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S. HRG. 108–731

NATIONAL PARKS AIR TOUR MANAGEMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

TO

CONDUCT OVERSIGHT ON THE IMPLEMENTATION OF THE NATIONAL PARKS AIR MANAGEMENT ACT OF 2000 (PUBLIC LAW 106-181)

JULY 22, 2004

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

97–456 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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NATIONAL PARKS AIR TOUR MANAGEMENT ACT

THURSDAY, JULY 22, 2004

U.S. SENATE,
SUBCOMMITTEE ON NATIONAL PARKS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:33 p.m., in room SD–366, Dirksen Senate Office Building, Hon. Craig Thomas presiding.

OPENING STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Thank you all very much for being here. I want to welcome the witnesses today to the National Parks Subcommittee.

Our purpose is to conduct oversight on the implementation of the National Parks Air Tour Management Act of 2000.

The National Parks Air Tour Management Act was passed 4 years ago. The intent was to ensure that visitors to our national parks have a safe and enjoyable experience, whether they are visiting on foot or in the air.

In the 4 years since the act was passed, the Federal Aviation Administration and the National Park Service has struggled to form a cooperative working relationship. I certainly understand and appreciate the hard work of the agencies and understand the difficulty of putting something like this together. However, I am concerned that it has taken the National Park Service and FAA nearly 4 years to complete a seven-page memorandum of understanding and that the environmental assessment process has only recently begun. This is a very slow process. It cannot be good for the parks or for the commercial air tour operators.

The purpose of this hearing is to gain a better understanding of some of the issues involved: No. 1, the proposed schedule for completion of the planning process; two, key issues affecting the cooperative relationship between the agencies; and finally, how a lengthy implementation schedule may affect the commercial air tour operations and the national park resources.

So I hope we can address those issues, get an idea of where we are, what the schedule for completion would be, what are the key issues that still exist with respect to the agencies, and then talk a little bit about the impact that we are having by having this rather long time to get into place.

So I want to welcome panel one: Mr. Bill Withycombe, Regional Administrator, Western-Pacific Region of FAA, and Mr. Paul Hoffman, Deputy Assistant Secretary, Fish and Wildlife and Parks, the Department of the Interior. Thank you, gentlemen, for being here.

Your full statements will be put in the record and if you would just kind of summarize it and tell us where you are, why, we will appreciate it. Would you like to begin, Mr. Withycombe.

STATEMENT OF WILLIAM C. WITHYCOMBE, REGIONAL ADMINISTRATOR, WESTERN-PACIFIC REGION, FEDERAL AVIATION ADMINISTRATION

Mr. WITHYCOMBE. Good afternoon. I would like to thank the subcommittee for the opportunity to appear before you today, along with my colleague, Deputy Assistant Secretary Hoffman, on the implementation of the National Parks Air Tour Management Act of 2000.

I am the FAA Regional Administrator who has been given the program responsibility for implementing this act. Over the past several years, we have worked very closely with the Department of the Interior and the National Park Service, better known as NPS in my statement, on establishing the groundwork for implementing the act. On behalf of Secretary Mineta and Administrator Blakey of the FAA, I would like to thank DOI and NPS for their dedication and cooperation in this important effort.

I would also like to offer my full statement for the record and briefly summarize how FAA has worked with the National Park Service to make this program a reality.

Over time, the popularity and frequency of air tours over some of our Nation's national parks has increased. Concern has also increased over how the tours were affecting park resources and their enjoyment by visitors. In response in 2000, Congress enacted the legislation known as the National Parks Air Tour Management Act to regulate air tours over parks and tribal lands through, among other things, the development of air tour management plans. The FAA and the National Park Service developed cooperative plans to do this.

In accordance with the act, the FAA and the National Park Service established the National Parks Overflights Advisory Group, better known as the NPOAG, which has provided, and continues to provide, valuable advice to our agencies on issues related to the implementation of the act. In fact, the NPOAG is going to be meeting three times during this fiscal year. The next meeting is here in Washington on September 9 and 10.

We also, in cooperation with the National Park Service, established minimum altitude to complete our statutory definition of what constitutes commercial air tour operations. We determined this through rulemaking that was effective in January of last year. Along with completing the rulemaking action, the FAA and NPS finalized earlier this year a Memorandum of Understanding regarding implementation of air tour management planning. The MOU establishes a timeframe and framework for cooperation and participation between FAA and NPS.

We have also established a website and an advisory circular that provides guidance to air tour operators. We also have produced a

public information video that we use when we hold outreach meetings.

To date, the FAA has received applications for air tour operations from 91 separate air tour operators. Commercial air tour operations are currently conducted or proposed for over 107 national parks and 6 specific tribal lands.

Because the ATMP's are a new program that raise issues that have not been dealt with before, we decided the best approach would be for the FAA, along with the National Park Service, to initiate development of ATMP's and associated environmental documents at a relatively small number of parks, 9 of the 113 locations.

At each of the nine parks noted above, we have completed some baseline noise monitoring, and agency scoping has been started. We are now in the initial stages of identifying potential impacts and developing ATMP alternatives to mitigate or prevent significant adverse impacts on the parks. We are doing this under the National Environmental Policy Act, NEPA, in cooperation with, of course, the National Park Service in preparation of these related documents.

We have paid particular attention to public outreach in this effort, publishing notices of our intent in developing the ATMP's and associated environmental documents. We have started public scoping in each of these parks that I mentioned before, and during the scoping period, we invited the public, agencies, and other interested parties to provide detailed comments.

As recently as last week, we held consultation with the Kapuna Group members in Hawaii Volcanoes National Park and Haleakala National Park, and with the Federal Advisory Commission and other patient community members on Kalaupapa National Historical Park. Through consultation, we will better understand the cultural resources within each park, the impacts of air tour operations on the park resources, and the use of them.

The FAA and the National Park Service will use this information we gain through the public outreach effort to provide information on the environmental studies that we need to do and through the public agency scoping to identify significant issues and potentially significant impacts on the operations.

Although we focused on these nine parks, we are moving ahead with other parks, specifically four other parks within the 48 States. These are located in Arizona and Montana.

We believe that significant progress has been made so far in implementing the act, and we are working together to resolve such issues as interim operating authority, new operator approval, and increases in flights that have been requested by other operators.

There are challenges associated with this. We have received approximately 15 new entrant applications, and the FAA and National Park Service are currently working to establish criteria and processes for making the necessary determinations for granting such authority. We have asked the special NPOAG committee to study these issues for us and give us their advice.

In closing, Mr. Chairman, the FAA and the National Park Service are working cooperatively and collaboratively to reach a conclusion on these matters, and I am confident that mutually acceptable conclusions will be reached. I can assure you that we take seriously

our responsibilities under the act to mitigate and prevent significant adverse effects due to air tours on the precious resources of our national parks. At the same time, we also appreciate the value and benefits afforded to the public who wish to view the parks via air tours.

How to balance these interests in accordance with the direction provided by Congress under the act is our task. We will look forward to continuing our work with the National Park Service on this effort and appreciate the committee's interests in our program.

That concludes my prepared statement. I would be happy to address any questions you may have.

[The prepared statement of Mr. Withycombe follows:]

PREPARED STATEMENT OF WILLIAM C. WITHYCOMBE, REGIONAL ADMINISTRATOR FOR THE WESTERN-PACIFIC REGION, FEDERAL AVIATION ADMINISTRATION

Chairman Thomas, Senator Akaka, Members of the Subcommittee, good afternoon. I would like to thank the Subcommittee for this opportunity to appear before you today, along with my colleague from the Department of Interior, on our implementation of the National Parks Air Tour Management Act of 2000 (Act). I am the Federal Aviation Administration (FAA) Regional Administrator who has been given the program responsibility for implementing the Act. Over the past several years, we have worked very closely with the Department of Interior (DOI) and the National Park Service (NPS) on establishing the ground work for implementing the Act and, on behalf of Secretary Mineta and Administrator Blakey, I would like to thank DOI and NPS for their dedication and cooperation in this important effort.

I would like to briefly describe what the Act provides and how the FAA has worked, along with the NPS, to make this new program a reality. Over time, as the popularity and frequency of air tours over some of our nation's National Parks increased, concern also increased over how such tours were affecting Park resources and their use and enjoyment by visitors. In response, Congress enacted the National Parks Air Tour Management Act on April 5, 2000 as part of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, known as *Air-21*. The Act requires all persons operating or intending to conduct a commercial air tour operation over or within half a mile from the border of a National Park, or over tribal lands within or abutting a National Park, to apply to the FAA for authority to conduct such tours. The Act further requires that FAA and NPS cooperatively develop an Air Tour Management Plan (ATMP) for each unit of the National Park System or tribal land that does not have a plan in effect at the time a person applies for tour authority. The purpose of an ATMP is to provide acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations on Park natural and cultural resources, visitor experiences, and tribal lands. The Act also states that the NPS has the responsibility of conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of national parks in ways that leave them unimpaired for future generations and that the FAA 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.

The Act specifically excludes the Grand Canyon National Park, tribal lands within or abutting Grand Canyon National Park, parks or tribal lands located in the state of Alaska, and flights conducted by a commercial air tour operator over or near the Lake Mead National Recreation Area solely as a transportation route to conduct an air tour over Grand Canyon. The Act expressly prohibits commercial air tour operations over the Rocky Mountain National Park, regardless of altitude.

In addition to the requirements set forth for commercial air tour operators, the Act directed the FAA and NPS to establish an Advisory Group to provide continuing advice and recommendations with respect to the Act's implementation, commonly accepted quiet aircraft technology, measures to accommodate Park visitor interests, and any other issues that the FAA or NPS request. Accordingly, FAA and NPS established the National Parks Overflights Advisory Group (NPOAG), which has provided, and continues to provide, valuable advice to both the FAA and NPS on issues related to implementation of the Act. In fact, the NPOAG will be meeting three times during this fiscal year, the next meeting being right here in Washington DC on September 9th and 10th.

Under the Act, the FAA, with the cooperation of NPS, was required to establish a minimum altitude to complete the statutory definition of a "commercial air tour operation." Determination of this aspect of the definition was necessary before the Act's commercial air tour operating requirements could come into effect. The FAA did this through rulemaking, seeking public comment through a Notice of Proposed Rulemaking, published in April 2001. Approximately 2,400 comments were received in response to the Notice. The issuance of the final rule was delayed, however, in part, by the priority necessarily given to security related rulemaking the FAA conducted following the tragic events of September 11, 2001. We issued the final implementing regulations on October 25, 2002, with an effective date of January 23, 2003. The implementing regulations are contained in part 136 of title 14, Code of Federal Regulations.

Along with completing the rulemaking actions, the FAA and NPS finalized earlier this year a Memorandum of Understanding (MOU) regarding implementation of air tour management planning. The MOU establishes a framework for cooperation and participation between the FAA and NPS. In addition, we have developed several public information resources to support implementation of the program. These include:

- A website through which the public can obtain detailed information about the program and may register to obtain notification about public involvement opportunities for specific parks. This website address is *www.atmp.faa.gov*.
- FAA Advisory Circular 136-1, which was published on October 25, 2003. This Advisory Circular provides guidance to air tour operators on the application process and other details related to compliance with Federal Aviation Regulation Part 136.
- A public information video, produced in cooperation with the NPS that provides an overview of the ATMP program. This video has been used during the public outreach and scoping meetings we've held to provide a basic understanding of the program. The video is available for public viewing on the FAA's ATMP website.

To date, the FAA has received applications for air tour operating authority from 91 separate air tour operators. Commercial air tour operations are currently conducted, or are proposed for, over 107 national park units and six specific tribal lands. To put this in context, there are currently 384 units of the National Park System in the U.S. The level of commercial air tour activity over Parks ranges from as many as over 30,000 annual operations over Hawaii Volcanoes National Park to as few as five or less annual operations at numerous, smaller parks.

Because the establishment of ATMPs is a new program that raises issues that we have not dealt with before, we decided that the best approach would be for the FAA, along with the NPS, to first initiate development of ATMPs and associated environmental documents at a relatively small number of parks—9 of the 113 locations—in order to work out any threshold issues regarding implementation before moving on to developing plans at all locations. The nine selected parks include the three major parks in the state of Hawaii: Hawaii Volcanoes National Park, Haleakala National Park, and Kalaupapa National Historical Park; three smaller parks located on the island of Hawaii; Lake Mead National Recreation Area; Mount Rushmore National Monument; and Badlands National Park. These parks were selected based on consideration of the level of air tour activity, unique issues associated with the particular park, economies of travel, the expertise and ongoing working relationships among local NPS and FAA staff and the air tour operators, and/or the previous activities related to management of air tour operations.

ATMPs and supporting environmental reviews under the National Environmental Policy Act (NEPA) are required for each park where air tours are, or will be, conducted regardless of the level of tour activity. We intend to implement each ATMP through rulemaking, which will require some time, but will ensure that all interested parties have the opportunity to understand and comment on the ATMPs. All ATMPs will be subject to public participation. We anticipate that the first ATMPs will be completed in late 2005.

At each of the nine parks noted above, we have completed some baseline noise monitoring and public and agency scoping. We are now in the initial stages of identifying potential impacts and developing ATMP alternatives to mitigate or prevent significant adverse impacts on the parks. To comply with the National Environmental Policy Act of 1969 (NEPA), the FAA and NPS will cooperatively prepare an Environmental Assessment (EA) for each ATMP. Based on the results of the EA, the FAA will prepare either a Finding of No Significant Impact (FONSI) or a full Environmental Impact Statement.

We have paid particular attention to public outreach, publishing notices of our intent to develop the ATMPs and associated Environmental Assessments for each of the nine parks in March and April this year. We completed public and agency scoping meetings in April and May. As required by the Act, we held at least one public scoping meeting and an agency scoping meeting for each project. During the scoping period, we invited the public, agencies, and other interested parties to provide detailed comments, suggestions, and input regarding all aspects of commercial air tour operations and their potential impacts, as well potential ATMP alternatives. We also successfully facilitated the filing of public comments through our website.

We, along with the NPS, have also initiated specific consultation regarding potential impacts to historic properties, in accordance with section 106 of the National Historic Preservation Act, and have pursued Government-to-Government consultations with affected Indian Tribes. As recently as last week, we held consultations with Kupuna (Native Hawaiian Elders) Group members at Hawaii Volcanoes National Park and Haleakala National Park and with the Federal Advisory Commission and other patient and community members at Kalaupapa National Historical Park. Through consultation, we will better understand the cultural resources within each Park, the impacts of air tour operations on park resources and the use of them, and gain an appreciation for concerns about air tour operations in general.

FAA and NPS will use the information gained through this public outreach along with information gained in ongoing environmental studies and through public and agency scoping to identify the significant issues and potentially significant and adverse impacts related to commercial air tour operations. We certainly recognize that there are very disparate views on this subject. That is why we are moving carefully and seeking as much public input and information as possible to help guide development of ATMP alternatives and provide the basis for determining if any limitations or restrictions on commercial air tour operations are necessary and justified.

Although our focus so far has been on these nine parks, we are also moving ahead on certain studies for other parks. Specifically, we will initiate noise monitoring at four additional parks this summer in conjunction with the primary air tour season. These parks include Glacier National Park located in Montana, and three parks in Arizona: Canyon De Chelly National Monument, Navajo National Monument, and the Petrified Forest National Park.

With regard to resources to support implementation of the ATMP program, the FAA has received $21 million over the past four fiscal years (FY-01 through FY-04). To date, we have obligated $19 million towards our operational costs and to the Volpe National Transportation System Center (Volpe Center), administered by one of our sister DOT agencies, the Research and Special Programs Administration (RSPA), to provide contract support to the program. We have tasked the Volpe Center to develop environmental and ATMP documents for a total of 18 park and tribal land locations. The current level of obligation can fund an additional 18 locations, which brings the total locations currently funded to 36. Our current estimates indicate a cost of approximately $.5 million per location to complete the development of the required NEPA and ATMP documents. Under the terms of our MOU, the FAA and NPS have agreed to a cost sharing of 60% FAA and 40% NPS for preparing ATMPs, subject to availability of funding. However, to date, the NPS has not been able to provide funding for the program.

We believe that we have made significant progress so far in implementing the Act, overcoming certain challenges to interagency collaboration by working together to resolve policy matters and to improve communication. However, our work is far from finished. There are several important issues that we are now in the process of resolving. These include matters related to noise modeling and determining significance of environmental impacts. Also, we are in the process of double-checking the basis for interim operating authority granted to existing commercial air tour operators because we think misunderstandings about how to count air tour operations per Park have led to cases of inaccurate numbers of authorized flights. We must additionally handle requests from existing tour operators for increases in flights over Parks pending development of applicable ATMPs. The FAA has received a number of requests from existing operators for increases in air tour operations and we anticipate more requests in the future. No increases have been authorized to date because of concerns about the accuracy of current flight numbers and because criteria and a process for granting increases are still under development by FAA and NPS.

Another challenge we face is the issuance of interim operating authority to new entrant tour operators. The FAA has required tour operators who initiated service after the Act was enacted to cease operations pending the development of the ATMP or until interim operating authority is granted to them as a new entrant. Under the Act, interim operating authority may only be granted to a new entrant if the FAA

determines that it is necessary to ensure competition, and may not be granted if we determine it would create a safety problem or if the NPS determines it would create a noise problem. Approximately 15 new entrant applications have been received. FAA and the NPS are currently working on establishing criteria and processes for making such determinations, and we have asked for the advice of the NPOAG on this issue.

In closing, Mr. Chairman, the FAA and the NPS are working cooperatively and collaboratively to reach a conclusion on these and other matters, and I am confident that mutually acceptable conclusions will be reached. I can assure you that we take very seriously our responsibility under the Act to mitigate or prevent significant adverse effects due to air tours on the precious resources of our national parks. At the same time, we also appreciate the value and benefits afforded to the public who wish to view our parks via air tours. How to balance these interests in accordance with the direction provided by Congress under the Act is our task. We look forward to continuing our work with the NPS on this effort and appreciate this Committee's interest in our programs.

That concludes my prepared statement. I would be happy to address any questions you may have.

Senator THOMAS. All right, sir. Thank you very much.

Mr. Secretary.

STATEMENT OF PAUL HOFFMAN, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. HOFFMAN. Thank you, Mr. Chairman, for the opportunity to testify on behalf of the Department of the Interior on the implementation of the National Parks Air Tour Management Act of 2000, and thank you for including my written testimony in the record.

The National Parks Air Tour Management Act directs both the Park Service and the FAA to develop plans for the 107 park units that currently have air tour operations. The act directs the FAA and the Park Service to work cooperatively in the development of these plans. Specifically the act says that FAA is the lead on NEPA analysis. The Park Service is a cooperating agency, but both of us are required to sign an EA or an EIS that is the output of that NEPA process.

Before we could get started developing any actual plans, there was some big-picture coordination, if you will, that was required for us to establish some of the processes and standards by which we develop these plans. My cohort, Mr. Withycombe, mentioned that there was a National Parks Overflights Advisory Group established, and they have been a very important part of the process. They assisted in the development of regulations associated with this law and provide input on an ongoing basis, helping us in analyzing these issues.

It was necessary for us to identify the responsible personnel within each agency for the development and implementation of these plans.

There was the need to meld two fairly distinct organizational missions. The Federal Aviation Administration is largely responsible for managing our airspace and ensuring that air travel is safe and available to the general public. That was a pretty good butcher job of a description of your mission, Bill. And of course, the Park Service mission is to conserve the natural resources and the wildlife and the cultural and historic resources, while maintaining the

opportunity for people to visit those and do that in such a way as to leave them both unimpaired for future generations.

There was a lot of work to be done to reach agreement on how impacts are analyzed. Impacts from air tours are a unique blend of science and analysis.

There was a need for scheduling and budgeting for the air tour management plans.

And there was a need to reconcile our distinct agency approaches to conducting NEPA analysis.

And we had to develop some interim operating authorities for the existing air tour operators at the 107 parks in order to allow them to continue to do business until an air tour management plan is developed for each of those parks.

We have made some progress and we have some procedural accomplishments. We did sign an MOU on how we would conduct this process. The Park Service signed that in January of this year. So that is in place. Even though the act designates the FAA as the lead agency and the Park Service as a cooperating agency, under our MOU there is much more emphasis on cooperative NEPA analysis and cooperative development of the science that goes into the analysis of these impacts.

The MOU also assigns responsibility for the funding of the development of ATMP's with the FAA picking up 60 percent and the Park Service picking up 40 percent of the cost of each ATMP.

There was a high-level meeting held this January over at FAA. I attended part of that meeting. It was also attended by the Council on Environmental Quality, and I would characterize it as a very successful meeting. It concluded after 2 days of hard, rigorous work. There are greatly improved communications as a result of that. I think there is greater respect by each agency of the other agency's missions. I think we established some boundaries as to our missions, and we agreed on an approach to conducting NEPA.

We are working to develop an agreement on an implementation plan for the development of ATMP's. The basis for this is that we believe having an implementation plan will give us a more legally defensible plan in the end. It will address some of the broader issues. We can negotiate them once, make them part of the implementation plan, instead of negotiating them with each plan. It will provide greater efficiencies and more consistency in the development of these plans. The draft implementation plan is expected to be available by the middle of August.

There is greater coordination and cooperative development regarding technical issues relative to the measurement of sound and the analyses of those sounds that are conducted. We are working very closely with the Department of Transportation's Volpe Center, which is their contractor that conducts sound modeling and measurement and analysis processes for the FAA. We are utilizing the FICAN committee to help us address some of the questions we each have about how we measure and analyze sound.

The reality of this is that this issue is somewhat complicated by the spill-over impacts of what we do with ATMP's and how that can impact or is impacted by what we are doing with the Grand Canyon Overflights Act to resolve the air tour issue there or how that spills over into affecting how the FAA analyzes airport expan-

sion projects or how noise analysis and impacts affect military preparedness, the military training exercises. So what we do in the way of analyzing sound impacts and measuring those sounds and addressing those impacts has pretty significant spill-over impacts in other areas of responsibility for the FAA and the Park Service.

We have a current air tour management plan process underway. Bill hit on that. We are analyzing and starting the process for six parks in Hawaii, four on the big island, one each on Maui and on Molokai, and we have seven mainland parks that we are in the process of developing ATMP's for.

We have held coordination and familiarization meetings with the parks so that the FAA and the parks could share information specific to those particular units. We have had scoping meetings in Hawaii, as well as Lake Mead, Badlands National Park and Mount Rushmore National Monument. And we have acoustic monitoring that has or is taking place in those parks, as well as four other parks, the Navajo National Monument, Canyon de Chelly, Petrified Forest, and Glacier National Parks.

We are continuing our coordinated and cooperative approach to developing air tour management plans. We are working on acoustic measurements and the analyses and the modeling. This is a very complicated subject that requires a lot of detailed attention. We are addressing issues which are sort of unique to air tour management plans, such as the difference between sounds that are audible versus noticeable. We are addressing differences in the way the FAA looks at impacts where they consider and the act actually directs them to analyze and mitigate significant adverse impacts, and the Park Service standard is impairment of resources. All impacts do not constitute impairment, but all impairments are impacts. So we are working through some of those delicate differences.

We have improved our NEPA coordination. We have got respect for each agency's expertise. The FAA recognizes that the Park Service's specific expertise is in protecting resources and the values for which the parks were established, and we recognize that the FAA's expertise is in managing airspace and keeping the airspace that people fly in safe.

That pretty much concludes my testimony, and I will open it up to questions as well. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hoffman follows:]

PREPARED STATEMENT OF PAUL HOFFMAN, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to report to the committee on the status of implementation of the National Parks Air Tour Management Act (NPATMA). I am pleased to report that much progress has been made since our last appearance before the Senate Subcommittee on Aviation in 2002. I will briefly address the specific aspects of the program in which the Committee has noted interest.

OVERALL IMPLEMENTATION—PROGRAM PLANNING AND DEVELOPMENT

Pursuant to the NPATMA, the National Park Service Air Tour Management Program (ATMP) is responsible for working with the Federal Aviation Administration (FAA) to develop air tour management plans in the 107 park units where operators have applied for operating authority. The development of this many plans requires considerable coordination between the National Park Service (NPS) and the FAA including identifying 1) the roles and responsibilities of the FAA and the NPS personnel, 2) how to ensure that the missions of the two agencies are both incorporated in the planning process, 3) how resource impacts are to be analyzed, and 4) sched-

ules, budgets, and other basic elements fundamental to program planning. Perhaps the biggest challenge to program implementation for their two agencies has been how to reconcile our differing agency-specific requirements for National Environmental Policy Act (NEPA) documents.

Both the NPS and the FAA have made significant efforts this past year that have resulted in improved agency relations and allowed us to move forward together in various areas. A summary of these efforts is followed by a more detailed description of each of the relevant issues.

After enactment of NPATMA, the agencies began working on an implementation plan to address how the environmental documents will be prepared, how park units will be prioritized with respect to the 107 air tour management plans, and how agency personnel will administer both programmatic and park-specific tasks. In 2003, a decision was made to set aside the development of the implementation plan in favor of initiating park-specific planning for more than 20 units. In January 2004, key officials, lawyers, and program staff from the FAA and the NPS met for two days to establish better working relationships and address some higher-level policy matters, including how best to meet Congress's intent that we better manage air tours to protect park resources from any potential adverse impacts from those air tours. The meetings were hailed as a huge success by both agencies, providing insight, knowledge, perspective, and respect for the other agency. During the meeting, the FAA and NPS finalized a Memorandum of Understanding to guide the cooperative effort of the two agencies, as specified in NPATMA. In May 2004, both agencies agreed that, in addition to moving forward on park-specific plans, they should return to efforts to complete the implementation plan. In doing so, the FAA and NPS acknowledged that negotiating the broad-based issues in the context of the implementation plan, rather than renegotiating similar issues for each park, would be more efficient and would help achieve greater consistency and more legally defensible park-specific plans. The FAA and the NPS met the week of June 21, 2004 to write the implementation plan and intend to complete a final draft by mid-August 2004.

Shortly after enactment of NPATMA, the DOT's Volpe Center was contracted by the FAA to assist in the coordination of technical issues and development of Environmental Assessments (EAs), and has been a critical partner in the implementation of the ATMP for both agencies. The NPS and the FAA meet twice a year for program planning with the DOT's Volpe Center. The Volpe Center program staff has been involved in the production of both work schedules and cost estimates for the air tour management plan EAs. Although initially working mostly through the FAA, the Volpe Center staff has also begun working closely with the NPS as our collaborative efforts continue to trickle down through both agencies.

PARK-SPECIFIC AIR TOUR MANAGEMENT PLAN IMPLEMENTATION

As mentioned above, in 2003, the FAA and the NPS initiated air tour management plans for 13 specific park units: six[1] in Hawaii, and seven[2] in the continental U.S. Initial meetings were held with federal and local team members at each park unit to provide an orientation to the park, to discuss air operations at the park, and to acquaint the park personnel with the process and scheduling for air tour planning. The meetings were also used to initiate the collection of necessary information including resource data and contact information for potentially affected or interested parties and agencies.

During November and December 2003, the NPS and the FAA developed materials to aid in the NEPA scoping for nine[3] park units, including notices published in the Federal Register. In March 2004, notices were published, public and agency scoping meetings were held, and NEPA document preparation was begun.

The draft analysis of acoustic data for Hawaii Volcanoes National Park was produced in May 2004. At the Implementation Plan meeting in Fort Collins in June 2004, a preliminary process for evaluating public comments and developing air tour management plan alternatives was developed. These processes will also be included in the implementation plan. Acoustic monitoring will begin this summer at Navajo National Monument, Canyon de Chelly National Monument, Petrified Forest National Park, and Glacier National Park. Collecting data this summer will allow us to begin preparing the EA for these parks in 2005. This latest monitoring exercise

[1] Haleakala and Hawaii Volcanoes National Parks; Kalaupapa, Kaloko-Honokohau, Pu'uuhonua-Honaunau National Historical Parks; and Puukohola Heiau National Historic Site.

[2] Yellowstone, Badlands, and Petrified Forest National Parks; Lake Mead National Recreation Area; Navajo and Canyon de Chelly National Monuments; and Mount Rushmore National Memorial.

[3] The six Hawaii park units, Lake Mead NRA, Badlands NP, and Mount Rushmore N Mem.

is a prime example of the type of sensible, cost-effective, geographic clustering both agencies are pursuing.

INTERAGENCY COOPERATION

Consistent with the Administration's objective of encouraging interagency collaboration in these matters, the Department of the Interior and the NPS have been working closely with the FAA to establish cooperative procedures for the preparation of air tour management plans. We have worked hard together to improve what started out as a challenging joint venture.

The January 2004 meeting, mentioned earlier in the testimony, was very successful in improving the working relationship between the FAA and NPS. Each agency made an effort to better understand the other agency and its mandates. For example, the NPS learned that the FAA has, on several occasions, been willing to mitigate even in situations where adverse impacts are less than "significant" under NEPA and, under certain conditions, is willing to do so for air tour management plans. Likewise, the FAA learned that the NPS does not view all impacts as necessarily "adverse impacts" or "impairment" under NEPA, as they had previously thought, but rather, that our resource conservation mandates require that we attempt to mitigate all adverse impacts not just those that are significant. With the help from the President's Council on Environmental Quality (CEQ), the two agencies were able to gain greater understanding of each other's core mission and the full implications of the NPATMA. Perhaps most important, the agencies agreed to adhere to the fundamental principal of "agency expertise" upon which NEPA stands.

The NPS acknowledges the FAA's sole province over air safety, and the FAA acknowledges the NPS authority and expertise regarding the protection of park resources, and therefore on this basis, the FAA and the NPS have agreed to jointly determine environmental impacts. This is being done through the implementation plan and with a special FAA/NPS workgroup on significant noise impacts. The NPS and the FAA have set up various workgroups and subcommittees and plan to continue working collaboratively to address issues as they arise. In fact, the two agencies are also collaborating to address issues outside the scope of this hearing including potential impacts from airport expansions, the Grand Canyon legislation, and other sound-related issues.

STATUS OF TECHNICAL ISSUES

Another result of the January 2004 meeting was a closer technical working relationship between the FAA and NPS, including the creation of a workgroup to evaluate decisions on technical matters. The methodologies and criteria that have traditionally been used to assess the impact of aircraft noise do not adequately address the effects on noise sensitive areas in national park units, where noise is very low and a quiet setting is a generally recognized purpose and attribute. Consequently, for air tour management plans, new methods are needed to measure and establish baseline sound levels and to assess potential impacts of air tour aircraft on national park units. The NPS Natural Sounds Program and the FAA, with the assistance of the Volpe Center, also have been working together to establish protocols, standards, and instrumentation for the collection of acoustic data in parks for the air tour management plan process.

The NPS and the Volpe Center agree that the following acoustic data needs to be collected:

- continuous, 1-second, one-third octave band (31 bands, 20-20,000 Hz, at a minimum) sound pressure level,
- very low-noise level (to near 0 dB),
- meteorological (wind speed and direction), and
- sources of sound.

Identification of sources of sound is needed to describe the park soundscape, and to identify and manage inappropriate noise sources. However, source identification is not yet available in all situations. Source identification is generally done through attended logging or playback of high-quality digital recordings, both of which are labor-intensive. Automated processes for source identification will almost certainly be available some time in the future, but that process is not available at this time. However, a process for selecting measurement locations has been established and both agencies agree that a thorough understanding of acoustic variability (daily, seasonal, and annual), and the resulting knowledge of appropriate measurement periods, will not be available until long-term measurements are made. In order to start the air tour management planning process and begin the study of long-term variability, park-wide short-term studies will be initiated (primarily by the Volpe

Center), and limited long-term studies will be initiated (primarily by the NPS). The NPS and the Volpe Center will continue to work cooperatively on data collection and analysis methods that can be used to characterize park soundscapes.

There is agreement between the NPS, the FAA, and the Volpe Center regarding data collection, analysis, and reporting. While there is general agreement on acoustic data issues, issues remain on how the data is to be used to analyze potential impacts. One of the FAA and NPS workgroups was formed to review and make recommendations on determinations of significant and adverse noise impacts.

COST OF ANALYSIS AND SCHEDULE

Through the contract mentioned earlier in the testimony, the Volpe Center is working to establish schedules and cost estimates for the ATMPs. Both agencies acknowledge the need for flexibility in scheduling ATMPs and have agreed to try to accommodate each park's peak visitor periods and staff capacity to the greatest extent possible. The initial schedule for EAs provided by the Volpe Center and the FAA was ultimately revised in order to give the two agencies time to resolve some over-arching issues. Tailoring the schedule has allowed us to develop a much more prudent and effective approach to the ATMP EA administration. The NPS will continue to work with the FAA and the Volpe Center to increase efficiencies by identifying practical geographic "clusters" of EAs that can be done together thus taking advantage of economies of scale and location.

FUNDING

In the MOU, the NPS agreed to provide 40% of the cost of preparing the air tour management plans, subject to the availability of funding. Unlike the FAA, the NPS has had no line item budget for air tour management activities. Current funding for the NPS Natural Sound Program totals $918,000; this covers salary, travel, and basic expenses for a small, centralized staff that is assisting parks and NPS management with air tour management plans in addition to all other issues related to sound or the FAA in parks. Approximately 80%-85% of the entire Natural Sound Program budget is spent on the ATMP while the remaining 15%-20% is shared to cover all other program components including military overflights, park technical assistance requests, airport expansion issues, the Grand Canyon Alternative Dispute Resolution process, coordination of all other NPS sound issues, outreach, education, partnerships, and interpretive work.

Based on the FAA's estimate of the cost of ATMP preparation, we estimate the NPS's share ranges from $2-4 million annually (depending on the number of parks). Our strategy for sharing the cost of preparing ATMPs includes tapping into entrance fee based accounts and other sources of project funding. Congress recently approved use of 20% fee demonstration funding for air tour management plan work in several low revenue parks. We continue to explore, with the FAA, ways to reduce costs including clustering parks for the environmental analysis. The schedule to date has reflected our mutual desire to be more efficient when dealing with several parks in a geographic area.

EFFECT ON AIR TOUR OPERATORS

The effect of this legislation on existing air tour operators depends on the extent to which an operator's air tour business may have been constrained by the cap on air tour flights over units of the national park system. Because we have not been able to permit any flight increases above the legislated cap or new entrants, the effect on some operators has likely been greater than either agency would have preferred. The NPATMA requires that both the NPS and the FAA make certain findings before the cap on air tour flights can be increased and any new entrants are permitted. However, these findings cannot be made without better data from the operators, which the FAA is working to gather. Both the NPS and the FAA are working together on this issue.

That concludes my remarks. Mr. Chairman, I would be happy to answer any questions you may have.

Senator THOMAS. Thank you very much. Appreciate it.

Senator Akaka has arrived. Do you have a statement, sir?

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. Thank you very much, Mr. Chairman, for holding this timely hearing on the National Parks Air Tour Management Act of 2000.

I know that you also have concerns about air tours over two of your magnificent national parks, Mr. Chairman, Yellowstone and Grand Teton National Parks. I look forward to working with you on this issue.

I would like to extend my aloha to my longtime friend from the islands, Mr. Dave Chevalier, President of Blue Hawaiian Helicopters. He is a model 2 operator, tirelessly contributing in positive ways to the development of the law and voluntarily introducing quieter aircraft, among other activities. It is good to see you here, Dave. Good to see you again.

Mr. Chairman, as you know, air tour management is an issue that has a long history in Congress, Hawaii and other parts of the Nation. The first congressional attempt to address the problem was in 1987, the National Parks Overflights Act, which required a report on the impact of overflights on national parks. In the 102d and 103d Congresses, Congresswoman Patsy Mink at that time, among others, sponsored legislation on air tour overflights. I sponsored legislation in the 105th and 106th Congresses.

Residents and visitors to national parks in Hawaii are vocal about the effects of air tours and the quality of experiences and wildlife in Hawaii's national parks.

We had a series of devastating tour crashes in the early 1990's that caused all of us to look more closely at the opportunity to manage the airspace over parks more wisely. I worked very hard with the Hawaii helicopter operators' Helicopter Association International, and Citizens Against Noise, among many groups to find a middle ground that would stem adverse effects on national parks and would not negatively affect air tour operators.

In 1998, I joined forces with Senator John McCain and we included the National Parks Air Tour Management Act as title 8 of the FAA Reauthorization Act. However, I am concerned that over 4 years have passed since the law was enacted and not one air tour management plan has been finalized.

Hawaii's Volcanoes and Haleakala National Parks are at the top of the National Park Service's list for parks requiring air tour management plans, followed by Lake Mead National Recreational Area, and Mount Rushmore National Memorial. Haleakala National Park has over 26,000 overflights per year and 10 operators are flying tours. Hawaii Volcanoes has 24,500 flights and 12 operators flying helicopters.

Earlier this year, the FAA started the first 13 of a total of 107 plans that need to be completed. There is a lot of work still to be done.

During the 4 years since the law was enacted, I have heard reports from a number of groups that the law was not being implemented in a timely manner, that there are not enough data to determine impacts, or that air tour operators were not cooperating. I have also received reports of very positive voluntary actions by

air tour operators to address the concerns that have been raised by park visitors.

I compliment each member of the national advisory group, the National Parks Overflights Advisory Group, for their dedication and hard work.

I commend the Federal Aviation Administration and the Park Service for reaching important milestones promulgating regulations that define a commercial air tour operation and establishing an interim operating authority application process for operators. These are valuable steps. It is not easy to bring two agencies with disparate missions together to work on a common mandate.

I hope the hearing today can shed light on some of the problems and provide insight on opportunities to improve the process of planning for air tour management over national parks, particularly if action should be needed from Congress.

We have an excellent panel before us today. We have heard you already and look forward to hearing the testimony of other witnesses as well.

Thank you very much, Mr. Chairman.

Senator THOMAS. Thank you, Senator. Glad that you are here.

I think it is clear that one of the principal questions and reasons for being here is to talk about the schedule and the timing and why it has taken as long as it has. I guess let me ask you both. Is there a projected date for this process to be completed?

Mr. WITHYCOMBE. Yes, sir, Mr. Chairman, I think I can speak to that to some degree.

First of all, implementation of the legislation, which was enacted in 2000, was delayed, unfortunately, by the events surrounding 9/11. The Department of Transportation and the FAA focused their attention on other rulemaking activities at that time. The regulation eventually was published and became effective in January 2003. That is roughly 17 months ago.

During that time period, we worked extensively with the National Park Service on establishing some schedules and some activities that would bring the two agencies together. As pointed out by Senator Akaka, there are two separate missions here and in order to do that, we had to overcome a number of technical challenges and also mission assignments basically to establish how we would work together.

This is a new program and new technical requirements and environmental issues needed to be resolved.

We also needed to reach agreement on an acceptable environmental purpose and need. That was a major issue over which, as pointed out by my colleague, Paul Hoffman, we attended a January meeting that was very helpful to us in resolving some of those differences. I think it was a breakthrough for us in achieving new levels of cooperation and also working together to start the scoping process that needed to be done environmentally in the nine parks that we had targeted for completion.

As far as the projected schedule goes, our best estimates—and these are just estimates at this point in time—are that we need to overcome a couple of technical challenges, that is, basically what is "significant impact" and how do we measure noise. The two differences are what we are working on right now through not only

NPOAG but also through our technical experts. We estimate that we could complete about 20 parks per year with the resources that we currently have and also that we would project our completion date, with roughly 100 parks, out about 5 years. That is the best estimate that we have right now.

Senator THOMAS. So your first completion would be in how long then?

Mr. WITHYCOMBE. The nine parks that we have targeted this year we estimate will be completed through the environmental process, establishment of ATMP, and also the rulemaking action that goes with that, in 2005, sometime in 2005 for those nine parks.

Senator THOMAS. A year from now.

Mr. Secretary, any different view than that?

Mr. HOFFMAN. No, no substantially different view. I liken it to building a house. The first thing you want is a good, solid foundation on which to build the rest of the house, and it took us a little while, but that is what we have been doing over the last 18 months, is developing that solid foundation on which we build the rest of these plans. We are going to stay committed to the process and start chunking them out as well as we can, given the resources we have, and both human and financial resources available.

Senator THOMAS. I presume that you have some good general criteria that apply everywhere and then specifically to each park as it is applied there. Is that generally right?

Mr. HOFFMAN. Right. We have been reaching agreement on some of the core principles, as you say, that would apply to any park, but then you also have a different set of facts, almost a unique circumstance under which you measure sound and the impacts that differs from each park. So there is some complicated analysis that is required for each different park and some measurements that need to be taken to establish baselines as well before we can really do a thorough and defensible analysis of those impacts.

Senator THOMAS. So you are suggesting that out of the 388 parks, there are 107 of them that will be interested in having overflights. Is that it?

Mr. HOFFMAN. I believe there are 107 that have overflight operations.

Mr. WITHYCOMBE. Yes. The application process is essentially giving initial operating authority to the current operators who have air tours based upon their number of flights that they had prior to the act. Those indicate that we have roughly 107 parks that they are operating in now based upon those applications.

I might add that we are going back to verify those applications again to make sure that we have good numbers from the operators. That is part of the NPOAG recommendation that was given to us. We are going back to work through them to establish a method to do that, and also to work with the Park Service in this effort as well.

Senator THOMAS. If it takes about a year to do nine, then it is going to take you 10 or 12 years to do them all. Is that correct?

Mr. WITHYCOMBE. The best estimate that we could give, as I mentioned before, is about 20 parks per year, given the resources

and the ability to do this in a timely way. If there are 100 parks remaining, that would be about 5 years.

Senator THOMAS. It seemed that once you had set the criteria, that the determination of applicability to each park would be relatively easier and that you all would not have to be involved in every one. The parks can kind of make their own judgment based on your criteria, can they not?

You talk about 11 September, but nevertheless this is 4 years, and by the time you are through, it is going to be 15 years before this is done. That seems like a pretty incredible length of time to do something, does it not?

Mr. WITHYCOMBE. You make a good point, Mr. Chairman. Obviously, we would like to do as many of these as we possibly could. We are studying ways in which we could possibly group these under one environmental study. That is not out of reason. We are obviously looking at ways in which we could do this more efficiently as well. But it is an environmental process done under the national standards for environmental reviews, and those do take time to complete and report. They then become part of a rulemaking action, which the FAA intends to enforce, to establish routes and altitudes in these national parks.

Senator THOMAS. I am sure it is tougher than it seems, but it looks like if you can determine what a 5,000 foot elevation does, it does the same thing in several parks. It does not seem like it is a whole, brand new experiment every time you go into it, is it?

Mr. HOFFMAN. Well, actually you would be surprised at how disparate the analysis can be, depending on the topography of the park, or the size of the park, or the type of aircraft that are flying. There are certain standards that you can apply to every one of these ATMP's, and then there is site-specific analysis that is necessary. Of course, the act requires FAA to be involved. So I do not believe FAA can just sort of hand it off to us.

I have to say that the resources to do these ATMP's even on the schedule the FAA is suggesting is going to be challenging for us to find.

Senator THOMAS. Does the Park Service have their 40 percent now?

Mr. HOFFMAN. We are finding the 40 percent through rec fee moneys. In those parks that have fees, out of the 80 percent funds; in those parks that do not have fees, out of the 20 percent fund.

Senator THOMAS. Why would you want air traffic over Mount Rushmore? There are some places where you are not going to fly, are there not?

Mr. HOFFMAN. Well, there have been small helicopter tours and I suppose fixed wing tours over Mount Rushmore for a number of years, and visitors like seeing——

Senator THOMAS. They like seeing the back of their heads.

Mr. HOFFMAN. Yes.

[Laughter.]

Senator THOMAS. Senator.

Senator AKAKA. Thank you, Mr. Chairman.

Mr. Withycombe, as you noted in your testimony, by enacting the Air Tour Management Act Congress intended to mitigate or pre-

vent significant adverse impacts to park resources from air tour operations.

We hear many things. One of the concerns I have heard is that in implementing this act, the FAA is focused on airspace management issues instead of addressing the potential impacts on park resources.

How do you respond to that concern and what action is the FAA taking to ensure that the congressional intent behind this act is met?

Mr. WITHYCOMBE. Senator Akaka, our mission basically is to ensure safety of the air tour operations over the national parks in this particular legislation. Aviation safety is our mission throughout the FAA. We are focused in this particular instance on ensuring the safety of operations for those people that are using air tours to see the national parks.

We also are looking, of course, at the environmental impact of those operations. As part of our plan, we are doing the required environmental analyses that are part of those studies. We intend to make a thorough study of each of these parks through noise analysis, through safety analysis, and the establishment of safe air tour routes over and around the National Park System. So we are concerned with both safety and the environment in this particular case.

Senator AKAKA. Mr. Withycombe, my second question involves the Kalaupapa site in Hawaii. As you know, Kalaupapa is not only a national historical park but also a very sensitive cultural site. I have heard from the residents of Kalaupapa that they oppose commercial air tours over the settlement. Kalaupapa is currently one of the initial park sites that is being studied by your agency.

What can I tell the residents to reassure them that FAA will be sensitive to their concerns during the planning and decision-making process?

Mr. WITHYCOMBE. Senator, we have just recently completed a number of focus meetings with Kapuna groups. We met also with the patient community in Kalaupapa. We also have heard the concerns they have voiced to us during those hearings. Those will all be considered as part of our environmental impact study, and we will be careful about whatever process takes place there.

We have a range of options under that process, based upon the impact that the community senses and reports to us. We also take comments from the air tour operators and the general public that may surround the park itself. Our goal is to find some middle ground or exercise whatever option we need to do based upon the input that we get. Hopefully that input will provide some reasonable answer to the concerns that have been raised.

Senator AKAKA. Mr. Hoffman, I would like to ask how national park resource impacts are to be analyzed and measured as part of the environmental assessments. I understand that one of the reasons for the delay in implementing this act is the difficulty of defining what constitutes a significant adverse impact.

My question is, have both agencies come to agreement on what constitutes a significant adverse impact, and how is it defined and how do you know when it has occurred?

Mr. HOFFMAN. Well, Senator, you have hit on the key challenge to managing any national park unit in terms of determining when is an impact an impairment or when is an impact just an impact.

We have reached agreement that the standard that the FAA is required under the law to use as significant adverse impact. In the National Park Service, we use the standard of impairment, where impacts may occur so long as they do not rise to the level of impairing the resources and impeding the enjoyment of those resources by future generations.

We are working closely with the FAA on managing issues that may arise to less than significant impacts. For instance, in some parks, larger parks or a cultural park like Kalaupapa, where natural quiet is an expectation, we may want to manage to a finer threshold, if you will, of allowing impacts on those kinds of parks versus other parks where there is less expectation on the part of the visitor or less impact on the resource as a result of those sounds.

So it is a park-to-park analysis. It is resource-to-resource. It is a cultural resource-to-cultural resource analysis that needs to take place, and each plan will be an independent decision.

Senator AKAKA. Mr. Hoffman, under the Air Tour Management Act, the Park Service is the cooperating agency to the FAA which has the lead role in developing air tour plans. However, the Park Service's Organic Act mandates the service to manage natural and cultural resources so that they are unimpaired for the enjoyment of future generations. That is a quote. Does the Park Service, with cooperative agency status, have sufficient legal authority to make a determination whether there are significant adverse effects?

Mr. HOFFMAN. Well, sir, the act designates the FAA as the lead organization in the NEPA analysis, and we have deferred to them on the funding side of it. But on the impact analysis, we have agreed that we will work cooperatively even though the act specifies the FAA as the lead agency and the Park Service as a cooperating agency, which is a role we play quite often in other NEPA analyses, and we believe we have played that role and quite successfully protected resources from being impaired in that role. But in this particular case where both agencies have to sign off on any NEPA document that is produced, we have agreed in principle that we will work cooperatively in the determination and mitigation of any impacts.

Senator AKAKA. Let me give Mr. Withycombe a chance to reply.

Mr. WITHYCOMBE. Senator, I would agree with the statement that Mr. Hoffman just made. We have required as part of our plan, and also part of the legislation that was passed through Congress, that both agencies would sign the environmental documents. This means that a cooperative arrangement has to be in place between the two agencies to reach agreement to settle on the environmental impact of that particular park.

I might also add that we are working together cooperatively to better define what significant impact actually is. We obviously have technical issues that we have to work through in that arena and we are in the midst of the environmental process in those nine parks. That is an important piece which we will have to finish in

order to complete those first nine parks. This will then lead into the other parks that we have to do throughout the country.

Senator AKAKA. Thank you for your responses.

Thank you, Mr. Chairman.

Senator THOMAS. Welcome, Senator Alexander.

Senator ALEXANDER. Thank you very much.

Senator THOMAS. Do you have any statement or questions at this point?

Senator ALEXANDER. Excuse me for being late. I had to preside which goes to junior Members of the U.S. Senate. So that is how I was picked for that honor.

Is this the first panel?

Senator THOMAS. The first panel. We are going right away to the second panel.

Senator ALEXANDER. If I may ask one question and make a short statement.

Senator THOMAS. Certainly.

Senator ALEXANDER. I am extremely interested in the idea of helicopters in the Great Smoky Mountains. That has been hotly debated in the State of Tennessee. We have often talked in this committee about the differences between the East and the West, and one difference is we do not have that much Federal land in the East and in the West the Federal Government owns a disproportionate amount. Also, we have lots of travel in the East. The Smokies, as an example, has 9 million or 10 million visitors a year. Yellowstone might have 3 million or something like that, if I remember, primarily because we are just in the middle of a lot of people.

Smokies is also managed as if it were a wilderness area. There is only one road through it. Most everyone within our region likes that. We have plenty of commercial activity outside the area but not inside. So the prevailing view in our State is that we like the idea of having, in the midst of all our commerce, 500,000 acres that is, as free as possible, of commerce and noise, and we prefer peace and tranquility. That is why in 1992 our State legislature passed a law outlawing the siting of heliports within the 9 miles of the Great Smoky Mountain National Park. Their hope was that that would discourage flying over the Smokies. That has been upheld.

I am informed there are two heliports today doing helicopter tours of the Smokies. They are located more than 9 miles away from the Great Smokies. So I assume that would comply with the State law. But I wonder if those two heliports are complying with the National Parks Air Tour Management Act of 2000. Are they in compliance with the Federal law? Have they filed the appropriate application forms and followed the procedures? What can either of you gentlemen tell me about those two heliports?

Mr. WITHYCOMBE. Well, sir, I would definitely have to get back to you on that particular issue. I am not sure exactly what kind of operation we have there. I would have to consult our experts that have reviewed those applications and verify whether or not those operators are in compliance with our regulations and our requirements for certification.

Our intent obviously in the Great Smoky Mountain area would be the same as we do for any other national park where we have operators who wish to operate there. That process would be a com-

plete review of their plans, taking a look at their applications and making sure that they are, in fact, operating within a half a mile of the national park. If that is the case, that would start an air tour management plan process, which we would then environmentally study, in consultation with the National Park Service. We would definitely look at the impact of those operations. That environmental process would provide us with public input. Anybody that had an interest in this operational application would be able to comment and provide us their concerns. Those concerns would be taken into account, and as I mentioned to Senator Akaka, we would look at a full range of options that we have, all the way from no operations over the national park to setting up specific routes that reduce the impact below significant or maybe even less than that.

Senator ALEXANDER. Mr. Hoffman, do you know whether those two heliports are in compliance with the Act of 2000?

Mr. HOFFMAN. I do not know about those two specific heliports, but the act does provide for interim operating authority for those operations that were in operation at the time the act was passed, and those authorities extend until such time as there is an air tour management plan and associated regulation in place. So if they were operating at the time of the act and if they filed with the FAA for interim operating authority, then they are operating under the Act. But I do not know the specific fact base around that.

Senator ALEXANDER. Well, I will not ask you to repeat what you have already said. What I would like to ask is that each of you let the subcommittee know and me know whether at this time the heliports operating in the area of the Great Smoky Mountains are in compliance with the terms of the Act of 2000. That would be the first thing.

And then second, I look forward, Mr. Chairman, to hearing the remaining discussions and comments. I will certainly listen to arguments that are made. But my strong bias and I believe the strong bias—and I say this not only as the U.S. Senator from Tennessee, but as a resident of Tennessee who lives within 2 miles of the Great Smoky Mountain National Park. The strong bias of most people in the area is that the park itself ought to be preserved. It is generally managed as if it were a wilderness area and that is dramatically disturbed by the noise of helicopters. So that is my bias. I want to listen to the testimony today, and I look forward to keeping up with your efforts to implement the act and I am grateful to the chairman for calling this hearing.

Mr. WITHYCOMBE. Mr. Chairman, if I may just add a comment to this. Senator, my colleagues here tell me that we have received applications for operations over the Smoky Mountains National Park. There are probably the two operations that you referred to. It is really the operators that must come into compliance rather than the heliports themselves, and as pointed out by Paul Hoffman representing the National Park Service here, we basically have what we call an initial operating authority process which once they apply to us, if they have flown over that park before, they are automatically given authority to continue that operation until we look at the air tour management plan process.

Senator ALEXANDER. Thank you. I appreciate the clarification. I would still appreciate if you could just send me a letter letting me know the status then of the operators, if it is the operation to which the act applies rather than the heliports.

Mr. WITHYCOMBE. We will do that, Senator.

[The letter follows:]

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, DC, August 11, 2004.

Hon. LAMAR ALEXANDER,
U.S. Senate, Washington, DC.

Re: Commercial Air Tour Operations at Great Smoky Mountains National Park

DEAR SENATOR ALEXANDER: This letter is in response to your request for additional information during the July 22, 2004 hearing on implementation of the National Parks Air Tour Management Act of 2000 (Act), before the Senate Committee on Energy and Natural Resources, Subcommittee on National Parks. I testified on behalf of the Federal Aviation Administration (FAA) about our work with the National Park Service to implement the Act. During the hearing, you requested that we provide information on an issue raised by another witness, Mr. Charles Maynard, regarding two air tour operators that were allegedly in violation of the Act by conducting commercial air tour operations over the Great Smoky Mountains National Park (Park) without FAA operating authority.

We have looked into the matter and have found that there are two existing operators conducting commercial air tours over the Park. Great Smoky Mountain Helicopter, Inc.—doing business as Smoky Mountain Helicopters—has been authorized 120 annual air tour operations by the FAA for the Park, and Rambo Helicopter Charter, Inc.—doing business as Scenic Helicopter Tours—has been authorized 1800 annual air tour operations by the FAA for the park.

The statement at the hearing that there were two additional operators at the Park turns out to be incorrect. The apparent confusion, we believe, can be attributed to the fact that the two operators conduct their business under different names than their corporate names. We have confirmed this finding with Mr. Charles Maynard and with the National Park Service. Additionally, you had inquired whether the location of a heliport has any bearing on whether or not the operators comply with the Act. Under the provisions of the Act, it does not.

I hope this information is helpful to you and your staff. If you have further questions or require additional information, please contact David Balloff of the FAA's Office of Government and Industry Affairs at 202-267-3277.

Sincerely,

WILLIAM C. WITHYCOMBE,
Regional Administrator for the Western-Pacific Region.

Senator ALEXANDER. Thank you.

Senator THOMAS. I think, Senator, as we have talked about before, you are asking about compliance. The requirements are not set yet for compliance. They are allowed to go as they were, but they have not yet designed what they have to comply with.

One very quick one, Paul. There are current users. There are current people making flights.

Mr. HOFFMAN. Yes.

Senator THOMAS. Do they pay something into the park for doing this?

Mr. HOFFMAN. There are certainly certain parks where they pay a fee, but there is no authority for the parks to pursue the collection of that fee. It is more or less a voluntary fee that is paid.

Senator THOMAS. It would be a good way to get your $20 million.

In any event, all right, thank you. Let us go on to our next set of panelists. Thank you, gentlemen. Appreciate it.

Next, we have Mr. Roy Resavage, president, Helicopter Association International, Alexandria, Virginia; Mr. Charles Maynard, former director, Friends of the Smokies, Jonesboro, Tennessee; Mr.

David Chevalier, owner, Blue Hawaiian Helicopters, in a town in Hawaii which I cannot pronounce; and Mr. Don Barger, senior director, Southeast District, National Parks and Conservation Association, Knoxville, Tennessee. Thank you, gentlemen, for being here.

Your total statements will go in the record. If you could hold your comments to 5 minutes, we would appreciate that very much. We would like to start with you, Mr. Resavage.

STATEMENT OF ROY RESAVAGE, PRESIDENT, HELICOPTER ASSOCIATION INTERNATIONAL, ALEXANDRIA, VA

Mr. RESAVAGE. Good afternoon, Mr. Chairman and Ranking Member Akaka, and Senator Alexander. My name is Roy Resavage. I am president of the Helicopter Association International.

HAI fully supports the ATMP process and we believe that great strides have been made since this project commenced many years ago. However, all the major stakeholders are disappointed in the rate of progress to date and few are optimistic about the prospect of an accelerated schedule in the future.

The air tour experience has become a highlight for many visitors to our national parks. HAI members fly the vast majority of helicopter tours over national parks, and we have a vested interest in providing a memorable, safe experience for our customers. Air tours are arguably one of the most environmentally friendly ways to view the wonders of our national parks. They are not just a passing fad. HAI acknowledges that we share these magnificent natural treasures with the local residents, Native Americans, visitors who prefer to view the experience from buses, trains, cars, rafts, hiking trails, as well as the animals that inhabit the parks.

The National Park Overflight Working Group was created as a mediating tool to bring these diverse interest groups, the Federal Aviation Agency, and the National Park Service to the bargaining table. This was not an easy process and the initial meetings were notable for their lack of civility as all advocates zealously pursued their own myopic points of view. It took a great deal of courage and patience in the early stages, but consensus was eventually reached on most items that appeared so inflammatory at the beginning of the process. Implementation of ATMP's was predicted to be close at hand. No one felt that they ahead achieved all their goals, which is probably a good indicator that tough compromises were achieved.

HAI and its members were part of the National Parks Overflights Advisory Group process from the very beginning and we still are very involved today. Everything seemed to be on track for the implementation of the ATMP, but many things went terribly wrong. The heated debates between the traditional adversaries gave way to a morass between the two major agencies, the FAA and the National Park Service. Incredible delays developed over definitional terms, which would be the lead agency, who would have the final veto authority, who was going to pay the bills. These were not trivial issues to the agencies involved, and the clock kept ticking while wordsmithing and legal maneuvering took place.

All of these delays have had a chilling effect on the expansion of responsible air tour operations. The initial goal was to complete the ATMP's for the national parks in 2 years. Why did this not hap-

pen? It could be argued that the bar was just set too high and that completion of such an enormous project in 2 years was an extremely naive undertaking. In fact, the expectations far exceeded capabilities. However, a great deal of the delay has been self-induced.

Delays on where the first ATMP would be beta tested, decisions on how sound was to be measured, where to place the microphones, what constitutes unacceptable noise and to whom still remain unanswered questions.

How many parks require an ATMP? The number keeps growing and is a moving target. The cost of the envisioned studies could easily exceed $1 million per park. With over 100 parks, where will the money come from? How long will it take to accomplish the ATMP process for each park? To our knowledge, the Park Service still has not obligated their original budgetary requirements.

Air tour operators remain in limbo as this endless parade of irresolvable challenges block the path of progress. Parks that are not currently supporting air tours are off limits. Quotas have been arbitrarily set at an unjustifiably low level. Until recently there was no official guidance as to how an operator could obtain interim operating authority. New operator entry is virtually impossible to obtain without acquiring the certificate of an existing operator.

HAI and its members believe that moving forward with the ATMP process is in everyone's interest. The current situation is anti-competitive at best and would be the subject of ethical scrutiny if under the control of private enterprise.

HAI respectfully requests that Congress intervene in the situation and require the respective agencies to honor their charter, fund them as necessary, and offer incentives for solutions that address what really needs to be done to protect the public's interest. Perhaps it is time to review the current process, abandon some bad science assumptions, and look to appropriate computer modeling and give credit for quiet technology advancements.

Most of the air tour operators are small businessmen and women already governed by a mountain of regulatory guidance. They want to do the right thing but they are forced to remain on the sidelines while the two major Titans engage in combat over who will reign supreme. It is time to move forward and give the parks back to the people.

Thank you very much for my time and I will be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Resavage follows:]

PREPARED STATEMENT OF ROY RESAVAGE, PRESIDENT, HELICOPTER ASSOCIATION INTERNATIONAL

Good afternoon, Chairman Thomas, Ranking Member Akaka, and Members of the Subcommittee. My name is Roy Resavage, and I am President of The Helicopter Association International (HAI). It is an honor for me to appear before the Senate National Parks Subcommittee today to discuss helicopter air tour industry concerns over the air tour management plan (ATMP) process. I respectfully request that my remarks be included in the official committee record.

HAI fully supports the ATMP process, and we believe that great strides have been made since this project commenced many years ago. However, all of the major stakeholders must be disappointed in the rate of progress to date, and few are optimistic about the prospect of a significantly accelerated schedule in the future.

The air tour experience has become a highlight for many visitors to our National Parks, including the Grand Canyon. HAI members fly the vast majority of helicopter

tours over national parks. We have a vested interest in providing a memorable, safe experience for our customers. Air tours are arguably one of the most environmentally friendly ways to view the wonders of our national parks, they are not just a passing fad, and we want to work in harmony with the other important stakeholders. HAI acknowledges that we share these magnificent natural treasures with the local residents, Native Americans, visitors who prefer to view the experience from buses, trains, cars, rafts and hiking trails, as well as the animals that inhabit the parks.

The National Parks Oversight Advisory Group (NPOAG) was created as a mediating tool to bring these diverse interest groups, the Federal Aviation Agency (FAA) and the National Park Service (NPS) to the bargaining table. This was not an easy process and the initial meetings were notable for their lack of civility as all advocates zealously pursued their own myopic points of view. It took a great deal of courage and patience in the early stages, but consensus was eventually reached on most items that appeared so inflammatory in the beginning. An ATMP was created and its implementation was predicted to be close at hand. No one felt that they had achieved all of their goals, which is probably a good indicator that tough compromises were achieved.

HAI and its members were part of this NPOAG process from the very beginning and today a former Chairman of the HAI Board of Directors, Elling Halvorson, carries on that tradition. Everything seemed to be on track for the implementation of the ATMP, but many things went terribly wrong. The heated debates between the traditional adversaries gave way to a morass between the two major agencies the FAA and the NPS. Incredible delays developed over definitional terms, who the lead agency was, who had final veto authority and who was going to pay the bill. These were not trivial issues to the agencies involved, and the clock kept ticking while wordsmithing and legal maneuvering took place.

All of these delays have had a chilling effect on the expansion of responsible air tour operations. The initial goal was to complete ATMPS for the national parks in two years. Why didn't this happen? It could be argued that the bar was set too high, and completion of such an enormous project in two years was an extremely naive undertaking. That probably does explain some of the delay; expectations exceeded capabilities. However, a great deal of the delay has been self-induced. Delays on where the first ATMP would be beta tested added unneeded time to the process. Decisions on how sound was to be measured, where to place the microphones, what constitutes unacceptable noise and to whom, remain unanswered questions. How many parks require an ATMP, the number keeps growing and is a moving target. The cost of the envisioned studies could easily exceed $1,000,000 per park. With over a 100 parks, where will the money come from? How long will it take to accomplish the ATMP process for each park? To our knowledge, the Park Service has not obligated their original budgetary requirements. The published shortfall in the future Park Service budget, allowing only for the maintenance of safe and healthy parks, is the topic of media speculation on a daily basis.

Air tour operators remain in limbo as this endless parade of unsolvable challenges block the path of progress. Parks that are not currently supporting air tours are off limits; Quotas have been arbitrarily set at unjustly low levels. Until recently there was no official guidance as to how an operator could obtain interim operating authority. New operator entry is virtually impossible to obtain without acquiring the certificate of an existing operator.

HAI and its members believe that moving forward with the ATMP process is in everyone's interest. The current situation is anti-competitive at best, and would be the subject of ethical scrutiny if it were under the control of private enterprise. HAI respectfully requests that Congress intervene in this situation and require the respective agencies to honor their charter, fund them as necessary, and offer incentives for solutions that address what really needs to be done to protect the public's interest. Perhaps it's time to review the current process, abandon bad science assumptions regarding noise propagation, and avoid the expensive of millions of dollars and months of data gathering and look to appropriate computer modeling.

Most of the air tour operators are small businessmen and women who are already governed by a mountain of regulatory guidance. They want to do the right thing, but they are forced to remain on the sidelines while the two major Titans engage in combat over who will reign supreme. It's time to move forward and give the parks back to the people.

Senator THOMAS. Thank you very much.

Mr. Chevalier.

STATEMENT OF DAVID J. CHEVALIER, CEO, BLUE HAWAIIAN HELICOPTERS, KAHULUI, HI

Mr. CHEVALIER. Good afternoon, Chairman Thomas, Ranking Member Akaka, aloha. Senator Alexander. My name is David Chevalier. I am the CEO of Blue Hawaiian Helicopters.

I was a member of the original National Park Overflight Working Group which reached the consensus upon which this law was based. It was a difficult process to reach consensus between aviation and the environmental groups, as we seem to hold diametrically opposing interests. I do not believe we would have been able to reach these agreements had it not been without a professional moderator's help.

I believe the same situation now exists between the FAA and the National Park Service. It appears to me the process is broken or at least slow as molasses. I think that an independent professional moderator should oversee and facilitate action between these two very different bureaucracies.

While the National Park Advisory Group is a very valuable consulting resource on the civil side in this process, it does not drive the boat. The FAA and the National Park Service should be given a firm time line for completion of tasks, and a professional moderator between the FAA and National Park Service decisionmakers should be immediately utilized whenever an impasse is reached.

While the aviation representatives argued against restrictions as to the manner in which Americans choose to view their parks, we ultimately compromised in an agreement that the number of flights would be frozen until the interim management plan process was complete. This you wrote into law. While I personally disagree with these interim restrictions and would vote to change that law, it is imperative that the established law be followed. There was always concern by the NPOWG over the enforcement of this law.

Hawaii was chosen as a place to begin the process because of a voluntary and successful air tour management plan that was already in place at Haleakala and to a lesser extent at Volcanoes. When the law came in place, operators received a questionnaire. We were asked the number of flights that we had conducted over a specified time period to figure out exactly how many we would be allowed to do through the interim process until the interim management plans were complete.

Well, as far as I know, no air tour company yet to date has been audited to assure the accuracy of those numbers given. It would have been an easy task to verify the numbers of overflights by the $25 per overflight fee payment history for Volcanoes National Park. It became evident that a number of air tour companies are not paying any overflight fees, as I believe is required by law. But apparently there certainly is no mechanism in the law to collect these fees. As it stands now, this law does not have any teeth. Air tour companies should be audited to prove the number of overflight slots claimed, as well as show proof of payment of those flights. I would suggest you either enforce that law or change it.

A different standard exists for air tour visitors than ground visitors at most of our Nation's national parks. While we must not lose sight of the legitimacy of air tour visitors to view the park from the

air, neither should we lose sight of their responsibility to pay an equal entry fee as ground based visitors do.

As this is an airspace issue, the FAA is the rightful lead agency and the NPS the cooperating agency in the development of the plans. However, considering the interests of the two bureaucracies, I think the NPS must be the watchdog of any air tour management plan.

As a fill-in at the last advisory group meeting at Lake Mead, I had suggested that each tour aircraft be required to carry a transponder which would broadcast its own discrete code and that this would be recorded automatically on a ground-based NPS computer. The computer would then track in real time the location of each aircraft within the specified boundaries of the park. Routes and overflight counts could be recorded automatically. This is an objective management tool that is widely employed now by trucking companies. Similarly, the FAA has been moving toward ADSB technology in the lower 48 States. Implement flight tracking and enforcement of any plan is substantially complete. NPS forwards an unexplained deviation of an ATMP to the FAA. The FAA then investigates and takes appropriate action where necessary. I think, though, more often than not, that this is going to absolve air tour operators of accusations of noncompliance by citizens.

Technology is also available whereby overflight billings could go out automatically and this in conjunction with this tracking system. I think that overflight fees should go first to pay for the tracking equipment and second to the general fund of the park.

It must be recognized that air tour operations in many areas of the country have made significant voluntary efforts to minimize noise impacts to ground visitors at national parks. Nevertheless, we can do better by adopting quiet technology aircraft. Although there are incentives mandated by this law to adopt quiet technology, there is a problem. As yet, there is no established guideline for what constitutes a quiet technology aircraft. The advisory group has recently been given the assignment of recommending these guidelines. I question their technical ability to be able to do this without the help of an expert group such as Volpe. In any case, I think these guidelines should have been established a long time ago and it needs to happen very soon.

Quiet technology will not only help reduce noise impacts at national parks but over the neighborhoods that we must traverse as well. Until these two agencies complete their responsibility to establish guidelines, there is no incentive for any company to make a large investment in aircraft that might not meet the definition. Operators need assurance of which aircraft will be acceptable for the incentives mandated by this law. It takes substantial time to plan for these kind of major acquisitions. So all I ask is please set a deadline for the definition of quiet technology aircraft.

Thanks for listening.

[The prepared statement of Mr. Chevalier follows:]

PREPARED STATEMENT OF DAVID J. CHEVALIER, CEO, BLUE HAWAIIAN HELICOPTERS

Good afternoon, Chairman Thomas, Ranking Member Akaka, and Members of the Subcommittee. My name is David Chevalier, and I am the CEO of Blue Hawaiian Helicopters. I was a member of the National Park Overflight Working Group (NPOWG), which reached a landmark consensus agreement between environmental,

Native American and aviation interests and upon which Public Law 106-181 is based. Many times, over many hours of debate, one side or the other was ready to walk out and call the exercise a failure.

It was a difficult process to reach consensus between the aviation and environmental groups as we seemed to hold diametrically opposing interests. I don't believe that we would have been able to reach the agreements that we did without a professional moderator. I believe the same situation exists now between the FAA and the NPS. It appears to me that the process is broken. I believe that an independent, professional moderator should oversee and facilitate action between these two very different bureaucracies.

While the NPOAG is a valuable consulting resource in this process, it does not drive the boat. The FAA and the NPS should be given a firm timeline for completion of tasks, and a professional moderator between the FAA and NPS decision makers should be immediately utilized when an impasse is reached.

Although the NPOWG came from opposing positions, we arrived at a consensus that air tour passengers are legitimate visitors to the National Parks and that the impacts of both ground visitors as well as air tours on this resource must be mitigated.

One of the most contentious issues that we faced was the limitation on the number of National Park overflights. While the aviation representatives argued against restrictions as to the manner in which Americans choose to view their parks, we ultimately compromised on an agreement that the number of flights would be frozen until the Air Tour Management Plan (ATMP) process was complete. This became incorporated into the law.

While I still disagree with these interim restrictions and would vote to change the law, it is imperative that the established law be followed. There was always a concern by the NPOWG over the method of enforcing this law. Hawaii was chosen as the place to begin this process because a voluntary and successful air tour management plan was already in place at Haleakala National Park. Operators received a questionnaire as to the number of flights that had been conducted over the National Parks in a specified time period prior to implementation of this law. This was to assist the FAA in establishing the number of flights that would be allowed until the ATMP process is complete (Interim Operating Authority).

No air tour company has yet been audited to assure the accuracy of those numbers. It would have been a simple task to verify the number of overflights by the $25/overflight payment history for Volcanoes National Park. It has become evident that a number of air tour companies are not paying any overflight fees as is required by law. No mechanism in the law exists to collect these fees. As it now stands, that law has no teeth. Air Tour companies should be audited to prove the number of overflight slots claimed, as well as to show proof of payment for those flights. Change the law or enforce it.

A different standard exists for air tour visitors than ground visitors at most of our nations' national parks. One must not lose sight of the legitimacy of air tour visitors to the park or their responsibility to pay the same fees as are required of ground based visitors.

As this is an airspace issue, the FAA is the rightful lead agency, and the NPS the cooperating agency in the development of the ATMP's. However, considering the interests of the two bureaucracies, the NPS must be the watchdog of any ATMP. As a fill-in at the last NPOAG meeting at Lake Meade, I suggested that each tour aircraft be required to carry a transponder which would broadcast its' own discrete code and that this would be recorded automatically on a ground-based NPS computer. The computer would then track, in real time, the location of each aircraft within the specified boundaries of the National Park. Routes and overflight counts could be recorded automatically. This is an objective management tool which is widely employed by trucking companies. Similarly, the FAA is already moving toward ADSB technology in the lower 48 states. Implement flight tracking, and enforcement of any plan is substantially complete. NPS then forwards any unexplained deviation of an ATMP to the FAA, the FAA then investigates, and appropriate enforcement action is taken.

More often than not, I believe that this will absolve air tour operators from false allegations of non-compliance by citizens. Technology is available whereby overflight fee billings could go out automatically. I believe that the overflight fees should go first to pay for the tracking equipment and second to the general fund of the park.

It must be recognized that air tour operators in many areas of the country have made significant, voluntary efforts to minimize noise impacts to ground visitors at National Parks. Nevertheless, we can do better by adopting quiet technology aircraft. Although there are incentives mandated by this law to adopt quiet technology, there are problems. As yet there is no established guideline for a definition of a

"quiet technology aircraft". The NPOAG has recently been given the assignment of recommending these guidelines. I question their technical ability to do this without professional help from an expert group, such as Volpe. In any case, these guidelines should have been established shortly after incentives were mandated.

Quiet Technology aircraft will not only help reduce noise impacts at the National Parks, but over the neighborhoods we must often traverse as well. Until these two agencies complete their responsibility to establish such guidelines, there is no incentive for any company to make large investments in aircraft that might not meet the definition. Operators need assurance of which aircraft will be acceptable for the incentives mandated by this law. Companies need substantial time to plan for such major acquisitions. Please set a deadline for the qualification of Quiet Technology aircraft.

Thank you for your time.

Senator THOMAS. Thank you very much.

Mr. Maynard.

STATEMENT OF CHARLES W. MAYNARD, MEMBER OF THE NATIONAL PARKS OVERFLIGHT ADVISORY GROUP

Mr. MAYNARD. Chairman Thomas and Ranking Member Akaka and Senator Alexander, thank you for this time to present my views on the Air Tour Management Act and its enforcement.

I became interested in this issue of commercial overflights of national parks due to my work at the Great Smokies and in Yellowstone and the Grand Tetons. For over a decade, the National Park Service and the Federal Aviation Administration struggled over jurisdiction and impacts concerning air tours over our national parks.

I was a member of that original National Parks Overflight Working Group that continued to wrestle with those same issues. The group finally came to a consensus about a process that was incorporated into the National Parks Air Tour Management Act.

All members of the group agreed that national parks were special places for our country. They also agreed that one regulation would not fit every unit in the National Park System. At that point, the process of an air tour management plan was conceived. Safety and resource impact concerns could be determined on a park-by-park basis with input from local, regional, and national perspectives.

Since the act was passed, it appears that the two agencies have continued to struggle over those same issues: jurisdiction and impacts. The two agencies have assigned capable staff who seem to work well together. I am not convinced that there was good collaboration at the beginning of the process, but I will say in the past year, the pace has picked up and the two teams seem to be working better together. I think we had a very slow start that delayed some of the implementation far beyond all of our expectations.

I am concerned that existing and new entrants are not being held to a standard that has been agreed upon through an air tour management plan due to the delay of the development of those plans. The issue of verification still seems to be in a gray area, as my friend Dave has mentioned. How do we verify information supplied by the operator or by those on the ground?

I am also sure that other existing and new entrants are struggling to maintain or grow a business in an uncertain climate created again by the lack of an ATMP. This impacts visitor experiences as well as air tour businesses. Neither of these situations is a good one.

Another reason for delay is the struggle to define adverse significant impacts. In fact, at its last meeting in March, the National Parks Overflights Advisory Group was asked to weigh in on this issue and provide a white paper for the agencies. This is currently being worked on and will be considered at its next meeting. I think it is very important that the National Park Service have a major role in determining what are adverse significant impacts on the soundscapes of the very places that have been placed under their care.

Still another issue for consideration is the enforcement of the ATMP's. Since the National Park Service has no role in the enforcement of FAA rules, it can only report infractions. It was the intent of the original group that the enforcement would be up to the FAA through operating certificates issued to the operators. In this way, if a bad apple begins to spoil the bushel, that operator would lose his or her certificate. I am unclear whether this is still the process, but hope that this can be clarified through work with the advisory group and the two agencies.

In the original working group, we had some discussions on using incentives to reward good actors. It appears that this would be in the power of Congress to institute some of these incentives. We also talked about providing incentives for those who use quieter technology. Due to the greater expense of newer, quieter technologies, it was understood that without real incentives, an operator would have no motivation to buy the latest technology. I hope that your committee will consider some possibilities in this matter so that even areas that have overflights will be able to be quieter.

What troubles me about this slow to no progress is that the need for the experience of natural sounds is unabated. If anything, in the midst of the din of our modern world, the need for natural sounds is growing. If my own words are strongly in favor of natural sounds, it is because I fear their loss. We must treasure the soundscapes of an area just as we would the landscapes. However, our parks are also treasures of our Nation's history. Sometimes our silence needs to be out of respect for courage and sacrifice at sites such as Gettysburg, Valley Forge, or Chickamauga.

I would urge you to fully fund the efforts of both agencies in their work to fulfill the intent and requirements of the National Parks Air Tour Management Act. I also would hope that you would plan periodic checkup meetings with the FAA, the NPS, and the advisory board.

We need to be still and silent long enough to hear. We need to shut off the noise long enough to revel in the natural sounds that abound in our parks. We need to be quiet long enough to stand in awe at national shrines and contemplate the enormous sacrifices that have been made for freedom and liberty.

The Air Tour Management Act is good legislation that goes a long way in preserving the soundscapes of America's treasures while allowing them to remain accessible. I urge you to continue your efforts on behalf of our country's special places.

Thank you, Mr. Chairman and members of the committee for this chance.

[The prepared statement of Mr. Maynard follows:]

PREPARED STATEMENT OF CHARLES W. MAYNARD, MEMBER OF THE NATIONAL PARKS OVERFLIGHT ADVISORY GROUP AND FORMER DIRECTOR OF FRIENDS OF GREAT SMOKY MOUNTAINS NATIONAL PARK

Mr. Chairman and members of the Committee, thank you for the opportunity to present my views on the Air Tour Management Act of 2000 and its enforcement.

I wish to submit the text of my comments for the records of the Senate Subcommittee on National Parks and to summarize them in my comments.

I served as the first Executive Director of Friends of Great Smoky Mountains National Park from 1994 to 2001. Also, as a member of the original National Parks Overflight Working Group (NPOWG), a current member of the National Parks Overflight Advisory Group (NPOAG), and an author of books and articles about America's scenic and historic treasures, I am grateful for this moment to give you my thoughts on the implementation of the Air Tour Management Act.

I became interested in the issue of commercial overflights of national parks due to my work in the Great Smokies, Yellowstone, and the Grand Tetons. For over a decade the National Park Service (NPS) and the Federal Aviation Administration (FAA) struggled over jurisdiction and impacts concerning air tours over our national parks. The White House appointed the National Parks Overflight Working Group that continued to wrestle with the same issues, but came to a consensus about a process that was incorporated into the National Parks Air Tour Management Act.

All members of the Working Group agreed that National Parks were special places for our country. They also agreed that one regulation would not fit every unit in the National Park System. It was at that point that the process of an air tour management plan was conceived. In this way, safety and resource impact concerns could be determined on a park-by-park basis with the input of local, regional, and national perspectives.

At times in the years since the act was passed in 2000, it appears to me that the two agencies have continued to struggle over jurisdiction and impacts. The two agencies have assigned capable staff to work on this issue. While the two sets of staff people seem to work well together at meetings, I'm not convinced that there was good collaboration from the beginning. I will say that in the past year the pace has picked up and the two teams seem to be working better together. At this point I must say that the staffs of both agencies are bright, capable people who seem dedicated to working on this issue. I think we simply had a very slow start that delayed some of the implementation far beyond anyone's expectations.

Both agencies have had to deal with new regulations and security concerns since September 11, 2001. The implementation of this act coincided with this difficult time. I do think that this delayed both the FAA and the NPS in their initial efforts to implement the act.

I am concerned that existing and new entrants are not being held to a standard that has been agreed upon through an air tour management plan (ATMP). The issue of verification still seems to be in a gray area. How do we verify information supplied by the operator or by those on the ground?

I am also sure that other existing and new entrants are struggling to maintain or grow a business in an uncertain climate created again by the lack of an ATMP. There are impacts on visitor experiences as well as air tour businesses. Neither of these situations are good ones.

Another reason for delay is the struggle to decide the definition of "adverse significant impacts." In fact, at its last meeting in March, the National Parks Overflight Advisory Group was asked to weigh in on this issue and provide a white paper for the agencies. This is currently being considered. I think it is very important that the National Park Service have a major role in determining what are adverse significant impacts on the soundscapes of the places under their care.

Still another issue for consideration is the enforcement of the air tour management plans with the operators. Since the National Park Service has no role in the enforcement of FAA rules, it can only report infractions. It was the intent of the original group that the enforcement would be up to the FAA through the Part 135 certificates issued to operators. In this way, if a "bad apple" begins to spoil the bushel, that operator loses his/her Part 135 certificate. I am unclear whether this is still the process but hope that this can be clarified through work with the advisory group and the two agencies.

In the National Parks Overflight Working Group we had some discussions on using incentives to reward good actors. It appears that this would be in the power of Congress to institute some of these incentives. We also talked about providing incentives for those who use quieter technology. Due to the greater expense of newer, quieter technologies, it was understood that without real incentives an operator would have no motivation to buy the latest technologies available. I hope that your

committee will consider some possibilities in this area so that even areas that have overflights will be able to be quieter.

What troubles me about this slow to no progress is that the need for the experience of natural sounds is unabated. If anything, in the midst of the din of our modern world, the need for natural sounds is growing.

It is important that we as humans have places where we can listen. National parks are some of those spots where human-made noise needs to be left behind so that natural sounds can be heard and discerned.

An old folktale describes a farmer who was disturbed by the "noise" of his wife, his children, and his mother-in-law. When he sought the advice of the village wise man, he was told to bring his pigs, cows, and goats into his house with his family. The noise was atrocious! He couldn't stand it. Upon returning to the wise man, he was advised to remove the animals. As the animals were taken out, he began to hear the music of his family. "Ah," said he, "much better. We have to remove the noise to hear the sounds that surround us.

Several years ago I came to Washington's National Gallery of Art to see an exhibit of Thomas Moran's works. The paintings were marvelous. Enormous canvases of the Grand Canyon, Yellowstone, and Idaho Falls covered entire walls. Small watercolors of Yellowstone recalled scenes now familiar to me. What amazed me was how quiet it all was. People spoke little and then only in hushed tones. I found myself thinking that these people were being respectful of great works of art that were fakes. Yes, fakes! The real works of art are what Moran was trying to capture on canvas. The authentic treasures are in those national parks—the Grand Canyon, Yellowstone, Yosemite, the Great Smokies.

It is puzzling to me that we treat "fakes" with more respect and awe than we do the real articles. Many attempts have been made over the years to encroach on the natural sounds of our nation's parks. Cars, buses, airplanes, motorboats, personal watercraft all serve useful purposes in transporting people, but each has its place. Some places need to be reserved for listening without the interruption of mechanical noises. Too often our ears are assaulted with harsh human-made noise that overpowers. National parks are for the benefit and enjoyment of all the people. All these people have many needs and desire varied uses.

Enjoyment for one is work for another. To see the Grand Canyon from the air can be an awesome experience, as can a trek deep into the canyon away from the press of humanity. Striking an equitable balance requires that BOTH experiences be valued. This is not an either-or choice. Our national parks are for the enjoyment of ALL people. We must be wise enough to craft spaces for all uses. This is not without its difficulties as the past few years have shown us. It was the intent of the National Parks Overflight Working Group and the National Park Air Tour Management Act to seek that balance.

If my own words are strongly in favor of natural sounds, it is because I fear their loss in the din of our mechanized world. We must treasure the soundscapes of an area just as we would the landscapes. However, our parks are also treasures of our nation's history. Sometimes our silence needs to be out of respect for courage and sacrifice, at sites such as Gettysburg, Valley Forge, or Chickamauga for example.

I would urge you to fully fund the efforts of both agencies in their work to fulfill the. intent and requirements of the National Park Air Tour Management Act. I also would hope that you plan periodic check-up meetings with the Federal Aviation Administration, the National Park Service, and the National Parks Overflight Advisory Board.

Natural quiet does not exist. Heaven forbid that it ever should. Rachel Carson warned about hazards to the environment in her book, *Silent Spring*. The implication was that if nature is silent, then there is real trouble. Nature is NOT quiet. It is filled with wonderful sounds loud and soft, booming and buzzing.

No one likes to be shushed. We should be encouraging people to listen, to truly hear the wonderful natural chorus that surrounds us. We don't need natural quiet. We need human-made quiet. We need to be still and silent long enough to hear. We need to shut off the noise long enough to revel in the natural sounds that abound in our natural parks. We need to be quiet long enough to stand in awe at national shrines and contemplate the enormous sacrifices for freedom and liberty others have made on our behalf.

In summary, my recommendations are:

- That the agencies (FAA and NPS) are fully funded to complete the ATMPs for all the parks where operators have requested to fly.
- That the agencies (FAA and NPS) have full funding to monitor the ATMPs.
- That a simple and clear procedure of verifying air tour operations must be developed.

- That the National Park Service have the lead role in determining adverse significant impacts to the resources and soundscapes in the parks.
- That Congress continue to work with and monitor the progress of the two agencies (FAA and NPS) as they work on implementing the ATMA of 2000.
- That the two agencies continue their work together and with the National Parks Overflight Advisory Group.
- That Congress develop some incentives for those who comply with a park's air tour management plan and some penalties for those who do not.
- That Congress develop some incentives for those operators who employ quieter technology.

The National Parks Air Tour Management Act is good legislation that goes a long way in preserving the soundscapes of America's treasures while allowing them to remain accessible. I urge you to continue your efforts on behalf of our country's special places. It would be a shame to come this far and let it fall by the wayside now.

Thank you, Mr. Chairman and members of the committee for the invitation to this hearing. I am most encouraged by your work and your continued interest in our national parks and this very important issue.

Senator THOMAS. Thank you.

Mr. Barger.

STATEMENT OF DON BARGER, SOUTHEAST REGION DIRECTOR, NATIONAL PARKS CONSERVATION ASSOCIATION

Mr. BARGER. Good afternoon, Mr. Chairman, Ranking Member Akaka, Senator Alexander. In the world of meaning, Charles Maynard is always a hard act to follow. I appreciate the opportunity to present comments of the National Parks and Conservation Association.

Congress elevated two basic principles when it passed the Air Tour Management Act in 2000. No. 1, that the sounds of nature are among the inherent components of the resources that form the core of the National Park Service's conservation mandate; and two, that within the units of the National Park System, the opportunity to experience natural sounds shall be preserved unimpaired for the enjoyment of future generations. These two principles embody the most fundamental purposes of the National Park Service Organic Act of 1916 and reflect the act's enduring meaning in the world today.

I want to focus my comments on three areas of implementation.

First, this act was carefully designed to allow both agencies to use existing tools and authorities in a tandem effort. While we believe that the working relationship may be improving between the FAA and the Park Service, things are going to continue to bog down if the Park Service tries to tell the FAA how to fly planes or if the FAA tries to tell the Park Service how to protect parks.

We believe that the legislative history is clear. Quoting from the report on the Committee on Commerce, Science, and Transportation from S. 82 in 1999, "The committee further intends that the FAA retains its role as the sole manager of America's airspace and its responsibility to ensure a safe and efficient air transport system and that the NPS retains its responsibility and authority to protect park resources and values and visitor experiences."

We urge this subcommittee to continue to pay close attention to this point as it is crucial in avoiding further delay. The protection of our parks should not be determined by a departmental compromise.

Second, NPCA is concerned that there is not yet a reliable process to certify the existing number of commercial air tour overflights

over park units or even whether operators have existing operations over the parks where they claim to fly. National park managers were surveyed in 1992 and reported 42 park units had existing flightseeing operations. After the final rule was issued, however, more than 70 air tour operators applied for interim operating authority as existing operators at more than 100 national park units. Collectively, these existing operators are claiming to fly more than 160,000 air tour overflights a year over units of the National Park System, excluding Grand Canyon. Is this the right number? The answer is basically we do not really know. Inaccuracies in these numbers frustrate any meaningful assessment of the impacts of existing flights on the parks resources and visitors.

To answer your question, Senator Alexander, this last week I called up the Smokies and asked them were they aware of any interim operating authority applications having been filed and their answer was no for the two operators down in Sevierville. That does not mean they have not been but the park simply was not aware of them at all.

NPCA believes the best solution to this situation is sunlight. FAA should immediately release to the public the names of all air tour operators claiming existing operator status over parks, along with the number of flights that they each claim. We also recommend that the FAA release the names of new entrant applicants and where they wish to fly. Such information is central to the understanding of whether and how the act is being implemented. At this point none of this information is available to the general public, and as far as we know, FAA even refuses to give interim operating applications to their partners, the National Park Service.

Third, while Congress has specifically granted the Park Service the authority to protect park visitors and resources, the Park Service has insufficient funding to implement the act as intended. Park Service estimates given to NPCA more than 4 years ago showed that the funding requirements for air tour management planning are more than twice the current budget. Unfortunately, the lack of funds prevents the Park Service from playing the role that the act properly prescribes. It is yet another byproduct of the chronic operational funding shortfall that plagues the National Park System and which many members of this subcommittee have been trying to help us address.

In conclusion, NPCA respectfully asks that the subcommittee help ensure that both agencies implement the Air Tour Management Act expeditiously. We specifically recommend, No. 1, that we demand that the agencies continue to improve their level of cooperation, paying particular attention to ensuring that the Park Service retains its authority to determine the impacts of air tours on park resources, visitors, and values; two, call for the expedited release of information to the public on existing and new entrant applications and the development of a clear procedure for verifying operator claims about where and how often they fly; and finally, support an increase in funding for the Park Service's operations so that it can fully participate in the development of these plans.

Thank you, Mr. Chairman and members of the committee, for inviting me today. I very much appreciate your interest in this very important issue.

[The prepared statement of Mr. Barger follows:]

PREPARED STATEMENT OF DON BARGER, SOUTHEAST REGIONAL DIRECTOR, NATIONAL PARKS CONSERVATION ASSOCIATION

Mr. Chairman and members of the Committee, thank you for the opportunity to present the views of the National Parks Conservation Association on the implementation of the National Parks Air Tour Management Act of 2000 (the Parks Air Tour Act).

NPCA is the only national, non-profit advocacy group dedicated solely to protecting and enhancing America's National Park System for present and future generations. NPCA's 300,000 members are spread throughout the United States; they visit national parks to experience nature, wildlife, scenic wonders, and natural soundscapes, as well as to enjoy the many cultural and historic features that our nation has chosen to preserve for posterity.

Since 1992, I have been employed as NPCA's Southeast Regional Director. The region I manage for NPCA includes 46 national park units, including the Great Smoky Mountains National Park, the most visited national park in the entire National Park System.

The management of commercial air tours over national parks has long been of great concern to NPCA and our members. While we do not oppose all commercial air tours over parks, we are concerned that Park System units such as Hawaii Volcanoes, Haleakala, Bryce Canyon, Glen Canyon, and Grand Canyon are subject to overflights by hundreds and thousands of commercial air tours every year. Commercial air tours can disrupt the park experience for visitors: The noise from helicopters and planes and the visual intrusions they cause often jar visitors who travel great distances to visit the parks and expect a measure of peace and solitude.

NPCA worked on the development and pushed for the passage of the National Parks Overflight Act of 1987, a law that gave the FAA and Park Service the ability to regulate commercial air tours over Grand Canyon and called for a study on overflights over parks nationwide. Members of our staff worked with representatives of the FAA, Park Service, air tour industry, and Native American community in the National Parks Overflight Working Group, which drafted some of the original language for the Parks Air Tour Act of 2000, the law whose implementation we are discussing today.

LEGISLATIVE HISTORY

Congress elevated two basic principles when it passed the Parks Overflight Act of 1987 and the Parks Air Tour Act: (1) that the sounds of nature are among the inherent components of the resources which form the core of the National Park Service's conservation mandate and (2) that within units of the National Park System, the opportunity to experience natural sounds, shall be preserved "unimpaired for the enjoyment of future generations." These two principles embody the most fundamental purposes of the National Park Service Organic Act of 1916, and reflect the Parks Air Tour Act's enduring meaning for the world today.

In enacting these important park overflight laws, Congress placed significance importance on the protection of natural sounds in our national parks such that it designed a new, unprecedented role for the National Park Service in their implementation. Congress authorized the National Park Service to exercise some control, in cooperation with the FAA, over the commercial air tour industry that profits from flying over many of our most scenic and visited national parks. Both the Park Overflights Act and the Parks Air Tour Act broke new ground in ordering a level of cooperation between the National Park Service and the FAA to which neither agency was accustomed, and I dare say for which neither agency was fully prepared.

IMPLEMENTATION

The different cultures and missions of FAA and NPS have hindered the implementation of the Parks Air Tour Act and resulted in extremely disappointing delays in implementing the Act. As the Act recognizes and provides, the FAA has the "authority" to control airspace and to manage the adverse effects of aircraft overflights on public lands. The Act also recognizes that the Park Service is the appropriate agency to determine the impacts of commercial air tours on park resources and visitor experiences. The competing missions and goals of both agencies resulted in a delay of 2½ years before the FAA published the final rule to implement the Parks Air Tour Act—a critically important rule because it defined the air space over national parks that would be subject to regulation. In addition it took both agencies more than three years to finalize a Memorandum of Understanding that helps de-

fine how they will cooperate when analyzing the air tour issue at national parks and when implementing management solutions.

While the working relationship between the FAA and the Park Service has been improving somewhat, the debate continues over which agency determines the impacts of air tour overflights on park visitors and resources. This is particularly troubling, given the important role for the Park Service contemplated by the Act, its legislative history,[1] and the recommendations of the National Parks Overflight Working Group.[2] And although the FAA may be expected to claim that it will defer to Park Service expertise in determining air tour impacts, the actual experience and relative power and resources of the two agencies makes this assertion highly questionable. We encourage the subcommittee to make certain that the Park Service is, in fact, the agency that determines air tour impacts, so appropriate implementation may move forward without further delay. This includes ensuring the Park Service receives and requests the resources necessary to do the job.

THE AIR TOUR ACT RULE

The rule required that existing and new entrant air tour operators wishing to fly regular tours over park units apply to the FAA. Those applications identified for the FAA and NPS which national park units and tribal lands actually required air tour management plans. "Existing operators" were granted Interim Operating Authority (IOA) so that they could continue to fly over a park unit. According to the Parks Air Tour Act, IOA grants each existing air tour operator permission to fly a certain number of flights annually; each operator's total flight allowance is based on the number of annual flights he flew over a park unit before the passage of the Act.[3] IOA may not provide for an increase in annual flight numbers unless the FAA Administrator and Park Service Director agree to an increase.[4] A final air tour management plan may, however, provide for increases; prohibit air tours entirely; or lower the existing limits on numbers of operations imposed by the I0A. "New entrants" generally are prohibited from operating until a park unit completes an air tour management plan, specifically to pause the growth of air tour operations over park units until the FAA and Park Service create a suitable management structure. Yet, the Parks Air Tour Act provides that the FAA Administrator, with the consent of the Park Service Director, may grant IOA to "new entrants" if (1) the Administrator determines that "new entrants" are necessary to ensure competition over a park unit and (2) more than two years have elapsed since enactment. We believe the agencies should not consider "new entrant" applications until the agencies and the public has complete and reliable information on existing operators' status over parks. Although the Act provides for the integration of competition for the park air tour business, bringing new entrants into park airspace where impacts of existing air tour overflights have not been accurately identified or analyzed—and indeed, the data about existing air tour overflights may be suspect—frustrates the purpose and intent of the Act.

SCOPE OF PARK AIR TOUR ISSUE

In 1992, the National Park Service surveyed park managers throughout the Park System about the type and scope of aircraft overflights impacting park units. At that time, managers in 42 park units reported the existence of sightseeing overflights over the units they managed.[5] We knew then that air tours at certain parks were of great concern, but we did not yet fully comprehend the scale. The potential scale became clear after the final Parks Air Tour Act rule was issued and more than 70 air tour operators applied for IOA as existing operators for more than 100 national park units. Collectively, these existing operators are claiming they fly more

[1] See p. 44 of Report (106-9) of the Committee on Commerce, Science, and Transportation on S. 82, March 8, 1999.

[2] See p. 4, National Parks Overflights Working Group Outline of Recommended Rule, December 16, 1997.

[3] IOA, as defined by the final rule, shall provide annual authorization only for the great of: The number of flights used by the operator to provide the commercial air tour operations within the 12-month period prior to April 5, 2000; or the average number of flights per 12-month period used by the operator within the 36-month period prior to April 5, 2000.

[4] The Act also says that IOA "shall" promote protection of national park resources, visitor experiences, and tribal lands; and "shall" allow for modifications of the IOA based on experience if the modification improves protection of national park resources, and values, and of tribal lands.

[5] Results of survey included in the Park Service's July 1995 Report on Effects of Aircraft Overflights on the National Park System (prepared pursuant to the 1987 National Parks Overflights Act).

than *160,000* air tour overflights a year over units of the National Park System. This figure excludes air tours over Grand Canyon National Park. But, is this the correct number of actual air tours over the Park System? Because of the problems with verification and lack public disclosure in the IOA process, we cannot be certain.

Some parks clearly have a larger problem with air tour overflights than others: At Hawaii Volcanoes and Haleakala National Parks, which we know have active air tours throughout the year, existing operators claim to fly more than 23,000 flights a year over each park. While there is likely a fluctuating, seasonal nature to this business in many parks, the total number of overflights over those two Hawaii park units would translate to an average of more than 63 flights a day over each park. Over the U.S.S. Arizona Memorial in Honolulu harbor, operators claim more than 3,600 flights a year. Air tour operators over Mount Rushmore National Monument report they fly more than 5,500 overflights annually. Glacier National Park, a park with a publicly-vetted General Management Plan that calls for the elimination of commercial air tour overflights, has more than 1,500 air tours a year, most.concentrated in a three-month summer season. And, operators are claiming hundreds and thousands of flights a year over a number of parks in the southwest and some in the east.

PUBLIC DISCLOSURE AND VERIFICATION

There is not yet a reliable process to certify the existing number of commercial air tour overflights over park unit or even whether operators have existing operations over the parks where they claim to fly. While many operators filed or attempted to file accurate claims in their IOA applications, some of the claims that we have seen arouse suspicion. We learned in discussions during the last Overflight Advisory Group meeting that in some cases, FAA's instructions to commercial air tour operators about how to apply for IOA might have been unclear or inconsistent. As a. result, some commercial air tour operators may have provided inaccurate information about the national parks they actually fly over and the number of flights flown over specific parks. Our concern is that before the air tour management process even has begun over most park units, we may have unreliable figures at some parks about the true scale of the air tour business. Proceeding under such uncertainty is unfair to local communities near parks, park visitors, and existing and new air tour operators.

Inaccuracies in these, numbers frustrate any meaningful assessment of the impacts of existing flights on a parks resources and visitors. This is true even when the operations are highly visible. In fact, at the Great Smoky Mountains National Park there are at least two flight-seeing operations that fly into the airspace of that park and, to my knowledge, the park has had no applications for IOA. Whose job is it under the Act to enforce in this case?

NPCA believes the best solution is sunlight: FAA should immediately release to the public the names of all air tour operators claiming "existing" operator status over parks, along with the number of flights they each claim. We also recommend that the FAA release the names of "new entrant" applicants and where they wish to fly. Such information is central to understanding how the Parks Air Tour Act is being implemented and how the authority granted under IOA "promotes protection", or might be "modified to promote protection"[6] based on long-standing experience. At this point, none of this information is available to the public; as far as we know, FAA refuses to give IOA applications to even the Park Service. During the last meeting of the Advisory Group, the FAA proposed to issue a new Federal Register notice asking all existing air tour operators to "self-correct" their claims of flight volumes over parks. After collecting those responses, FAA would release to the public a revised list of existing air tour operators along with the numbers of flights over parks they claimed. While such a process may work in the end, we believe it is unnecessarily time consuming and may cause further delays that are unfair to park visitors and air tour operators alike. (Genuine concerns about security at some internationally renowned park units, such as Mount Rushmore, should provide sufficient motivation to the FAA for informing the Park Service and the public about who is flying near these popular sites).

Following that last Advisory group meeting, NPCA and The Wilderness Society, both of which are members of this group, sent a Freedom of Information Act request to the FAA seeking the air tour operators' applications for Interim Operating Authority over those parks of concern. Our request was necessary because FAA has not provided the Advisory Group with the IOA applications, even though the Advisory Group's role is to advise the agencies on implementation of the Act. We want

[6] See footnote 5.

to share the results of our FOIA with the rest of the Advisory Group, but FAA has demanded that we pay a significant fee for its release of the operator applications. At this point, our FOIA request is still unresolved.

FUNDING FOR THE AIR TOUR MANAGEMENT PROCESS

While Congress has specifically granted the Park Service the authority to protect park visitors and park resources, NPS has insufficient resources to enforce the Act as intended. The Memorandum of Understanding between the agencies for the air tour management process requires a 60/40 split on costs for outside contractors hired to do studies and environmental assessments. This demand for cooperation should be recognized in the Park Service's budgets. NPS estimates provided to NPCA more than four years ago showed the funding requirements for air tour management planning to be more than twice the current budget of $918,000. Unfortunately, the lack of funds prevent the Park Service from playing the role Congress contemplated it would have. It is yet another byproduct of the chronic operations funding shortfall that plagues the National Park System, and which many members of this subcommittee have been trying to help us address.

CONCLUSION AND RECOMMENDATIONS

In conclusion, NPCA respectfully asks that the subcommittee help ensure that both the FAA and NPS implement the National Parks Air Tour Management Act expeditiously, and according to the spirit, and not just the letter of the law. We specifically recommend that Congress:

- Demand that FAA and NPS continue to improve their level of cooperation, while paying particular attention to ensuring that NPS retains its authority to determine the impacts of air tours on park resources, visitors, and values;
- Call for the expedited release of information, to the public on existing and new entrant park air tour operator applications and the development of a clear procedure for verifying park air tour operator claims about where and how often they fly;
- Support an increase in funding for the Park Service's operations so it can fully participate in the development of air tour management acts

Thank you, again, Mr. Chairmen for the opportunity to testify today and for your subcommittee's interest in this important issue facing our national parks. I welcome any questions that you may have.

Senator THOMAS. Well, thanks to all of you. We appreciate you being here and appreciate your points of view.

Maybe we have a few quick questions. We will try to ask them quickly, and if you can answer them quickly, that will be nice too.

Mr. Resavage, you referred to quotas arbitrarily set at unjustly low levels. What do you mean? Who set the quotas and why are they arbitrary?

Mr. RESAVAGE. Well, I say they are arbitrary because a timeframe was just picked that said if you have flown between this month of this year and this month of this year, that that should be the number that you should be held to. Well, was that a good year or a bad year? Was that a year where there was a lot of activity or was it a year where there was very little activity? Is the need or the requirements of the people that want to visit the parks increased or decreased the people that want to experience the parks by air? So it is very difficult for us to understand how those numbers could be selected to begin with and then the justification for maintaining them at that particular level.

Senator THOMAS. Thank you.

Mr. Maynard, you indicated that it is important the Park Service has a major role in determining the adverse impact. Is there a concern on your part that that is not the case?

Mr. MAYNARD. Well, I am concerned that we are still arguing over what adverse significant impacts are.

Senator THOMAS. Arguing with who?

Mr. MAYNARD. The two agencies are still working on that definition.

Senator THOMAS. Why would FAA have any particular concern about the impacts? I would think you would determine what the impacts are and then FAA would figure out how to avoid them.

Mr. MAYNARD. I do not think that is the way it is currently being—I think they are trying to come up with definitions that both agencies can work with and live with. As I mentioned, the advisory group has been asked to weigh in on this and they are going to try to develop some things in the next few months for that.

But that is, I think, one of our concerns over and over again, that the Park Service maintain that ability to say this is an impact on our resource or on our visitors in this resource.

Senator THOMAS. Sure, I understand.

Does your organization have a feeling strongly about whether there ought to be overflights or not?

Mr. MAYNARD. Well, I am at the Smokies, and as Senator Alexander pointed out, in the Smokies the legislation that set up the Smokies originally was very careful to make sure that commercial development stayed outside of the park so that unlike Yellowstone, for instance, there are no hotels inside the park. They are outside. So I think the local communities are similar to what Senator Alexander was saying, that there is real concern over what is happening over the park as opposed to away from the park looking into the park. There are ways to have wonderful overflight experiences but just not over the park.

Senator THOMAS. You say you had some involvement with Teton. That was kind of the way that was. The border was such that you could fly outside the border and still get most of the impacts of the—of course, you could still hear them as well, as I recall.

Senator.

Senator AKAKA. Thank you, Mr. Chairman.

Dave Chevalier, first of all, I want to say thank you again. Thank you for your years of hard work contributing to the implementation of the act. The voluntary air tour management plans in Hawaii are very important models for air tour issues nationwide, and your firm has been a key player in making this work. I want you to know that I do appreciate that.

I am encouraged to hear your suggestion for using transponders to track flights and the use of fee demonstration funds from overflight visitors to fund the system. The use of transponders is already widespread in the trucking and commercial fishing industry, not to mention wildlife tracking and is being considered for tracking cargo containers as they arrive in the United States.

What level of acceptance would this suggestion have among air tour operators over national parks nationwide?

Mr. CHEVALIER. Senator, I think that the people that want to play by the rules will welcome this because it proves that they do play by the rules, and they will not be tarred with the same brush of an operator who may not want to play by the rules. That is always something we have to deal with. By not having that, by not having good enforcement, you can make suckers out of law-abiders. That is why something like this would ensure compliance and that

everybody is playing by the rules. I think that would be well accepted.

Senator AKAKA. You mentioned incentives for quiet technology. I realize you have been on the forefront in investing in what we call quiet technology. What kinds of incentives and guidelines would be most useful, do you think?

Mr. CHEVALIER. I am really not sure. I really hate to put that out as what those might be. I think that is more of a job for the advisory group to come up with that. But there definitely has to be something. I think the critical thing, though, is that we come up with a definition for quiet technology, what aircraft qualify. Yes, we have invested in quiet technology aircraft. That sounds good but there is nothing to say that they are quiet technology aircraft. There is no definition of this aircraft meets the definition and this aircraft does not. So until we have that guideline set, operators around the country are not going to spend that money, and it takes, like I said, a lot of long-term planning to be able to make these acquisitions for most companies, and they have to know what the target is.

Senator AKAKA. Mr. Resavage, I thank you for your forthright testimony. I appreciate your continued support for the goals and intent of the air tour act.

With the problems you have highlighted, I would be interested in your comments on the use of a moderator or mediator to fix the process as suggested in other testimony.

Another option to Congress is a study by the Government Accounting Office, an objective voice to evaluate and make recommendations on the implementation of the act.

What is your opinion of these two options and do you have any other suggestions?

Mr. RESAVAGE. Thank you for the question, Senator.

I would support the role of a mediator, and I think that it would have the potential of expediting the process. I believe that if a study group were to come in, that again might push back the results. As we all know, if you have blue ribbon panels working on gathering data and analyzing data, it seems to take forever.

I think the people that have worked on the NPOAG really deserve a tremendous amount of credit where there was a lot of animosity in the very beginning and people were trying to protect their positions, but through careful negotiating and moderation and the willingness of people on all sides to work together, they have come up with a reasonable plan, again where not everyone is pleased but it is a workable plan that should be implemented.

I think a moderator, as you possibly suggest, Senator, might be able to get the two agencies working a little bit faster and closer together. I agree with Mr. Barger's comment and Mr. Maynard's also that the agencies appear to be trying to work better recently, and they are making a solid effort to have this plan work. But I do not want to grow old before we see this thing happen, and I am getting pretty close to that already. So I would like to see some type of accelerated process, and I think your suggestion would be a good one.

Senator AKAKA. Mr. Barger, a point made several times today is the importance of fully funding the Park Service's contribution to

the Air Tour Management Act. In the memorandum of agreement signed earlier this year, there is a 60/40 split between the FAA and the National Park Service. Did I understand correctly that at its current budget of $918,000 for overflights, the Park Service still falls short of its 40 percent funding expectation under the joint agreement?

Mr. BARGER. That depends entirely on how long you want the process to go. What we found from the figures that we were given by the National Park Service several years ago was that the level of funding specifically for the soundscape program that does the implementation of the Park Service's aspect of these plans was less than half of what they needed to actually move it along on an expedited schedule. This is part and parcel to the chronic underfunding of the National Park Service's operational budget overall. There are really not other places that this can be pulled from.

NPCA did a business plan initiative where we took graduate students from universities and put them in the parks to just do a small business plan for the parks, and we came up with a very consistent 30 to 35 percent shortfall in basic operational money just to operate the parks. So there is not room elsewhere in the Park Service's budget. These things have to be deliberately funded so that they can be completed in a timely manner.

Senator AKAKA. Well, thank you very much. My time has expired. So let me pass you on to Senator Alexander.

Senator ALEXANDER [presiding]. Senator Akaka, do you have other questions you would like to ask?

Senator AKAKA. Well, I have one more.

Senator ALEXANDER. Why do you not take whatever time you need?

Senator AKAKA. Mr. Barger, in your view what effect does the Park Service's funding level have on its ability to contribute to the decision-making about the law and its implementation?

Mr. BARGER. I think there are two aspects to that. The Park Service performing its appropriate function within the tandem effort is a matter of a cooperation and understanding between the two agencies of what those various roles are. I think that needs to be clarified. I think the agencies need to understand that Congress commissioned the FAA to take care of safety, transport efficiency, and the National Park Service to protect the resources and the visitor experience in national parks, and bifurcate those functions within their overall procedure. If that is done, then I would suggest that we may not need a mediator. In fact, you might have a lot clearer process to move forward with.

Senator AKAKA. Thank you for your responses.

Thank you very much, Mr. Chairman.

Senator ALEXANDER. Thank you, Senator Akaka, for your interest and leadership.

I want to thank the witnesses for this. I am officially new to the issue and catching up, so I will not have many questions. I am personally not new to the issue because I am very interested in it and I am interested in seeing the dilemma that the law creates for all of you. Basically it says the Park Service can decide, the way I read it, what the environmental impact is, but the FAA can decide how to control the airspace. Then that leaves the operators, who are try-

ing to operate a business, with a lot of uncertainty for a long period of time while that is worked out, and that is about the worst thing that can happen to a small business.

Let me just ask this. None of you represent the Park Service but did you start out with the idea that the Park Service could just make a decision in all the parks about what it would take to protect the parks and then send it to the FAA and let them outside that area make the safety rules? That would be one way to do it.

Why does the Park Service under the law not have the right to say that in Chickamauga, which was an example that Senator Thomas used, to preserve the serenity of the occasion, we do not want to be able to hear any helicopters and just send that to the FAA? Or why could the Park Service not decide that in another area that there were major areas where it did not make much difference or it made less difference? Did that ever happen?

Mr. CHEVALIER. That was the crux of the discussion in the working group certainly. We did decide that there may be some parks where air tours are not appropriate, and that will be determined at the end of the ATMP process. There may be some parks where there are going to be unlimited air tours because it is an urban environment. We would hope that in most parks certainly now that have air tour flights, there can be an accommodation worked out where it can be a win-win for both. That is really what we want to get to, where there is a place for ground visitors where they can have the experience, the solitude and natural quiet, and at the same time we can have a place where air tour visitors can see their parks as well.

Senator ALEXANDER. That is a very reasonable approach. I am just wondering, though, why the FAA has anything to do with the kind of experience someone has in a national park. Why is the National Park Service not in charge of that?

Mr. RESAVAGE. Senator, if I could just add. Part of the difficulty is, as Mr. Hoffman had mentioned earlier, it is a very complicated process trying to figure out what is an acceptable level of noise or excess energy, whatever the PC term is for what we hear, whether it is buses or trains or cars or helicopters that are in the National Park System. When you are trying to work the algorithms and figure out how much noise is acceptable and who is contributing what to that, the FAA cannot be taken out of that equation because there are airports that are in close proximity to some national parks. There are aircraft that are flying over the parks that are actually not part of the commercial experience but they are also adding noise to the environment. So it is a very delicate process of trying to figure out who is adding what to the equation and who should be held accountable for trying to compensate for that noise or reduce that noise.

Mr. BARGER. Senator Alexander, if I may respond also to that. I think it is a very good question. My response would be the National Park Service is responsible for those things, and in fact, the legislation was designed and the report language confirms that, in fact, the intention was for the agencies to exert existing authorities, rather than try to create a new authority or new jurisdiction, to simply meld those two together in a tandem effort.

I think where you see a lot of the complications—they come from two different agencies participating in a NEPA process together where one is a lead agency by necessity and the other a cooperating agency. And in relation to national parks, the park-specific nature of the resources in that particular place need to be looked at. The degree and depth of analysis is going to vary from place to place.

And third, public involvement is one of the reasons you want to make sure and have a process in each place.

I will say that a decibel meter can give you information but it cannot give you a decision based on the preservation of values. I think that is where your question went. I have to agree with you that the National Park Service has the mandate from Congress to make those kinds of decisions. I think after a few plans have been put in place and some common things begin to develop, you may find them coming much more efficiently and more quickly.

Senator ALEXANDER. Let me ask, if I may, just maybe one or two more questions, and then I will see if Senator Akaka has any other questions.

Just so I understand what the status of things are today, if I am an operator and I want to fly at Chickamauga, can I do that? Can I fly over a national park if I am not now flying? What is the law?

Mr. CHEVALIER. No.

Senator ALEXANDER. So new entrants are not allowed today, is that correct, while this decision-making is going on?

Mr. RESAVAGE. Senator, my understanding is that if someone has not currently operated within the previous 12 months, they cannot automatically start operating in a national park area. They can apply for an interim operating authority, but then as Mr. Withycombe had mentioned earlier and Mr. Hoffman both, then that application will be taken into account and they will determine whether that would have an adverse impact or not. But to date, to my knowledge, that is not what is occurring. To have a new entrant, basically a person would have to obtain someone else's certificate even at an existing park, let alone starting an operation at a new park.

Senator ALEXANDER. Thank you.

And since Mr. Maynard and Mr. Barger know the Smokies pretty well, am I right, so far as you know, are there now two operators operating flights in the Smokies? Is that correct, or do you know?

Mr. MAYNARD. There are two that have applied for interim operating authority that had had operations before. However, there are two others that appear to be operating there as well.

Senator ALEXANDER. Do the other two have the authority to do that?

Mr. MAYNARD. Well, I think that is what we need to determine.

Senator ALEXANDER. That would be answered by my question to the National Park Service and the FAA. So that would be four operators that have been observed operating in the Smokies.

Mr. MAYNARD. Right.

Senator ALEXANDER. And you think two clearly have authority and it is not clear whether two more do.

Mr. MAYNARD. Right.

Senator ALEXANDER. Well, thank you. I think Chairman Thomas has done a service by putting the spotlight on this, and Senator

Akaka by his interest has done the same. I am glad to have had the chance to be a part of the discussion. I apologize for missing the first part, but I could not help that because of my presiding responsibilities.

Just to summarize three principles that are in my mind as I will be looking at this, I think certainty is a very important principle and the Government does a disservice to itself, to the people it serves, and to small businesses especially when it creates uncertainty so people cannot make their plans. So the idea of moving things along is certainly something we should do.

Then I think we have got two other principles that I will have in my mind as I look at what the right thing to do is here. I have come to believe that the absence of artificial noise may be 20 or 25 years from now the rarest and most valuable quality of life aspect that we have. It will be harder and harder to find. I also believe that there are many national parks where limited or no loud helicopter noises would be the right policy. That would be my personal view. I think of the Smokies in particular because of the huge population that uses the Smokies and is around the Smokies, and there are not many refuges in that geographical area of this country. Loud helicopter noise or loud any noise is in direct contradiction to 500,000 acres that are operated as if it were a wilderness.

Having said that, I am also aware that a single policy for all our parks and all our sections of the country is almost always not a wise policy. Almost always. The West has one set of circumstances; the East has another. Cities have some; rural has another. I hope that as we work through this as a committee and as your organizations do and as the Government agencies do that we admit that up front. There might be a wide diversity in policies here, just as there is broad diversity in our country. I can think of many examples of that. They come up before this committee on a regular basis.

I was thinking of the fees that are charged for recreational areas and national forests. In the West where there are vast expanses, they have become a real irritant in many cases. In Cherokee National Forest in the East, the $2 million a year that are collected there is absolutely essential to clean it up and run out the drug users and do all the other things that those of us who want to use it want. So we should recognize that, that in the West there might be one policy, in the East there might be another. That may help to get through the issues here. It sounds like you are already on that track with the advisory committee by segregating out some parts of the country and working on those and trying to solve those problems and moving on to others.

But I appreciate your effort. I thank you for your time in coming here. We will all read your testimony carefully. I for one intend to be very interested in the subject as we move along.

The hearing is adjourned.

[Whereupon, at 4:13 p.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

NATIONAL PARKS CONSERVATION ASSOCIATION,
SOUTHEAST REGIONAL OFFICE,
Knoxville, TN, August 18, 2004.

Hon. CRAIG THOMAS,
Chairman, Subcommittee on National Parks, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN THOMAS: I appreciate the opportunity to extend my testimony before the Subcommittee on National Parks on July 22nd through these responses to your questions. I apologize for not being able to get these back to you by August 13th as requested; your letter did not reach me until August 12th. I hope that this information is responsive to your inquiries and stand ready to provide any other clarification or further information that you request to facilitate your important review of the implementation of the National Parks Air Tour Management Act of 2000. Your questions and my response follow.

Yours Truly,

DON BARGER,
Senior Director.

[Enclosure.]

Question 1. You noted a lack of confidence in the original application information the FAA received from the air tour operators. What is your confidence in the second round of information sought by the FAA?

Answer. When the Federal Aviation Administration (FAA) drafted its first Advisory Circular, the National Park Service (NPS) asked the,FAA, to require enough information to provide a means to verify the submitted data. Apparently, the FAA did not do so. The only reason FAA has now had to ask twice is that we know from operators who are trying to comply with the Act that at least some of the original numbers were "padded" and are not accurate. Lack of clarity about the uses of the information may also have left operators uncertain about its purpose and application. In this situation, the Reagan Doctrine—"trust, but verify"—seems appropriate.

It is critically important that information be accurate before becoming the basis for management decisions. The "safe harbor" concept is a good idea, but only if we get it right this time. We believe that public involvement and daylight are essential elements of any successful effort. Given our experience to date, our confidence in the second round of information sought by FAA will most likely be pretty low unless FAA releases all current information on proposed or purported park overflights to the public, and requires meaningful proof from air tour operators to support their interim operating authority applications and the number of annual flights claimed on those applications.

Question 2. You suggest that an analysis be done prior to allowing new businesses to operate air tours. Isn't that what the plan is supposed to do? What can be done short of another NEPA process to allow new entrants to operate sooner?

Answer. The air tour management plans are supposed to analyze existing and proposed overflights impacts on park soundscapes, visitors, values and other resources. The delay in completing plans is regrettable and punctuates the importance of this congressional focus on FAAINPS cooperation and funding for this program. Nonetheless, we do not believe that the delays should force the NPS to sidestep its legal responsibilities to analyze the impacts of existing overflights or of proposed overflights prior to allowing new entrants. To do so would, in fact, frustrate the purpose of the Act.

The NPOAG has been tasked to look at this issue and make recommendations. This consensus process has worked well to resolve these kinds of issues throughout

the creation of this planning framework and we would suggest it continues to be the best avenue to recommend solutions to this issue.

Question 3. Your testimony requests that the act be implemented according to the "spirit of the law not just the letter of the law". Please describe the difference between the two-as you see it.

Answer. Thank you for this question as we believe that it is at the heart of our current situation. The "spirit" of the National Parks Air Tour Management Act is to protect our national parks, and to provide for a proactive and fair method for managing park overflights where appropriate. While the "letter" of the law designates FAA as the lead agency, it also gives the NPS equal signatory authority on the Record of Decision for every management plan. These two provisions were created deliberately and for very different purposes. The FAA was designated as the lead agency in preparing the air tour management plans because it is the agency with the authority and jurisdiction to implement and enforce those plans. The NPS was given signatory authority on the Record of Decision because it is the agency with the authority and jurisdiction to protect national park resources and values. The "spirit" of this statutory framework has been from the beginning that each agency would maintain and exercise its existing authority in the creation of a plan that accomplishes the respective missions of both.

In the current situation, we believe FAA is trying to assert its own standards and processes as taking precedence over NPS standards and processes with regard to park protection. We believe the "spirit" of the law requires that the FAA-give deference to the NPS with regard to determining standards, impacts and the appropriate processes for evaluating these standards and impacts in relation to park protection. Likewise, the NPS must defer to the FAA in matters of air safety and enforcement of any airspace restrictions created by an air tour management plan. Simply put, the NPS cannot tell the FAA how to fly planes, and the FAA cannot tell the NPS how to protect parks.

NPCA is grateful for the subcommittee's interest in the proper implementation of this important statute. The National Parks Air Tour Management Act is about protecting the meaning, resources and values of our national parks, and the experiences that we will provide to our grandchildren rest in the balance. Please let me know if we may be of further assistance to the Committee.

HELICOPTER ASSOCIATION INTERNATIONAL,
Alexandria, VA, September 1, 2004.

Hon. CRAIG THOMAS,
Chairman, Subcommittee on National Parks, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR THOMAS: Thank you, again, for the opportunity to appear before the Subcommittee and for this additional opportunity to put forth common-sense solutions to the dilemma of the helicopter tour industry.

In response to your three questions with regard to my testimony regarding the National Parks Air Tour Management Act of 2000 (P.L. 106-181), the quick and dirty responses are as follows.

Sincerely,

ROY RESAVAGE,
President.

[Enclosure.]

Question 1. Given, as you noted, that the bar for completing the plans might have been set too high, what can be done in the meantime to ease the burden on air tour operators?

Answer. Relief to the FAA and NPS stalemate would be partially provided by a more liberalized and standardized process of obtaining interim operating clearances, and an accurate assessment of the actual numbers of tours flown.

Question 2. You referred to quotas "arbitrarily set at unjustly low levels." Can you clarify this statement please? Who set the quotas and why are they arbitrary?

Answer. Quotas were based upon a one-year period, not a multi-year average. Further, no consideration was given to *future* needs and number of persons wishing to visit the national park system by air. In fact, the formula does not even correctly identify the number of flights flown. The FAA and the NPS set the quotas.

Solution: Take a mathematical average of a range of years. Improve the quality of the data. Build in a reasonable escalation provision for increased demand for these services.

Question 3. What could be done in air tour management plans to create incentives for the use of quiet technologies?

Who decides what constitutes quiet technology?

Answer. The FAA is charged with defining what constitutes quiet technology.

Operators that have already re-capitalized their fleet to significantly quieter aircraft should receive special considerations now! For example: Preferred commercial air tour routes and altitudes and relief from caps and curfews.

DEPARTMENT OF THE INTERIOR,
OFFICE OF LEGISLATIVE AND CONGRESSIONAL AFFAIRS,
Washington, DC, November 2, 2004.

Hon. CRAIG THOMAS,
Chairman, Subcommittee on National Parks, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR THOMAS: Enclosed are answers to the follow-up questions from the hearing held by the Subcommittee on National Parks, Senate Energy and Natural Resources Committee on July 22, 2004. These responses have been prepared by the National Park Service.

Thank you for giving us the opportunity to respond to you on the matter. We apologize for the delay in our response.

Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosure.]

QUESTIONS FROM SENATOR THOMAS

Question 1. What are the top three priorities for DOI and FAA when it comes to implementing the Air Tour Management Act of 2000?

Answer. The top three priorities for the National Park Service (NPS) working in concert with the FAA are to:

- provide protection of park resources through sound science, air safety, and opportunities to enjoy parks via air tours;
- improve and enhance methods to measure and analyze the impacts of air craft noise and to develop appropriate and effective mitigation; and
- jointly establish, implement, and enforce a mutually agreeable process for developing Air Tour Management Plans (ATMPs).

Question 1A. What progress have you made towards achieving those priorities?

Answer. We are monitoring and collecting acoustic data in approximately nine parks slated for ATMPs as well as working with the DOT's Volpe Center on modeling and analysis. We are working with FAA on a joint implementation plan that will guide ATMP development. We are also working on future ATMPs and have initiated the development of ATMPs in 11 parks.

Question 2A. As stated in the Act, the objective of an air tour management plan is to mitigate or prevent the "significant adverse effects" of air tours.

What about effects that are less than significant, will those also be mitigated?

Answer. Through its legal mandates including the Organic Act, the NPS is required to make every effort to mitigate less than significant impacts. The FAA has informed us that it has some authority and precedent for mitigating less than significant impacts under its organic statute. In the interagency meeting on January 28, 2004, the NPS and FAA agreed to provide appropriate mitigation in ATMPs, where justified, consistent with the agencies' relevant statutory authorities.

Question 2B. Will the park service be responsible for determining the level that park resources are affected by air tours?

Answer. Although the NPS has "special expertise" and under the National Parks Air Tour Management Act of 2000 (NPATMA), jurisdiction per NEPA for evaluating impacts to park resources, those determinations will be made jointly with the FAA (see also response to Question 3 below).

Question 2C. How will effects on the safety of air tours be determined?

Answer. The FAA will make that determination.

Question 2D. Is there agreement between the agencies on what a significant adverse effect might be?

Answer. No, not at this time. This is a critical issue for both agencies, and therefore, the FAA and the NPS have established a working group to address this concern. The working group has not yet met, but NPS and FAA look forward to working together to develop a mutually acceptable definition.

Question 3. Does the NPS have adequate authority to make a determination on the level of effect (either beneficial or adverse) that air tour operations may have on national parks? Are these determinations made separately or cooperatively?

Answer. The NPS has adequate legal authority to make a determination regarding impacts that air tours may have on units of the national park system—under previously existing authority. Additionally, the NPATMA instructs the NPS to work with the FAA in making such determinations over units of the national parks system. The two agencies agree that determinations regarding impacts to park resources will be made jointly and cooperatively, not separately, since the Act requires both the FAA Administrator and the NPS Director sign the environmental documents required under NEPA.

Question 4A. Even though the NPS has recently increased funding for air tour management, the funding level appears to fall far short of the 40% agreed to in the MOU.

How does the NPS expect to resolve this?

Answer. The base budget for the ATMP has decreased. We are looking into the use of other funds including Environmental Quality funds (which must be used on court ordered or congressionally mandated EIS/EA). The Natural Sound Program office has also identified base funding needs that would be necessary to help underwrite the costs of the 40% commitment to the FAA.

Question 4B. Has the inability to meet this obligation to the FAA had any affect on the level that the NPS has been included in project level decision-making?

Answer. Initially, yes; however, cooperation is improving. The agencies are more collaborative since the January meeting of senior officials from both agencies.

Question 4C. What about in the planning process?

Answer. See the answer to 4B above.

Question 5. Does the National Park Service have the information it needs to determine whether a new entrant operator can be issued interim operating authority? What about for applications to increase tours?

Answer. New entrants may be granted interim operating authority only if the Director ". . . determines that it would not create a noise problem at the park or on the tribal lands." The NPS does not currently have the information it needs to make the necessary determinations regarding new entrants or applications for increases. The NPS is working with the FAA to improve the accuracy of the information from air tour operators that have interim operating authority because the number of existing authorized operations in a number of parks has a bearing on the consideration of increases and new entrants. The NPS and FAA are also working collaboratively to establish the criteria and processes necessary for making determinations on new entrants and increases in accordance with the requirements of the NPATMA.

Question 6. What is the status of the renewal agreement between the Department of the Interior and local airport authorities for operating the airport at Jackson Hole, Wyoming?

Answer. In order to remain eligible for FAA funding, the Jackson Hole Airport must have at least 20 years remaining on their agreement with the Department of the Interior. Since the existing agreement expires on April 27, 2033, the critical date for the airport will occur in 2013. The NPS has asked the Jackson Hole Airport Board to provide in writing the specifics of their proposal regarding the use agreement. Once we have received the information, a decision as to the most appropriate course of action will be made.

QUESTIONS FROM SENATOR AKAKA

Question 1. Does the Park Service have sufficient and adequate data on which to base the decision of whether there is an adverse effect on the natural soundscape of a Park?

Answer. No, not currently. However, the NPS is currently collecting data through monitoring and modeling that will enable it to make such determinations. Furthermore, the NPS and the FAA are working on determining the thresholds for what constitutes a significant adverse impact.

Question 2. Congress, has made it clear in the legislative history accompanying the Air Tour Management Act that, even though the FAA is the lead agency for the purpose of developing air tour management plans, the National Park Service is responsible for determining the impact of commercial air tours on park resources and visitor experience. Has the FAA made it clear in its rule-making process and in preparing additional guidance for implementing the Act that the NPS is to play the lead role in developing impact assessments?

Answer. NPATMA specifies that FAA shall be the lead agency and NPS a cooperating agency for purposes of complying with the Council on Environmental Quality (CEQ) regulations, but also goes further than the CEQ regulations by directing that both agencies shall sign the environmental decision document. Given the NPS' jurisdiction and special expertise with regard to impacts on park resources and visitor experiences and the FAA's jurisdiction and special expertise with regard to the safety and environmental impacts of aircraft operations, we will work with FAA to clearly outline the roles for these agencies in the guidelines for development of ATMPS.

Question 3. What, in your mind, would represent a significant adverse impact on a National Park in regard to the impacts of air tours?

Answer. The NPS and FAA have established a working group to consider this issue. From the NPS perspective, the general laws and policies applicable to the National Park System provide some guidance on what would represent a "significant adverse impact"; but in any given case, the NPS would need to examine the legislation specific to that unit, its resources and values, other visitor uses, overall management objectives, and reach a decision based upon the definition developed by the NPS and the FAA.

Questiion 4. In the event of a tossup, as determined through effective NEPA and scientific analysis, between an adverse impact on a national park (or its fee-paying visitors) and an air tour operator's historic level of use, which should take precedence in the decision? Or, in your mind, how would this be resolved in the decision? How does your idea of impact significance fit into this determination?

Answer. The Act is unequivocal in providing that impacts to park resources or visitor use would take precedence over a historic "use" by an air tour operator. The Act states that when an ATMP limits the number of commercial air tour operations over a national park during specified time frame, the Administrator, in cooperation with the Director, shall consider relevant factors including the following: the safety record of the pilot, quiet aircraft technology, experience flying over national park units, financial capability, training programs for pilots, and responsiveness to criteria developed by the NPS for the affected park. Historic use is only relevant with respect to the allocation allowed for an existing air tour operator. More specifically, allocations for interim operating authority are based on an average of the air tour operations the year preceding the enactment or the average of three years. The objective of the Act which is, ". . . 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 . . .", clearly focuses on protecting park resources. The Act is straightforward in that if the historic use is shown to have a significant adverse impact upon a park unit, then the ATMP for that park must make recommendations to change the historic use to an acceptable level that would mitigate such impacts.

Question 5. How do you consider the idea of park resources and values—their significance and "uniqueness" as established in legislation—against the notion of requiring justification for mitigating impacts including those that might be considered significant?

Answer. While it is important to have, to the extent possible, a universal standard for what constitutes a significant adverse impact, each park presents a unique set of circumstances and resources to be protected that requires the standard to be adaptable. Consequently, in an interagency meeting held on January 28, 2004, both the NPS and the FAA agreed that the specific purposes for which a park unit was established as set forth in its enabling legislation, the resources and values of that specific park unit, along with the more general tenets outlined in the NPS Organic Act, must be factored into the determination of what impacts from air tours warrant mitigation, These factors will be considered in the NEPA analysis process for both impacts that reach the level of "significant adverse impact" and those that are adverse but less than significant.

Question 6. I (Senator Akaka) would appreciate It you could provide me with the following information:

Question 6A. Total obligations for each respective agency for the air tour management program from FY 2000 to FY 2004 (including personnel costs, travel, and all relevant object class categories).

Answer. NPS obligations are as follows:

FY2004	$573,217
FY2003	$931,258
FY2002	$946,683
FY2001	$947,651
FY2000	$429,200

FAA Obligations are as follows:

FY2004	$8,113,000
FY2003	$4,150,000
FY2002	$8,204,000
FY2001	$495,000
FY2000	$0

Question 6B. For FY 2003 and 2004, the President's requested and enacted amounts for the air tour management program.

Answer. NPS amounts are as follows:

FY	Requested	Enacted
2003	$1,004,000	$931,000
2004	$939,000	$921,000

FAA amounts are as follows:

FY	Requested	Enacted
2003	$8,200,000	$4,150,000
2004	$8,200,000	$8,113,000

Question 6C. An estimate of the annual amount of funding needed by both agencies to keep the implementation plan on schedule, assuming implementation in approximately 20 parks per year.

Answer. The NPS Air Resources Division has identified a need of a $2.74 million base operating increase in order to fulfill all aspects of the Natural Sounds program including completing 10-20 ATMPs annually. This represents an annual operating base of $3.66 million. The NPS is responsible for 40% of the cost of preparing initial ATMPs. The estimated annual amount for funding needed by the FAA to keep the implementation plan on schedule is $9,081 million. These estimates, however, have not been reviewed through the Budget process or evaluated against other competing priorities. There may also be opportunities for reducing these costs through improved efficiencies and greater coordination with other programs or activities.

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