact, an environmental assessment, or an environmental impact statement and the record of decision for the air tour management plan.

“(3) Contents.--An air tour management plan for a national park--

“(A) may prohibit commercial air tour operations in whole or in part;

“(B) may establish conditions for the conduct of commercial air tour operations, including commercial air tour routes, maximum or minimum altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights per unit of time, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts;

“(C) shall apply to all commercial air tour operations within  $\frac{1}{2}$  mile outside the boundary of a national park;

“(D) shall include incentives (such as preferred commercial air tour routes and altitudes, relief from caps and curfews) for the adoption of quiet aircraft technology by commercial air tour operators conducting commercial air tour operations at the park;

“(E) shall provide for the initial allocation of opportunities to conduct commercial air tour operations if the plan includes a limitation on the number of commercial air tour operations for any time period; and

“(F) shall justify and document the need for measures taken pursuant to subparagraphs (A) through (E) and include such justifications in the record of decision.

“(4) Procedure.--In establishing an air tour management plan for a national park or tribal lands, the Administrator and the Director shall--

“(A) <<NOTE: Public information.>> hold at least one public meeting with interested parties to develop the air tour management plan;

“(B) <<NOTE: Federal Register, publication.>> publish the proposed plan in the Federal Register for notice and comment and make copies of the proposed plan available to the public;

“(C) comply with the regulations set forth in sections 1501.3 and 1501.5 through 1501.8 of title 40, Code of Federal Regulations (for purposes of complying with the regulations, the Federal Aviation Administration shall be the lead agency and the National Park Service is a cooperating agency); and

“(D) <<NOTE: Native Americans.>> solicit the participation of any Indian tribe whose tribal lands are, or may be, overflowed by aircraft involved in a commercial air tour operation over the park or tribal lands to which the plan applies, as a cooperating agency under the regulations referred to in subparagraph (C).

“(5) Judicial review.--An air tour management plan developed under this subsection shall be subject to judicial review.

“(6) Amendments.--The Administrator, in cooperation with the Director, may make amendments to an air tour management plan. <<NOTE: Federal Register, publication.>> Any such amendments shall be published in the Federal Register for notice and comment. A request for amendment of an air tour management plan shall be made in such form and manner as the Administrator may prescribe.

#### “(c) Interim Operating Authority.--

“(1) In general.--Upon application for operating authority, the Administrator shall grant interim operating authority under this subsection to a commercial air tour operator for commercial air tour operations over a national park or tribal lands for which the operator is an existing commercial air tour operator.

“(2) Requirements and limitations. --Interim operating authority granted under this subsection--

“(A) shall provide annual authorization only for the greater of--

“(I) the number of flights used by the operator to provide the commercial air tour operations within the 12-month period prior to the date of the enactment of this section; or

“(II) the average number of flights per 12-month period used by the operator to provide such operations within the 36-month period prior to such date of enactment, and, for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period;

“(B) may not provide for an increase in the number of commercial air tour operations conducted during any time period by the commercial air tour operator above the number that the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;

“(C) <<NOTE: Federal Register, publication.>> shall be published in the Federal Register to provide notice and opportunity for comment;

“(D) may be revoked by the Administrator for cause;

“(E) <<NOTE: Termination date.>> shall terminate 180 days after the date on which an air tour management plan is established for the park or tribal lands;

“(F) shall promote protection of national park resources, visitor experiences, and tribal lands;

“(G) shall promote safe commercial air tour operations;

“(H) shall promote the adoption of quiet technology, as appropriate; and

“(I) shall allow for modifications of the interim operating authority based on experience if the modification improves protection of national park resources and values and of tribal lands.

“(3) New entrant air tour operators.--

“(A) In general.--The Administrator, in cooperation with the Director, may grant interim operating authority under this paragraph to an air tour operator for a national park or tribal lands for which that operator is a new entrant air tour operator if the Administrator determines the authority is necessary to ensure competition in the provision of commercial air tour operations over the park or tribal lands.

“(B) Safety limitation.--The Administrator may not grant interim operating authority under subparagraph (A) if the Administrator determines that it would create a safety problem at the park or on the tribal lands, or the Director determines that it would create a noise problem at the park or on the tribal lands.

“(C) ATMP limitation.--The Administrator may grant interim operating authority under subparagraph (A) of this paragraph only if the air tour management plan for the park or tribal lands to which the application relates has not been developed within 24 months after the date of the enactment of this section.

“(d) Exemptions.--This section shall not apply to--

- “(1) the Grand Canyon National Park; or
- “(2) tribal lands within or abutting the Grand Canyon National Park.

“(e) Lake Mead.--This section shall not apply to any air tour operator while flying over or near the Lake Mead National Recreation Area, solely as a transportation route, to conduct an air tour over the Grand Canyon National Park.

“(f) Definitions.--In this section, the following definitions apply:

“(1) Commercial air tour operator.--The term ‘commercial air tour operator’ means any person who conducts a commercial air tour operation.

“(2) Existing commercial air tour operator.--The term ‘existing commercial air tour operator’ means a commercial air tour operator that was actively engaged in the business of providing commercial air tour operations over a national park at any time during the 12-month period ending on the date of the enactment of this section.

“(3) New entrant commercial air tour operator.--The term ‘new entrant commercial air tour operator’ means a commercial air tour operator that--

“(A) applies for operating authority as a commercial air tour operator for a national park or tribal lands; and

“(B) has not engaged in the business of providing commercial air tour operations over the national park or tribal lands in the 12-month period preceding the application.

“(4) Commercial air tour operation.--

“(A) In general.--The term ‘commercial air tour operation’ means any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within  $\frac{1}{2}$  mile outside the boundary of any national park, or over tribal lands, during which the aircraft flies--

“(I) below a minimum altitude, determined by the Administrator in cooperation with the Director, above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

“(II) less than 1 mile laterally from any geographic feature within the park (unless more than  $\frac{1}{2}$  mile outside the boundary).

“(B) Factors to consider.--In making a determination of whether a flight is a commercial air tour operation for purposes of this section, the Administrator may consider--

“(i) whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

“(ii) whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;

“(iii) the area of operation;

“(iv) the frequency of flights conducted by the person offering the flight;

“(v) the route of flight;

“(vi) the inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;

“(vii) whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and

“(viii) any other factors that the Administrator and the Director consider appropriate.

“(5) National park.--The term ‘national park’ means any unit of the National Park System.

“(6) Tribal lands.--The term ‘tribal lands’ means Indian country (as that term is defined in section 1151 of title 18) that is within or abutting a national park.

“(7) Administrator.--The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

“(8) Director.--The term ‘Director’ means the Director of the National Park Service.”.

(b) Conforming Amendment.--The analysis for chapter 401 (as amended by section 706(b) of this Act) is further amended by adding at the end the following:

“40128. Overflights of national parks.”.

(c) Compliance With Other Regulations.--For purposes of section 40126 of title 49, United States Code--

(1) regulations issued by the Secretary of Transportation and the Administrator under section 3 of Public Law 100-91 (16 U.S.C. 1a-1 note); and

(2) commercial air tour operations carried out in compliance with the requirements of those regulations, shall be deemed to meet the requirements of such section 40126.

#### **SEC. 804. <<NOTE: Arizona. Nevada.>> QUIET AIRCRAFT TECHNOLOGY FOR GRAND CANYON.**

(a) Quiet <<NOTE: Deadline.>> Technology Requirements.--Within 12 months after the date of the enactment of this Act, the Administrator shall designate reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology for purposes of this section. If the <<NOTE: Reports.>> Administrator determines that the Administrator will not be able to make such designation before the last day of such 12-month period, the Administrator shall transmit to Congress a report on the reasons for not meeting such time period and the expected date of such designation.

(b) Routes <<NOTE: Regulations.>> or Corridors.--In consultation with the Director and the advisory group established under section 805, the Administrator shall establish, by rule, routes or corridors for commercial air tour operations (as defined in section 40126(e)(4) of title 49, United States Code) by fixed-wing and helicopter aircraft that employ quiet aircraft technology for--

(1) tours of the Grand Canyon originating in Clark County, Nevada; and

(2) “local loop” tours originating at the Grand Canyon National Park Airport, in Tusayan, Arizona, provided that such routes or corridors can be located in areas that will not negatively impact the substantial restoration of natural quiet, tribal lands, or safety.

(c) Operational Caps.--Commercial air tour operations by any fixed-wing or helicopter aircraft that employs quiet aircraft technology and that replaces an existing aircraft shall not be subject to the operational flight allocations that apply to other commercial air tour operations of the Grand Canyon, provided that the cumulative impact of such operations does not increase noise at the Grand Canyon.

(d) Modification of Existing Aircraft To Meet Standards.--A commercial air tour operation by a fixed-wing or helicopter aircraft in a commercial air tour operator's fleet on the date of the enactment of this Act that meets the requirements designated under subsection (a), or is subsequently modified to meet the requirements designated under subsection (a), may be used for commercial air tour operations under the same terms and conditions as a replacement aircraft under subsection (c) without regard to whether it replaces an existing aircraft.

b(e) Mandate To Restore Natural Quiet.--Nothing in this Act shall be construed to relieve or diminish--

(1) the statutory mandate imposed upon the Secretary of the Interior and the Administrator of the Federal Aviation Administration under Public Law 100-91 (16 U.S.C. 1a-1 note) to achieve the substantial restoration of the natural quiet and experience at the Grand Canyon National Park; and

(2) the obligations of the Secretary and the Administrator to promulgate forthwith regulations to achieve the substantial restoration of the natural quiet and experience at the Grand Canyon National Park.

**SEC. 805. <<NOTE: 49 USC 40128 note.>> ADVISORY GROUP.**

(a) ~~Establishment.—Not <<NOTE: Deadline.>> later than 1 year after the date of the enactment of this Act, the Administrator and the Director of the National Park Service shall jointly establish an advisory group to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks.~~

In General. - The director of the National Park Service may retain the advisory group established pursuant to this section, as in effect on the day before the date of the enactment of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act, to provide continuing advice and counsel with respect to commercial air tour operations over and near nation parks.

(b) Membership.—

(1) In general.—The advisory group shall be composed of--

(A) a balanced group of--

- (I) representatives of general aviation;
- (II) representatives of commercial air tour operators;
- (III) representatives of environmental concerns; and
- (iv) representatives of Indian tribes or Native Hawaiians;

(B) a representative of the Federal Aviation Administration; and

(C) a representative of the National Park Service.

(2) Ex officio members.—The Administrator (or the designee of the Administrator) and the Director (or the designee of the Director) shall serve as ex officio members.

(3) Chairperson.—~~The representative of the Federal Aviation Administration and the representative of the National Park Service shall serve alternating 1-year terms as chairman of the advisory group, with the representative of the Federal Aviation Administration serving initially until the end of the calendar year following the year in which the advisory group is first appointed.~~

The representative of the National Park Service shall serve as chairperson of the advisory group

(c) Duties.—The advisory group shall provide advice, information, and recommendations to the Administrator and the Director--

(1) on the implementation of this title and the amendments made by this title;

(2) on commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) on other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) at the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.

(d) Compensation; Support; FACA.—

(1) Compensation and travel.—Members of the advisory group who are not officers or employees of the United States, while attending conferences or meetings of the group or otherwise engaged in its business, or while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) Administrative support.—~~The Federal Aviation Administration and the National Park Service shall jointly~~The National Park Service shall furnish to the advisory group clerical and other assistance.

(3) Nonapplication of faca.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the advisory group.

**SEC. 806. <<NOTE: 49 USC 40128 note.>> PROHIBITION OF COMMERCIAL AIR TOUR OPERATIONS OVER THE ROCKY MOUNTAIN NATIONAL PARK.**

Effective <<NOTE: Effective date.>> beginning on the date of the enactment of this Act, no commercial air tour operation may be conducted in the airspace over the Rocky Mountain National Park notwithstanding any other provision of this Act or section 40126 of title 49, United States Code.

**~~SEC. 807. <<NOTE: Deadlines. 49 USC 40128 note.>> REPORTS.~~**

~~(a) Overflight Fee Report.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the effects overflight fees are likely to have on the commercial air tour operation industry. The report shall include, but shall not be limited to—~~

~~(1) the viability of a tax credit for the commercial air tour operators equal to the amount of any overflight fees charged by the National Park Service; and~~

~~(2) the financial effects proposed offsets are likely to have on Federal Aviation Administration budgets and appropriations.~~

~~(b) Quiet Aircraft Technology Report.—Not later than 2 years after the date of the enactment of this Act, the Administrator and the Director of the National Park Service shall jointly transmit a report to Congress on the effectiveness of this title in providing incentives for the development and use of quiet aircraft technology.~~

**SEC. 808. <<NOTE: 49 USC 40128 note.>> METHODOLOGIES USED TO ASSESS AIR TOUR NOISE.**

Any methodology adopted by ~~a Federal agency~~ the Director of the National Park Service to assess air tour noise in any unit of the national park system (including the Grand Canyon and Alaska) shall be based on reasonable scientific methods.

**SEC. 809. <<NOTE: 49 USC 40128 note.>> ALASKA EXEMPTION.**

The provisions of this title and section 40128 of title 49, United States Code, as added by section 803(a), do not apply to any land or waters located in Alaska.

# **National Park Overflights Advisory Group**

## **May 16, 2012**

### **Attachment E**

## **NPATMA Amendments in FAA Reauthorization Act**



# National Parks Air Tour Management Program

## NPATMA Amendments in FAA Modernization and Reform Act of 2012

Presented to: NPOAG, Rapid City, SD

By: FAA and NPS

Date: May 16, 2012



**Federal Aviation  
Administration**



**National Park  
Service**



# NPATMA Amendment Provisions

- **FAA Modernization and Reform Act of 2012 included the following provisions related to NPATMA:**
  - Exemptions for Parks with 50 or Fewer Annual Flights
  - Voluntary Agreements
  - IOA Modifications
  - Operator Reports
  - Crater Lake National Park Exception



# Exemptions for Parks with 50 or Fewer Flights

Legislative text highlights are:

- **Statutory exemption from NPATMA for national parks with 50 or fewer annual flights (which includes parks with 50 or fewer IOA, plus parks where actual flights are 50 or fewer, even if IOA is higher)**
- **NPS Director may withdraw the exemption for a park if the Director determines that an ATMP or voluntary agreement is necessary to protect park resources and values or park visitor use and enjoyment**
- **NPS Director must inform FAA Administrator in writing of each determination to withdraw an exemption**
- **The Director and Administrator must jointly publish a list each year of exempted parks**
- **Air tour operators conducting tours at exempted parks must report each year to the Administrator and the Director on the number of air tour operations they conducted at the park during the preceding 1-year period**



# Exemptions for Parks with 50 or Fewer Flights

- **May 2012 Federal Register notice for air tour reporting requirements publishes initial list of exempted parks based on combined IOA from all operators less than or equal to 50 flights**
- **First year of annual data collection for exempt parks begins Oct 1, 2012 and ends Sept 30, 2013**
- **Reports are due to FAA and NPS no later than 30 days after the close of the reporting period (first annual report due Oct 30, 2013)**
- **Operators are invited to submit data for period Oct 1, 2011 thru Sept 30, 2012 to verify additional parks qualifying for exemption**
- **FAA and NPS may publish a supplemental list of exempt parks the first year if more parks are determined to qualify for the exemption based on submitted data**
- **NPS working on internal guidance / criteria for provision to withdraw exemption**



# Exemptions for Parks with 50 or Fewer Flights

| National Park Unit                              | IOA |
|---|-----|
| Big Bend National Park, TX                      | 5   |
| Coronado National Memorial                      | 5   |
| Fort Bowie National Historic Site, AZ           | 5   |
| Fort Davis National Historic Site, TX           | 5   |
| Hohokam Pima National Monument, AZ              | 5   |
| Organ Pipe Cactus National Monument, AZ         | 5   |
| Rio Grande Wild and Scenic River                | 5   |
| Tumacacori National Historic Park, AZ           | 5   |
| Casa Grande Ruins National Monument, AZ         | 6   |
| Black Canyon of the Gunnison Nat'l Park         | 7   |
| Dinosaur National Monument, UT/CO               | 9   |
| Sequoia & Kings Canyon National Parks           | 10  |
| Lake Roosevelt National Recreation Area (T)     | 12  |
| Saguaro National Park                           | 12  |
| Capulin Volcano National Monument, NM           | 13  |
| Mojave National Preserve                        | 15  |
| Great Sand Dunes National Park and Preserve     | 16  |
| Salinas Pueblo Missions National Monument, NM   | 17  |
| Carlsbad Caverns National Park, NM              | 18  |
| Guadalupe Mountains National Park, NM           | 18  |
| San Juan Island National Historical Park        | 20  |
| Devils Tower National Monument                  | 22  |
| Gila Cliff Dwellings National Monument          | 26  |
| Pipe Spring National Monument                   | 26  |
| Hubbell Trading Post National Historic Site, AZ | 27  |
| Fort Union National Monument, NM                | 32  |
| Pecos National Historic Park, NM                | 32  |
| El Malpais National Monument                    | 43  |
| El Morro National Monument                      | 43  |
| Petroglyph National Monument, NM                | 45  |
| Petrified Forest National Park                  | 46  |
| Wupatki National Monument                       | 46  |
| Walnut Canyon National Monument                 | 49  |



# Voluntary Agreements

Legislative text highlights are:

- **A voluntary agreement is a discretionary alternative to an ATMP; it is not required**
- **The Director and Administrator may enter into a voluntary agreement with an air tour operator, including an operator with current IOA or a new entrant operator**
- **A voluntary agreement shall address management issues necessary to protect park resources and visitor use, without compromising aviation safety or the air traffic control system**
- **A voluntary agreement may include provisions that could also be included in an ATMP**
- **A voluntary agreement may include provisions to ensure the stability of, and compliance with, the agreement**



# Voluntary Agreements

## Legislative text highlights (continued):

- **A voluntary agreement may provide for fees**
- **The Director and Administrator shall provide an opportunity for public review of a proposed voluntary agreement and consult with any Indian tribe whose lands may be overflown. After this opportunity for public review and consultation, the voluntary agreement may be implemented without further administrative or environmental process.**
- **A voluntary agreement may be terminated at any time at the discretion of the Director, if the Director determines the agreement is not adequately protecting park resources or visitor experiences; or by the Administrator, if the Administrator determines the agreement is adversely affecting aviation safety or the national aviation system.**
- **If a voluntary agreement is terminated, operators shall conform to IOA until an ATMP for the park is in effect**



# Voluntary Agreements

- **FAA and NPS are beginning to explore parks where voluntary agreements may be a viable option.**
- **A voluntary agreement is an alternative to an ATMP. All operators at a park would need to be party to the agreement.**



# IOA Modifications

Legislative text highlights are:

- **Modifications to IOA for existing operators and new entrants may be allowed without NEPA review**
- **Modifications may be allowed if adequate information regarding existing and proposed operations is provided to the Administrator and Director; the Administrator determines there would be no adverse impact on aviation safety or the air traffic control system; and the Director agrees with the modification, based on professional expertise of the Director regarding the protection of the resources, values, and visitor use and enjoyment of the park.**



# IOA Modifications

- **Amendments to IOA do not eliminate specific qualifications in NPATMA.**
  - IOA must still meet NPATMA statutory tests of promoting protection of park resources, visitor experiences, and tribal lands, and promoting safe air tour operations.
  - New entrant IOA is still subject to NPS Director refusal if it would create a noise problem at a park or on tribal lands.
- **There are pending IOA modification requests that will be addressed under the new amendments.**



# Operator Reports

Legislative text highlights are:

- **Each air tour operator conducting a tour over a national park under IOA, an ATMP, or a voluntary agreement is required to submit a report to the Administrator and Director of the number of air tour operations over each park and other information the Administrator and Director may request to administer the air tour program**
- **No later than 90 days after the date of enactment of FAA reauthorization, the Administrator and Director shall jointly issue an initial request for reports**
- **Reports shall be submitted with a frequency and in a format prescribed by the Administrator and Director**



# Operator Reports

- **May 2012 Federal Register notice details reporting requirements**
- **Calls for quarterly reporting, first quarter of data collection begins Oct 1, 2012 and ends Dec 31, 2012**
- **Reports are due to FAA and NPS no later than 30 days after reporting period closes (first report due Jan 30, 2013)**
- **Information requested for each flight: date and time of departure, “N” number, aircraft make / model / series, departure airport / helipad, route, and park overflow**
- **Quarterly reporting requirement and details do not apply to operators at exempt parks; they need only report on an annual basis the number of operations they conducted in preceding year**



# Operator Reports

- **Excel spreadsheet template has been developed**
- **Operators can download report template from FAA or NPS website**
- **Operators enter data into Excel spreadsheet template and submit concurrently to FAA and NPS via email**



# Operator Reports

## Reporting Template:

|   |           |        |            |                 |        |                                    |  |  |  |  |  |
|---|-----------|--------|------------|-----------------|--------|------------------------------------|--|--|--|--|--|
| Operator/Company Name:                                      |           |        |            |                 |        | <b>FAA and NPS Information</b>     |  |  |  |  |  |
| dba (doing business as):                                    |           |        |            |                 |        | Name of Assigned POI:              |  |  |  |  |  |
| Certificate Designator:                                     |           |        |            |                 |        | Name of Assigned FSDO:             |  |  |  |  |  |
| Reporting Period: July 1 to September 30                    |           |        |            |                 |        | FSDO Phone No.:                    |  |  |  |  |  |
| Year: 2012  |           |        |            |                 |        | National Park Service Unit(s):     |  |  |  |  |  |
| <b>Notes</b>  |           |        |            |                 |        |                                    |  |  |  |  |  |
| 1   |           |        |            |                 |        | <b>Departure Airports/Helipads</b> |  |  |  |  |  |
| 2   |           |        |            |                 |        |                                    |  |  |  |  |  |
| 3   |           |        |            |                 |        |                                    |  |  |  |  |  |
| 4   |           |        |            |                 |        |                                    |  |  |  |  |  |
| 5   |           |        |            |                 |        |                                    |  |  |  |  |  |
| 6   |           |        |            |                 |        |                                    |  |  |  |  |  |
| <b>Data Submission</b>                                      |           |        |            |                 |        | <b>Routes Flown</b>                |  |  |  |  |  |
| For Each Operation, Fill in the Requested Information Below |           |        |            |                 |        | Code                               |  |  |  |  |  |
| NOTE: Mouse-over below for further guidance                 |           |        |            |                 |        | Route Name                         |  |  |  |  |  |
| Departure   | Departure | "N"    | Aircraft   | Departure       | Flight |                                    |  |  |  |  |  |
| Date  | Time      | Number | Make/Model | Airport/Helipad | Route  |                                    |  |  |  |  |  |
|   |           |        |            |                 |        |                                    |  |  |  |  |  |
|   |           |        |            |                 |        |                                    |  |  |  |  |  |



# Crater Lake National Park Exception

Legislative text highlights are:

- **An application to begin commercial air tour operations at Crater Lake National Park may be denied by the Director of the National Park Service without the establishment of an ATMP, if the Director determines that such operations would adversely affect park resources or visitor experiences**



# Crater Lake National Park Exception

- **NPS has sole jurisdiction with respect to this provision**
- **One such application has been received, from Leading Edge Aviation, Inc. for 300 operations annually**
- **NPS in process of making a determination**



# National Park Overflights Advisory Group

May 16, 2012

## Attachment F

# Categorical Exclusion Process for ATMPs



# National Parks Air Tour Management Program



**Federal Aviation  
Administration**



**National Park  
Service**

## Categorical Exclusion Process for ATMPs

Presented to: NPOAG, Rapid City, SD

By: FAA and NPS

Date: May 16, 2012



# Categorical Exclusion (CE) Process

- **FAA and NPS jointly developed guidance document using each agency's respective NEPA guidance (FAA Order 1050.1E and NPS Director's Order 12 (DO-12))**
- **A CE is a category or kind of action that has no significant individual or cumulative effects on the quality of the human environment**
- **Each agency independently determines if a proposed ATMP qualifies for a CE using its own NEPA guidance**
- **If agencies agree proposed ATMP can be categorically excluded, FAA prepares environmental decision document that is co-signed by FAA and NPS based on each agency's CE documentation**



# Categorical Exclusion (CE) Process

- **NPS proposes candidate park for CE process for the ATMP**
- **FAA and NPS form interdisciplinary team with various program staff and appropriate subject matter experts**
- **IDT holds kick off meeting**
- **IDT conducts internal scoping to gather information about existing conditions, define issues, and data needs**



# Categorical Exclusion (CE) Process

- **IDT develops an outreach strategy to include how and when to consult with affected agencies, and/or tribes, stakeholders, and interested public.**
- **At least one public meeting must be held to meet requirements of NPATMA.**
- **FAA and NPS jointly develop the description of the proposed ATMP which may include:**
  - **number of flights,**
  - **routes, altitudes,**
  - **potential (minimal) mitigation, and**
  - **information as applicable to comply with NPATMA requirements for content of an ATMP, including context-specific incentives for QT**



# Categorical Exclusion (CE) Process

- **Air tour operators may submit applications for OA to request a different allocation or different total OA for the ATMP. Applications for OS should include information regarding the relevant factors for competitive bidding as required under NPATMA.**
- **FAA Flight Standards reviews the proposed ATMP to determine if it meets regulatory standards (plan must be in a developed stage for this to occur).**
- **FAA and NPS will each follow their respective agency's guidance to determine if the proposed ATMP qualifies for a CE**



# Categorical Exclusion (CE) Process

- **Upon satisfaction that both FAA and NPS can support a CE, FAA will develop an environmental decision document in coordination with NPS that meets both agencies' needs, acknowledging each agency's independent NEPA review without deferring to agency-specific criteria.**
- **The environmental decision document is signed by FAA and NPS**



# Categorical Exclusion (CE) Process

## ATMP Rulemaking and Implementation

- **FAA will publish a Notice of Proposed Rulemaking (NPRM) for the proposed ATMP. The NPRM will include the CE determinations and RegFlex / SBA requirements.**
- **FAA drafts NPRM and proposed ATMP in coordination with NPS, assuring that drafting does not change terms of the proposed ATMP.**
- **FAA publishes NPRM with 45 (or 60) day comment period. The NPRM will include the proposed ATMP.**



# Categorical Exclusion (CE) Process

## ATMP Rulemaking and Implementation

- **FAA will consider NPRM comments in consultation with NPS. Changes to the proposed ATMP will be reviewed by both agencies for continued applicability of the CE. ATMP changes must be acceptable to both agencies.**
- **FAA publishes Final Rule with the final ATMP in the Federal Register that reflects the final agreed upon ATMP.**
- **FAA amends air tour operators' OpsSpecs/Letter of Authorization to reflect ATMP and make it enforceable**



# Categorical Exclusion (CE) Process

## FAA CE Process

- **FAA will use categorical exclusion 312f for regulatory actions identified in FAA Order 1050.1E, “Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment).”**
- **A determination of whether a proposed action that is normally categorically excluded requires an EA or EIS depends on whether the proposed action involves extraordinary circumstances.**



# Categorical Exclusion (CE) Process

## FAA CE Process

- **Extraordinary circumstances exist when the proposed action (1) involves any of the following circumstances\* and (2) may have a significant effect. Both conditions (1) and (2) must be present to preclude use of a CE.**

**\* - includes adverse effects on cultural resources, an impact on noise levels of noise-sensitive areas, impact on natural, ecological, or scenic resources of Federal, Tribal, State, or local significance, etc.**



# Categorical Exclusion (CE) Process

## NPS CE Process

- **Use environmental screening form (ESF) to ascertain the important environmental issues and determine if exceptional circumstances exist**
- **Contact federal, state, and local agencies and interested and affected public to obtain input**
- **If no exceptional circumstances exist, document in categorical exclusion form (CEF). The CEF identifies the CE used, ESF is attached.**



# Categorical Exclusion (CE) Process

## NPS CE Process

- **Several CE's may apply but most applicable is 3.4.A.8**
- **CE is 3.4.A.8, “Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:**
  - a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,**
  - b. Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it,**
  - c. Conflict with adjacent ownerships or land uses, or**
  - d. Cause a nuisance to adjacent owners or occupants.”**
- **If extensive mitigation is required to avoid triggering an exceptional circumstance, an EA must be prepared.**



# **National Park Overflight Advisory Group**

## **May 16, 2012**

### **Attachment G**

### **Park Updates**



# National Parks Air Tour Management Plan (ATMP) Program Update

Presented to: NPOAG, Rapid City, SD

By: FAA/NPS ATMP Staff

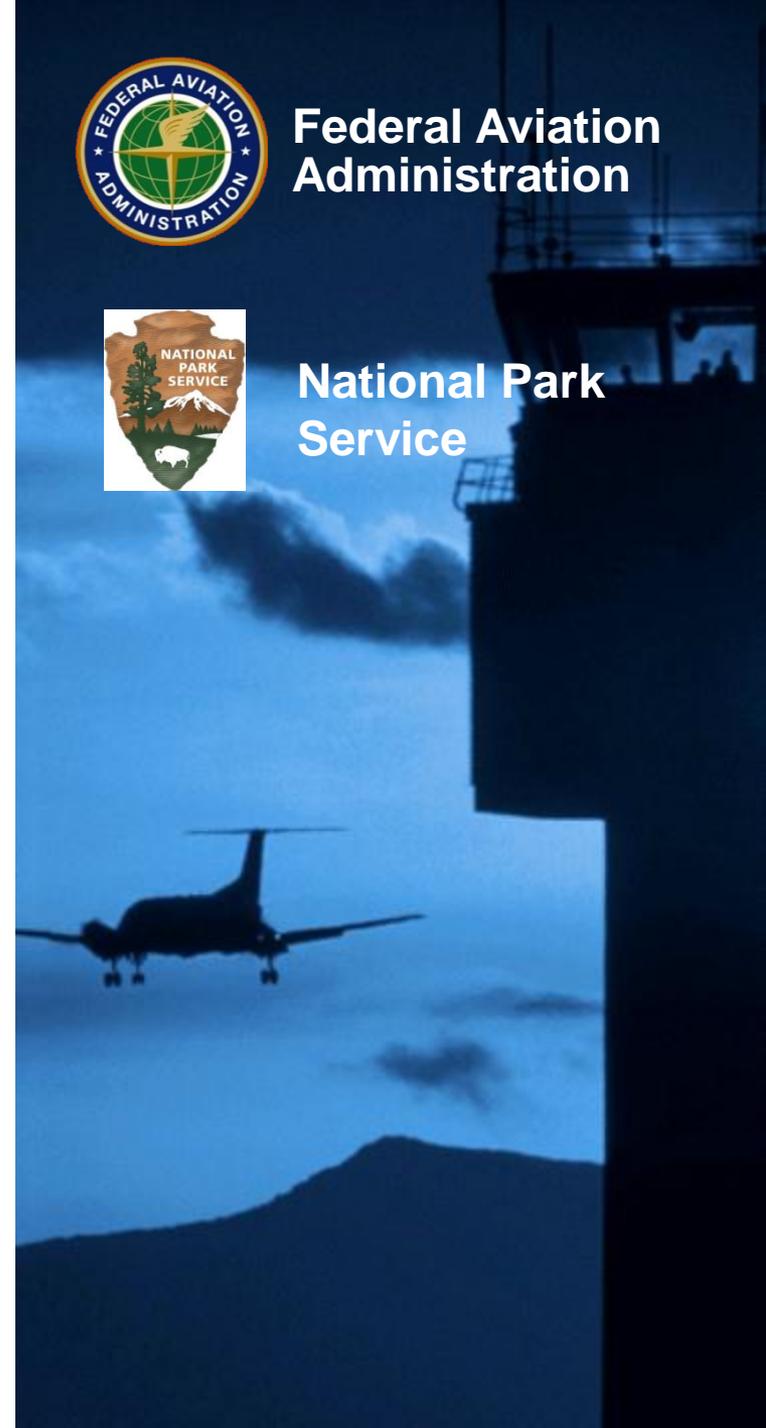
Date: May 16, 2012



Federal Aviation  
Administration



National Park  
Service



# Mt. Rushmore / Badlands

- **Mount Rushmore National Memorial**

- Internal review of preliminary draft ATMP EA on hold pending resolution on higher level agency issues
- FAA and NPS are meeting to discuss the possibility of a Voluntary Agreement

- **Badlands National Park**

- ATMP was on hold for South Unit GMP and OST issue
- FAA and NPS met with park and OST last year to discuss moving forward
- FAA and NPS will discuss the possibility of a Voluntary Agreement



# Haleakala / Hawaii Volcanoes

- **Haleakala**

- HALE preliminary draft alternatives released for public review and comment April – June 2011
- FAA and NPS preparing refinements to preliminary alternatives based on public comments

- **Hawaii Volcanoes**

- HAVO preliminary draft alternatives released for public review and comment in April – June 2011
- FAA and NPS preparing refinements to preliminary alternatives based on public comments



# Death Valley

- **Preliminary alternatives developed – sent out to Aviation Rulemaking Committee (received no comments)**
- **Started work on environmental document**
- **Candidate for Categorical Exclusion**



# Statue of Liberty / Governors Island

- **Kick off meeting held on October 15, 2009**
- **FAA and NPS met with Jerrold Nadler's office on November 18, 2010**
- **FAA and NPS to discuss development of separate ATMPs for Statue of Liberty and Governors Island National Monuments**



# Mount Rainier

- **Preliminary alternatives released for public review and comment - March 2011**
- **Public meetings and a tribal meeting were conducted in April 2011**
- **Moving forward with traditional ATMP**
- **Next steps**
  - Hold follow-up telcon with FAA/NPS to refine alternatives
  - Develop environmental document



# Petrified Forest

- **Preliminary alternatives developed**
- **Tribal meetings with Navajo, Zuni, & Hopi to brief them on alternatives – February & April 2012**
- **Exempt from ATMP (46 IOA)**
- **NPS looking at options to move forward**



# Golden Gate – Muir Woods/Point Reyes/SF Maritime

- **Kick off meeting/field trip: Sept 16-18, 2010**
- **Scoping: July 28-Oct 21, 2011**
- **Public meetings: Aug 16-17, 2011**
- **Alternatives Development Meeting: Feb 13-14, 2012**
- **Next steps**
  - FAA/NPS team developing preliminary alts based on public input and internal scoping
  - Planning for public comment on alternatives in Oct/Nov 2012



# Big Cypress

- **Preliminary alternatives developed**
- **Moving forward with potential Voluntary Agreement**
- **Next Steps:**
  - Set up meeting with operator to discuss contents of voluntary agreement
  - Consultation with tribes on voluntary agreement
  - Public review and comment (including public meetings) on voluntary agreement



# Acadia

- **Potential candidate park for voluntary agreement**
- **Kick off meeting tentatively scheduled for fall 2012**

