Motorized Recreation on National Park Service Lands

Updated February 19, 2014
Summary

In managing its lands, the National Park Service (NPS) seeks to balance a dual statutory mission of preserving natural resources while providing for their enjoyment by the public. Motorized recreation on NPS lands sometimes brings the two parts of this mission into conflict. Off-highway vehicles (OHVs) have been particularly controversial, with calls for greater recreational access intersecting with concerns about environmental impacts and disturbance of quieter pursuits. NPS’s laws, regulations, and policies generally emphasize the conservation of park resources in conservation/use conflicts, and NPS has fewer lands open to OHV use than do other federal land management agencies such as the Bureau of Land Management and the Forest Service. The 113th Congress has addressed motorized recreation through legislation and oversight, concerning broad issues such as recreational access to federal lands as well as individual conflicts at specific NPS units.

**ATVs and Oversand Vehicles.** Only 13 of the 401 park units are open to public recreational use of all-terrain vehicles (ATVs), four-wheel drive vehicles, and/or dune, sand, and swamp buggies. The extent of unauthorized use of such vehicles is in dispute. Several units have developed pilot education and deterrence programs to address unauthorized use. Legislative measures in the 113th Congress (H.R. 819, H.R. 2954, S. 486) seek to regulate OHV use at one NPS site, Cape Hatteras National Seashore.

**Snowmobiles.** Regulatory and judicial actions to allow or restrict snowmobile use have focused primarily on three Yellowstone-area park units. Winter use plans developed by NPS to establish numerical limits on snowmobile and snowcoach entries have been the subject of repeated, and often conflicting, court challenges. Most recently, NPS issued a final rule governing snowmobile use at Yellowstone for the 2014-2015 winter season and beyond. The rule allows up to 110 “transportation events” per day (defined as the use of either a multipassenger snowcoach or a group of snowmobiles).

**Aircraft Overflights.** Grand Canyon National Park is at the center of a conflict over whether or how to limit air tours over national park units to reduce noise. NPS and the Federal Aviation Administration (FAA) continue to work to implement a 1987 law (P.L. 100-91) that sought to reduce noise at Grand Canyon, and a 2000 law (P.L. 106-181) that regulates overflights at other park units. P.L. 112-141, enacted in 2012, contains provisions on air tour management at Grand Canyon, including some less-stringent standards for natural quiet than NPS had recommended in planning efforts. P.L. 112-95 contains provisions to expedite and streamline agency planning actions for commercial air tours over parks generally.

**Personal Watercraft (PWC).** Since 2003, NPS has completed regulations to open designated PWC areas at 13 units. In 2010, a federal judge ordered NPS to re-examine environmental assessments justifying PWC use at two of those units but did not overturn existing regulations.

**Mountain Bicycles.** This mechanized though nonmotorized activity also raises issues of the sufficiency of access to park lands as well as potential resource damage and disturbance of quieter recreational pursuits. Currently, more than 40 NPS units allow mountain biking on dirt trails and/or dirt roads. Mountain biking advocates have worked with NPS to explore opportunities to increase this activity in park units. In 2012, NPS finalized a rule that eases the process for park superintendents to open trails to bicycles.
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Introduction

The National Park Service (NPS) administers the National Park System for both recreational use and preservation of park resources, a mission that can be contradictory. Increased recreation on NPS lands has fueled disagreements over this dual mission and over the optimum extent of motorized versus nonmotorized recreational activities.

The National Park System, with 401 units covering approximately 85 million acres of land, received more than 268 million recreational visits in 2013. Use of off-highway vehicles (OHVs) in the parks—including all-terrain vehicles (ATVs), snowmobiles, personal watercraft, and others—along with recreational activities such as mountain biking, snow biking, heli-skiing, and aircraft tours, have evolved and gained in popularity. These newer forms intersect with more traditional, nonmotorized forms of recreation, including land-based activities such as hiking, camping, hunting, birdwatching, horseback riding, and rock climbing, and water-based pursuits such as fishing, canoeing, kayaking, and rafting.

OHV use in the parks has been particularly contentious, although NPS has fewer lands open to OHVs than do other federal land management agencies such as the Bureau of Land Management (BLM) and the Forest Service (FS). OHV supporters contend that the vehicles allow visitors access to hard-to-reach natural areas; bring economic benefits to communities serving riders; provide outdoor recreation opportunities for the disabled, senior citizens, and others with mobility limitations; and, in the case of snowmobiles, allow increased access to sites during winter. They assert that technological advances will continue to limit noise and pollution.

By contrast, opponents of OHVs in the National Park System assert that these vehicles damage the environment and cultural artifacts, pose safety concerns, and conflict with other forms of recreation. NPS staffing levels, they contend, are inadequate to effectively monitor motorized use and its impact on park resources. Opponents also cite the availability of other federal lands, such as BLM and FS lands, where OHV use may be permitted. Among environmental concerns raised by OHV critics are potential damage to wildlife habitat and land and water ecosystems; the impact of dust on winter snow melts and water supply; noise, air, and water pollution; and a diminished experience for recreationists seeking quiet and solitude and/or hunting and fishing.

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1 The NPS “Organic Act” of 1916 directs the Park Service to manage its lands so as “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” (16 U.S.C. §1).

2 NPS visitor use statistics are available on the NPS website at https://irma.nps.gov/Stats/. For 2013 statistics through December, see “Current Year Monthly and Annual Summary Report.” For comparison, a decade ago, in 2004, the National Park System received approximately 277 million recreational visits.


opportunities. Critics also point to the beneficial economic impact of nonmotorized recreation on local communities. The 113th Congress has addressed motorized recreation in the National Park System through legislation and oversight. Bills concerning motorized recreation at NPS units include H.R. 819, H.R. 2954, and S. 486, all of which would change regulations for OHVs at Cape Hatteras National Seashore; and H.R. 3590, as amended (H.Amdt. 538), which would prohibit NPS from altering regulations that allow the use of motorized vessels for fishing at Ozark National Scenic Riverways. In its oversight role, the House Natural Resources Committee has held hearings on outdoor recreation, including motorized and nonmotorized uses, on federal lands. A May 2013 hearing addressed outdoor recreation issues such as insurance and permitting problems for outfitters and guides. A June 2013 hearing discussed federal, state, and local interactions regarding outdoor recreation and addressed problems of coordination, trail and travel planning, conflicts between motorized and nonmotorized uses, and local input into agency planning.  

Authorities Governing Motorized Recreation on NPS Lands  

Executive Orders  

Two executive orders define and generally guide OHV use on federal lands. The first (E.O. 11644, February 8, 1972) defines an off-road vehicle, now commonly referred to as an off-highway vehicle, as “any motorized vehicle designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain,” with exceptions for any registered motorboat or authorized or emergency vehicles. It was issued to “establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” The order directed each agency to develop and issue regulations to carry out this purpose and to provide for the designation of areas and trails on which OHVs may be permitted, and areas in which such vehicles would not be permitted. Agencies were to monitor the effects of OHV use and amend or rescind area designations or other actions taken pursuant to the order as needed to further the policy of the executive order.
A subsequent executive order (E.O. 11989, May 24, 1977) amended the 1972 order to exclude military, emergency, and law enforcement vehicles from the definition of off-road vehicles (to which restrictions would apply). It provided authority to immediately close areas or trails if OHVs were causing or would cause considerable damage to the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails. Areas could remain closed until the manager determined that “the adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.” Also, each agency was authorized to adopt the policy that areas could be closed to OHV use except for those areas or trails that are specifically designated as open to such use. This meant that only open areas would have to be marked, a lesser burden on the agencies.

Other NPS Authorities

While the executive orders apply to federal lands generally, other authorities concerning OHVs are specific to the National Park System. In particular, NPS regulations generally limit OHV use in the park system to four types of NPS units—national recreation areas, national seashores, national lakeshores, and national preserves. The regulations also require special rulemaking, with environmental impact analysis and public comment, to designate routes and areas for OHVs in these park units. NPS’s management policies provide additional guidance, stating that OHV use “may be allowed only in locations where there will be no adverse impacts on the area’s natural, cultural, scenic, and esthetic values, and in consideration of other existing or proposed recreational uses.” In general, the management policies emphasize the conservation of park resources in conservation/use conflicts.

Although the executive orders cited earlier include oversnow vehicles in the definition of OHVs, the NPS regulations that permit OHV use only at certain types of park units do not apply to snowmobiles. Instead, snowmobile use in the National Park System is governed by separate regulations that limit such vehicles to designated routes and water surfaces that are used by motor vehicles or motorboats during other seasons. The regulations prohibit snowmobiles except “when their use is consistent with the park’s natural, cultural, scenic and aesthetic values, safety considerations, [and] park management objectives, and will not disturb wildlife or damage park resources.” NPS management policies further state that snowmobile use can be authorized only where it will not result in unacceptable impacts.

The enabling legislation for individual NPS units may establish specific activities as an appropriate use (e.g., water-oriented recreation, snowmobiling for subsistence or recreational purposes, or OHV travel to reach hunting or fishing areas). Additional unit-level direction for designated routes (such as temporary route closures) may be included in a park’s general management plan and/or determined by the park superintendent.

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10 Ibid., §1.4.3.
11 Personal communication with Kyle Earnest, NPS Congressional and Legislative Affairs Office, December 6, 2012.
12 36 C.F.R. §2.18.
14 36 C.F.R. §1.5.
ATVs and Oversand Vehicles\textsuperscript{15}

Excluding Alaska, 13 NPS units allow off-road use of ATVs, four-wheel drive vehicles, and/or dune, sand, and swamp buggies by the general public.\textsuperscript{16} Environmental groups have alleged that these vehicles damage wildlife habitat and disturb nonmotorized activities, both in the units that permit their use and in other areas where, they claim, unauthorized use occurs. Users of the vehicles, by contrast, have sought more routes and areas for off-road recreation and increased motorized access to hunting and fishing sites. They assert that NPS restrictions harm communities surrounding parks, which depend on business generated by OHV users.

NPS is in the process of issuing special regulations to designate routes and areas for off-road use in those units that permit ATVs and oversand vehicles. Eleven of the 13 park units have special regulations in place: Big Cypress National Preserve; Apostle Islands National Lakeshore; Curecanti, Gateway, and Lake Meredith National Recreation Areas (NRAs); and Assateague, Cape Cod, Cape Hatteras, Fire Island, Gulf Islands, and Padre Island National Seashores.\textsuperscript{17} Two additional units are open to public use while NPS completes OHV management planning: Glen Canyon NRA\textsuperscript{18} and Cape Lookout National Seashore.\textsuperscript{19} Also, Lake Meredith and Curecanti NRAs and Big Cypress National Preserve are developing regulations to change the current boundaries for OHV riders.\textsuperscript{20} Other areas that once allowed public off-road use of ATVs and oversand vehicles are now closed to such use, including Little River Canyon National Preserve and Big South Fork National River and Recreation Area.\textsuperscript{21}

Some of NPS’s regulatory actions respond to a 2005 lawsuit by environmental organizations.\textsuperscript{22} The groups alleged that ATVs and other off-highway vehicles constituted a “serious threat” to

\textsuperscript{15} This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and Kristina Alexander, CRS Legislative Attorney.

\textsuperscript{16} Personal communication with Kyle Earnest, NPS Office of Legislative and Congressional Affairs, February 10, 2014; also special regulations and superintendent’s compendia for individual park units. Some additional units permit use of ATVs and oversand vehicles by inholders, Native Americans, or others for specific limited purposes under a variety of authorizations. (An inholder is an owner of land within the boundaries of an NPS unit.)

\textsuperscript{17} See special regulations for these NPS units at 36 C.F.R. Part 7.


\textsuperscript{19} Cape Lookout National Seashore is developing a draft off-road vehicle management plan and environmental impact statement. NPS accepted comments on proposed alternatives through July 20, 2012; for information, see http://www.nps.gov/caloparkmgmt/upload/CALO-ORV-alts-brochure-full-061212.pdf. ORV use at the seashore is currently governed by the unit’s 1982 General Management Plan and a 2006 Interim Protected Species Management Plan; for information, see http://www.nps.gov/caloparkmgmt/current-documents.htm#IPSP. For updates on the planning process, see http://parkplanning.nps.gov/projectHome.cfm?projectID=15978.

\textsuperscript{20} In January 2013, Lake Meredith NRA released a Draft Off-Road Vehicle Management Plan/Environmental Impact Statement, available at http://parkplanning.nps.gov/document.cfm?parkID=76&projectID=20192&documentID=51446. Public comments on the plan were accepted through March 26, 2013; see 78 Fed. Reg. 5494. For updates on the planning process, see http://parkplanning.nps.gov/projectHome.cfm?projectID=20192. For Curecanti NRA, NPS issued a proposed rule in May 2013 (78 Fed. Reg. 27132) that would modify access for OHVs and snowmobiles. For Big Cypress National Preserve, see discussion below under “Site-Specific Conflicts.”

\textsuperscript{21} OHV use at Little River Canyon ceased in 2010. For additional information, see http://www.nps.gov/liriparkmgmt/index.htm. Big South Fork is closed to recreational OHV riders and currently has no designated trails for them. However, designated multiple-use trails are open to ATV use by licensed hunters while actively hunting deer or wild boar. See http://www.nps.gov/biso/parknews/gmpimplementation.htm.

NPS resources that the agency failed to address. The parties settled in 2008.\textsuperscript{23} NPS is still addressing some requirements of the settlement, such as the requirement that the agency develop environmental impact statements and special rules governing OHV use at Glen Canyon NRA and Cape Lookout National Seashore. (Cape Lookout has completed public scoping and is developing a draft alternative OHV management plan and environmental assessment; Glen Canyon released a draft plan in January 2014.) Also in response to the settlement agreement, NPS is encouraging education via the websites of units permitting OHV use.

**Unauthorized ATV Use in the National Park System**

As use of ATVs and other off-highway vehicles on federal lands has grown in recent decades, unauthorized use has also been reported in some areas, including NPS units. The extent of unauthorized OHV use in the National Park System is unclear. A 1999 survey from Bluewater Network found 40 park units with unauthorized use,\textsuperscript{24} but a 2004 NPS survey found unauthorized use in “several parks” and generally “less than significant” resource damage.\textsuperscript{25}

NPS has addressed unauthorized OHV use through public outreach, education, and enforcement activities such as officer training and increased fines and penalties.\textsuperscript{26} The agency also encourages units with illegal OHV use to pursue enforcement actions. However, some believe NPS budgetary and staff constraints limit enforcement effectiveness.\textsuperscript{27}

**Site-Specific Conflicts**

NPS’s regulation of ATVs and oversand vehicles has sparked protest, including legal action, by both OHV supporters and opponents. Recent controversy has centered on actions at Florida’s Big Cypress National Preserve and North Carolina’s Cape Hatteras National Seashore.

**Big Cypress National Preserve**

There is ongoing disagreement over OHV trail designation at Big Cypress National Preserve. Conservation groups cite potential harm by ATVs and similar off-highway vehicles to the endangered Florida panther, the endangered red-cockaded woodpecker, and the threatened eastern...


\textsuperscript{24} Bluewater Network, *Off-the-Track: America’s National Parks under Siege*, 1999. Bluewater surveyed 108 park units for unauthorized use of ATVs, four-wheel drive vehicles (jeeps, SUVs, etc.), and dune, sand, and swamp buggies.

\textsuperscript{25} Letter from Steve P. Martin, NPS Deputy Director of Operations, to Bluewater Network Executive Director Russell Long, May 3, 2005. No more recent estimates are available. In a 2009 GAO report (GAO, *Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles*, GAO-09-509, June 2009, at http://www.gao.gov/new.items/d09509.pdf), some park superintendents reported an increase in unauthorized use of ATVs and oversand vehicles at their units, but the responses were not quantified.

\textsuperscript{26} Some of these activities also stem from the settlement of the Friends of the Earth v. Department of the Interior lawsuit cited in footnote 23. The settlement required NPS to implement a pilot public education and deterrence program at 10 units between 2008 and 2011 to address unauthorized OHV use. For example, NPS produced and distributed a brochure on off-road driving, available at http://www.nps.gov/aboutus/loader.cfm?csModule=security/getfile&PageID=431411.

indigo snake, and to their habitat and prey. In contrast, those concerned about access to areas for hunting, fishing, and trapping have opposed limitations on OHV use in the preserve. The preserve’s enabling act authorizes motorized vehicles and hunting, fishing, and trapping, but also authorizes NPS to limit those activities to “assure [the area’s] natural and ecological integrity.”

Recent conflict has centered on the preserve’s “addition lands,” some 147,000 acres added to the site in 1988. NPS released a management plan for the addition lands that establishes 130 miles of OHV trails and allows up to 650 off-road permits annually; it also proposes 47,067 acres for wilderness designation. Hunters oppose the plan’s limitations on OHV use, including the proposed wilderness acreage and approximately 50,000 additional acres to be zoned “primitive backcountry.” Both designations would ban OHVs from these lands. Conservationists, however, oppose the 130 miles of new OHV trails, asserting that OHV use is “fragmenting the landscape” and causing air, water, and soil pollution. Conservation groups filed lawsuits against NPS challenging the addition lands management plan in October and November 2011. Oral arguments were held in June 2013.

OHV use has also been at issue in the original preserve. In July 2012, the U.S. District Court for the Middle District of Florida held that NPS violated the National Environmental Policy Act and the Endangered Species Act when it reopened OHV routes in the preserve’s Bear Island area. The ruling closed approximately 25 miles of off-highway trails that had been opened in the area.

Separately, in 2011 NPS banned “dispersed” OHV access (outside of designated trails) in Big Cypress National Preserve. All use of ATVs and other off-highway vehicles within the original preserve must be only on designated primary and secondary trails. Preserve Superintendent Pedro Ramos called the designated trail network “a big and positive step” in achieving resource protection while providing traditional access for sportsmen. However, the Big Cypress

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29 P.L. 100-301. Hunting, fishing, and trapping are also expressly authorized in the addition (§3(b)).
32 The case was referred to magistrate court. National Parks Conservation Association v. U.S. Department of the Interior, 2:14-mc-1 (M.D. Fla.).
Sportsmen’s Alliance as well as environmental groups have criticized the designated trail network for providing too little or too much OHV access to preserve lands.³⁷

**Cape Hatteras National Seashore**

At Cape Hatteras National Seashore, management planning has addressed potential harm by beach buggies and other oversand vehicles³⁸ to endangered species such as the piping plover and three species of sea turtles. OHV users, fishermen, and local businesses have opposed vehicle restrictions as harmful to the local economy. The balance of preservation and use at the seashore is further weighted by its enabling act, which provides that the area shall be a “recreational area for the benefit and enjoyment of the people,” but also states that the “area shall be permanently reserved as a primitive wilderness,” except for those portions “especially adaptable for recreational uses.”³⁹

In January 2012, after public scoping and environmental review, NPS published special regulations for the use of motorized vehicles at the seashore.⁴⁰ The regulations designate 28 of the 67 seashore miles as year-round OHV routes, with 13 additional miles to be OHV-accessible seasonally, but the remaining 26 miles are designated as vehicle-free areas. To further protect wildlife, the regulations provide for night-driving restrictions during sea turtle nesting season. They also establish vehicle standards and require a fee-based weekly or seasonal OHV permit.

The 2012 regulations contrast with NPS’s 2007 interim OHV management plan for the seashore, which had allowed greater access for motorized vehicles.⁴¹ The interim plan was the subject of a lawsuit by environmental groups against NPS, alleging that the plan failed to provide adequate protection for seashore resources, including rare turtle, avian, and plant species.⁴²

**Legislative Activity**

In the 113th Congress, H.R. 819 and H.R. 2954 propose to overturn the 2012 regulations at Cape Hatteras and reinstate the 2007 interim management plan. H.R. 2954 has passed the House.⁴³ Supporters of the bills contend that the 2012 regulations reduce visitor access to local stores, hotels, and restaurants and are unnecessary for wildlife protection. Opponents assert that OHV restrictions have already helped the seashore’s endangered species and have not reduced

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⁴³ The House bills are similar to legislation (H.R. 4094 and S. 2372) introduced in the 112th Congress.
visitation to the site. A Senate bill, S. 486, also would address OHV management at Cape Hatteras, but with a different strategy than the House bills. The Senate bill, which has been reported, would not reinstate the 2007 interim plan, but would reduce wildlife buffers at the seashore, mandate new vehicle access points, and require a public process to consider opening more beaches, extending seasonal off-road routes, and modifying the extent and location of vehicle-free areas.

No broader legislation has been introduced in the 113th Congress on the use of ATVs and similar vehicles in the National Park System, and no such bills were introduced in the 112th Congress.

**Snowmobiles**

Proposals to regulate recreational snowmobile use in NPS units have been controversial, with debate often mirroring the preservation/use conflict within the NPS mission. User groups contend that snowmobile use is necessary to access park sites in winter and helps support local communities and industry. Opponents are concerned about emissions, noise pollution, and wildlife damage from snowmobiles on parklands.

In 2000, NPS announced the enforcement of long-standing regulations that would have banned snowmobile use throughout almost all of the National Park System; later it modified its enforcement stance to allow snowmobile use to continue in the 43 park units that had permitted it prior to the announcement. To date, NPS has taken no further action on a general policy for snowmobiles. However, NPS’s management policies state that, outside Alaska, special regulations are required to designate snowmobile and oversnow vehicle routes after park planning determines such use to be appropriate. Designated routes are limited to those used by motorboats and motorized vehicles in other seasons.

**Site-Specific Conflict: Yellowstone National Park**

Since 2000, regulatory and judicial actions to restrict or allow snowmobile use have been park-specific, centering on Yellowstone National Park and units near it, including the John D. Rockefeller Jr. Memorial Parkway and Grand Teton National Park. The Clinton Administration issued final rules in 2001 to incrementally eliminate snowmobile use in these parks (with limited exceptions) and substitute the use of multi-passenger “snowcoaches.” The George W. Bush

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45 This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and Kristina Alexander, CRS Legislative Attorney.
46 For background information on snowmobile use in NPS units and its effects on the environment, see CRS Report RL31149, Snowmobiles: Environmental Standards and Access to National Parks, by James E. McCarthy.
48 66 Fed. Reg. 7260 (January 22, 2001). The rules were part of the settlement of a May 1997 lawsuit, in which the Fund for Animals sued NPS for its policy regarding snowmobiles in Yellowstone and Grand Teton national parks. See Fund for Animals v. Babbitt, No. 1:97-cv-01126 (D.D.C. May 20, 1997) (complaint); and Fund for Animals v. Babbitt, No. 1:97-cv-01126 (D.D.C. September 23, 1997) (settlement agreement). NPS regulations at 36 C.F.R. §7.13 define a snowcoach as “a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.”
Administration took a different approach, replacing the Clinton rules with regulations in December 2003 that eliminated the snowmobile ban in favor of daily entry limits, use of trained guides, snowmobile emission standards, and monitoring by park managers for impacts from air and noise pollution.\textsuperscript{49} The Clinton plan would not have allowed any snowmobiles at Yellowstone; the Bush plan would have allowed 950 per day. Both plans, as well as most subsequent revisions, were vacated by different federal courts.\textsuperscript{50} Conflicting rulings in subsequent legal challenges created confusion for park visitors, local communities, and businesses, with many unsure what winter use rules were in effect at Yellowstone.\textsuperscript{51}

Regulations by the Obama Administration allowed snowmobile use to continue, although at lower levels than in previous years. Through the 2012-2013 winter season, Yellowstone operated under winter use rules promulgated in November 2009,\textsuperscript{52} allowing daily entry to 318 commercially guided, best available technology (BAT)\textsuperscript{53} snowmobiles and 78 commercially guided snowcoaches. This contrasted with earlier years when up to 720 snowmobiles and 78 snowcoaches had been allowed.\textsuperscript{54} (Although the 2003 plan would have allowed 950 snowmobiles per day in Yellowstone, it never went into effect.)

Starting with the 2013-2014 winter season, NPS has issued new regulations intended to govern future snowmobile use in the park.\textsuperscript{55} The new regulations are to take effect through a phased

\textsuperscript{49} 68 Fed. Reg. 69267 (December 11, 2003). The 2003 rules, which allowed 1,140 snowmobiles in all three parks combined, followed a lawsuit settlement between the Administration, the International Snowmobile Manufacturers Association, and the State of Wyoming, requiring NPS to revisit the snowmobile ban and consider any additional information on “cleaner, quieter” snowmobile technology.

\textsuperscript{50} The 2003 plan was vacated by the District Court for the District of Columbia. Fund for Animals v. Norton, 294 F. Supp. 2d 92 (D.D.C. 2003). The D.C. court put the 2001 plan (as modified by a November 2002 plan) in place. However, the District Court for the District of Wyoming ruled the 2001 plan, which would ban all snowmobiles, violated the National Environmental Policy Act, describing it as “the product of a prejudged, political decision to ban snowmobiles from all the National Parks.” International Snowmobile Mfrs. Ass’n v. Norton, 340 F. Supp. 2d 1249, 1264 (D. Wyo. 2004).


\textsuperscript{52} The 2009 rules were published at 74 Fed. Reg. 60159 (November 20, 2009), and were extended through subsequent winter seasons, up to and including the 2012-2013 season (77 Fed. Reg. 74027, December 12, 2012).

\textsuperscript{53} For more on “best available technology” for snowmobiles, see CRS Report RL31149, Snowmobiles: Environmental Standards and Access to National Parks, by James E. McCarthy.

\textsuperscript{54} See, for example, 69 Fed. Reg. 65348, November 10, 2004.

\textsuperscript{55} 36 C.F.R. 7.13(1); 78 Fed. Reg. 63069, October 23, 2013. Also see 78 Fed. Reg. 16500, announcing the availability
transition. For the 2013-2014 season, the 2009 interim rules will continue, with 318 snowmobiles and 78 snowcoaches per day allowed. Starting with the 2014-2015 seasons, Yellowstone will measure winter use in a new way, through “transportation events” instead of vehicle limits. The regulations allow up to 110 transportation events per day, defined as the use of one snowcoach or one group of an average of seven snowmobiles. Most but not all of the vehicles are to be commercially guided, with tour operators allocating the “events” among snowmobiles and snowcoaches. No later than the 2016-2017 winter season, vehicles will have to meet “new best available technology” requirements.

The governor of Wyoming and the Wyoming congressional delegation have supported the plan’s balance between economic and conservation priorities. For example, the regulations increase the maximum number of snowmobiles per day (from the current 318 to potentially up to 480, depending on the distribution of snowcoach and snowmobile use), but also anticipate reductions in noise and pollution because snowmobile trips will be packaged together and guides have incentives to achieve environmental performance standards. Some snowmobile user groups, as well as some environmental groups, have also expressed support for the plan. However, conservation groups have also challenged claims by snowmobile advocates that vehicle technology is evolving to produce a “cleaner, quieter” experience for park visitors. They point to a recent NPS report finding some new snowmobile models to have higher emissions than the same companies’ earlier models.

Actual snowmobile use in Yellowstone diminished over the past decade while the winter use rules evolved. During the years when 720 snowmobiles were permitted per day, the average daily use was 266 snowmobiles, with the average use on the year’s peak day being 493 snowmobiles. After the allowed limit changed to 318 snowmobiles, the average daily use dropped to 191 snowmobiles, with the average peak day dropping to 279. Factors other than the NPS regulations also contribute to fluctuations in snowmobile usage, including yearly snowfall, gas prices, and the state of the economy.


56 No more than 50 of the transportation events on any day may consist of snowmobiles.

57 Under earlier rules, all snowmobiles and snowcoaches had to be commercially guided. The new regulations, in contrast, allow up to four “transportation events” of up to five snowmobiles each to be noncommercially guided.

58 For more details on the phases of transition to the “new BAT” requirements, see 78 Fed. Reg. 63069, section on “Phased Transition to New Management Paradigm.” Beyond the new requirements that all vehicles must meet, operators have the option to further upgrade their vehicles to meet “enhanced best available technology” standards, and those who do so may increase their number of vehicles per transportation event.


Legislative Activity

No legislation pertaining to snowmobiles in NPS units has been introduced in the 113th Congress as of January 2014, and none was introduced in the 112th Congress. Some earlier Congresses included language on snowmobiles in Yellowstone in appropriations bills, generally to ensure that judicial rulings could not deny snowmobiles entry during a specified winter use season.

Aircraft Overflights

NPS is to provide for the public enjoyment of parklands while protecting resources, including natural quiet, while the Federal Aviation Administration (FAA) controls airspace and aircraft overflights. This has created a conflict between resource management and aviation access authorities and their constituencies. Grand Canyon National Park has been the focal point of a conflict between groups seeking to limit overflights of national parks due to concerns about noise and safety, and air tour operators whose economic stability may depend on providing overflights, with ripple effects on local businesses. The National Parks Overflights Act of 1987 (P.L. 100-91) prohibited flights below the canyon’s rim and directed NPS to recommend a flight control plan for Grand Canyon that would provide a “substantial restoration of the natural quiet.” It required an NPS study of the effects of all aircraft overflights, which was submitted to Congress in 1994.

Aircraft overflights are also a concern for other park units. The National Parks Air Tour Management Act of 2000 (P.L. 106-181, Title VIII, hereinafter “Air Tour Act”) regulates commercial air tours at other park units. It requires the FAA and NPS to create management plans for air tours at individual park units and within a half-mile of their boundaries. Each plan could prohibit or limit air tours, such as by route and altitude restrictions. The Air Tour Act also requires FAA to establish “reasonably achievable” requirements for quiet aircraft technology for Grand Canyon within one year of enactment and to designate, by rule, Grand Canyon routes or corridors for aircraft and helicopters using quiet technology. Quiet aircraft would not be subject to existing caps on canyon overflights.

Site-Specific Conflict: Grand Canyon National Park

Several actions have been taken to achieve the substantial restoration of natural quiet at Grand Canyon in furtherance of P.L. 100-91, enacted more than 25 years ago. First, an FAA limitations rule capped the annual number of commercial air tour overflights at Grand Canyon. Second, the airspace rule expanded flight-free zones and restrictive routing over the canyon. Third, the FAA issued a final rule establishing a standard for quiet technology for certain aircraft in commercial air tour operations over Grand Canyon. The rule identifies which aircraft meet the standard. Fourth, data on natural ambient sound levels were collected by NPS and are being used, together

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63 This section was prepared by Carol Hardy-Vincent, CRS Specialist in Natural Resources Policy.
with air tour reported flight operations data and radar tracking data, to model air tour traffic and aircraft noise at Grand Canyon. The model is being used to measure success in restoring natural quiet, and the noise impact of various alternatives.

On February 4, 2011, NPS published a notice of availability of a draft environmental impact statement (DEIS) on options that could be taken to restore natural quiet at Grand Canyon. The agency had anticipated issuing a final environmental impact statement in the summer of 2012, but postponed that action in light of the enactment on July 6, 2012, of P.L. 112-141, which contains provisions pertaining to the determination and restoration of natural quiet at the park. Those provisions generally have been viewed as potentially resulting in curtailment of NPS planning actions to impose stricter noise standards. NPS is continuing to assess the provisions to determine how they will affect its planning effort. (For additional information on P.L. 112-141, see “Legislative Activity,” below.)

In the DEIS, the “substantial restoration of natural quiet” was defined as being achieved when reduction of noise from aircraft at or below 17,999 feet resulted in at least 50% of the park having natural quiet for 75% to 100% of the day. NPS regards 50% as the minimum restoration goal. The DEIS presented four alternatives, including the status quo, with a goal of restoring natural quiet while allowing for a viable air tour industry. According to NPS, among other provisions, the preferred alternative would:

- restore natural quiet in 67% of the park during the peak season 10 years after implementation (up from 53% under 2011 management),
- allow for 65,000 annual air tour operations (an increase over actual use of approximately 57,000, but a decrease from the current annual allocation of 93,971),
- limit daily air tours to 364 (up 50 from the peak day of 316 in 2005, but currently with no daily cap),
- move most non-air tour operations outside the park,
- establish higher flight altitudes near the North Rim,  
- provide incentives for quiet technology aircraft and require full conversion to quiet technology over 10 years, 
- provide an hour of quiet before sunset and after sunrise, and 
- raise flight-free zone ceilings to 17,999 feet (up from 14,499 generally; 7,999 at Sanup zone).

**Legislative Activity**

No general legislation pertaining to air tour management at Grand Canyon National Park has been introduced in the 113th Congress as of January 29, 2014.

The 112th Congress enacted broad transportation legislation, P.L. 112-141, which contains provisions on air tour management at Grand Canyon. Some provisions set out standards to be

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69 NPS communication to CRS, February 4, 2014.

70 This summary is derived from the text of the DEIS, as well as other NPS documents such as a press release of February 2, 2011, at http://parkplanning.nps.gov/document.cfm?parkID=65&projectID=28052&documentID=40021.
used by NPS in restoring natural quiet at the park. Another provision states that the “substantial restoration of natural quiet” would be considered achieved if 50% of the park is free of sound from commercial air tours for at least 75% of each day. This standard is viewed as essentially maintaining the status quo, while the NPS preferred alternative had sought to expand substantial restoration of natural quiet to 67% of the park. Advocates of the legislation sought to set standards for air tours as an alternative to the planning efforts underway by NPS, which they viewed as too restrictive and likely to have adverse effects on the air tour industry.71 Opponents of the legislation expressed concern that it would limit NPS’s ability to protect Grand Canyon resources and visitors from noise.

Like the NPS preferred alternative, the law requires conversion to quiet aircraft technology and incentives for conversion to quiet aircraft. However, the provisions and approaches of NPS and the law are not identical. For instance, the law requires all commercial air tour aircraft operating in the park to convert to quiet aircraft technology within 15 years of enactment, while the NPS preferred alternative provided for conversion to quiet technology over 10 years.

**Air Tour Management Plans**

Other regulatory actions have affected commercial air tours at park units generally, particularly in furtherance of the Air Tour Act. The Air Tour Act final rule72 requires air tour operators to apply for authority to fly over national parks and abutting tribal lands. FAA received applications for commercial air tours over more than 100 of the 401 park units, and has granted interim operating authority to all applicants. Application triggers development of an Air Tour Management Plan (ATMP) by FAA and NPS for each unit where none exists.73 The purpose of a plan is to mitigate or prevent any harm by commercial air tours to natural and cultural resources, visitor experiences, and tribal lands. Development of an ATMP requires an environmental review under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §§4321-4370f).

The FAA and NPS began developing ATMPs at about a dozen areas.74 Development of ATMPs has been proceeding much more slowly than had been expected, and to date none have been completed.75 The agencies also are taking actions in furtherance of P.L. 112-95, discussed below under “Legislative Activity.” For instance, they are nearing completion of voluntary agreements for a few areas, in lieu of ATMPs, and are assessing whether other areas are candidates for

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73 FAA provides information on the National Parks Air Tour Management Program via its website at http://www.faa.gov/about/office_org/headquarters_offices/are/programs/air_tour_management_plan/.

74 Some of the ATMPs will cover multiple park units. For instance, the ATMP for the Golden Gate National Recreation Area will include the Fort Point National Historic Site, Muir Woods National Monument, and San Francisco Maritime National Historical Park.

75 A January 2006 Government Accountability Office (GAO) report addressed the impact of the delay in implementation of the Air Tour Act. The report concluded that the delay has had little effect on park units, but has limited the ability of tour operators to make major business decisions. The agency identified four issues for Congress and the agencies to address to improve implementation, relating to the lack of flexibility for determining which parks need plans, an absence of NPS funding for plan development, limited ability to verify and enforce the number of air tours, and inadequate FAA guidance on the act’s safety requirements. See U.S. Government Accountability Office, *National Parks Air Tour Management Act: More Flexibility and Better Enforcement Needed*, GAO-06-263, (Washington, DC: GPO, January 2006). The report, together with information on agency actions on GAO’s recommendations, is available on the GAO website at http://www.gao.gov/products/GAO-06-263.
voluntary agreements under the law. Further, they published an initial list of more than 30 park units that are exempted from the requirement to develop an ATMP or voluntary agreement, based on a provision in the law that exempted park units with 50 or fewer commercial air tours.\(^{76}\) Based on the same provision, development of an ATMP for Petrified Forest National Park has been terminated.

The agencies have been determining the ambient sound levels at park units for which ATMPs are being developed, as a baseline for measuring noise sources and impacts. In general, acoustic data are being collected for comparison during the two seasons with the most and least overflights—summer and winter. In park units with year-round overflights, sound data generally are being collected in all seasons. Data usually are obtained during at least a 25-day period, at various locations throughout a park. Both the sound pressure level (i.e., intensity) and the frequency (i.e., pitch) are recorded.\(^{77}\)

On October 24, 2013, the FAA announced intent to seek approval for the collection of information on the human response to aviation noise in protected natural areas. The agency called the data from this research “critically important for establishing the scientific basis for air tour management policy decisions” in park units under the Air Tour Act, and stated that the research would expand on previous work “by using a wider variety of survey methods, by including different site types and visitor experiences from those previously measured, and by increasing site type replication.”\(^{78}\) On August 9, 2013, NPS announced intent to seek approval for a public survey about the value of natural quiet in park units. The agency seeks to obtain information on how human-caused sounds affect park visitation.\(^{79}\)

Some park units are developing soundscape management plans to manage sound, in part caused by overflights and other aircraft, as well as other human-caused noises such as from cars, buses, machines, and voices. For instance, Zion National Park (UT) issued a Soundscape Management Plan to address the increase in sources and intensity of noises in recent decades that could adversely impact visitor enjoyment and the health of ecosystems. The plan seeks in part to identify sources of sound, develop soundscape standards and ensure that standards are being met, eliminate or mitigate sounds incompatible with park purposes, and restore degraded soundscapes.\(^{80}\)

### Legislative Activity

No general legislation pertaining to air tour management at park units has been introduced in the 113\(^{rd}\) Congress as of January 2014.

The 112\(^{th}\) Congress enacted broad aviation legislation with provisions affecting commercial air tours over park units generally (P.L. 112-95). The provisions seek to expedite and streamline agency actions, in part because of the slow progress in completing ATMPs. They provide that, in lieu of an ATMP, the NPS director and FAA administrator may enter into a voluntary agreement with a commercial air tour operator that would govern commercial air tours over a park unit.

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\(^{77}\) For more information on sound management in NPS units, see the NPS website at http://www.nature.nps.gov/sound/management.cfm.


\(^{80}\) The plan is available on the website of the NPS at http://www.nps.gov/zion/parkmgmt/upload/ZNP-Soundscape-Plan_Sep_2010.pdf.
Before implementing a voluntary agreement, the agencies must provide for an opportunity for public review and consult with Indian tribes on affected tribal lands; agreements may be implemented “without further administrative or environmental process” beyond that described in the law.\(^81\) Voluntary agreements may contain provisions to establish conditions for the conduct of commercial air tours, ensure compliance, provide for fees for commercial air tours, and provide incentives for the adoption of quiet aircraft technology by commercial tour operators. Park units with 50 or fewer annual air tour flights are exempt from the requirement for an ATMP or voluntary agreement. However, the NPS director can withdraw an exemption in order to protect park resources and values or visitor use and enjoyment.

The law also allows agencies to modify interim operating authority, which could provide for additional authority because interim conditions have prevailed for longer than had been anticipated. It also establishes reporting requirements for commercial air tour operators on the number of air tours over each national park unit.

Another provision of P.L. 112-95 pertains only to Crater Lake National Park. It allows the NPS director to deny an application to begin commercial air tours at the park before the establishment of an air tour management plan. Subsequently, P.L. 112-141 extended the provision to Great Smoky Mountains National Park, and to applications to expand operations at both park units.

**Personal Watercraft (PWC)\(^82\)**

Personal watercraft (PWC) are high-speed, very shallow-draft,\(^83\) and highly maneuverable watercraft “operated by a person or persons sitting, standing, or kneeling on the vessel rather than within the confines of the hull” (36 C.F.R. §1.4). Often used to perform stunt-like maneuvers, PWC include watercraft known by brand and generic names such as Jet Ski\(^®\), Sea-Doo\(^®\), Surf-jet\(^®\), water sled, wet jet, Wavejammer, Wetbike, and WaveRunner\(^®\). PWC represent a small segment of the recreational boat market—the National Marine Manufacturers Association (NMMA) estimated that 1.3 million PWC were in use in 2012, about 8% of 16.67 million recreational boats.\(^84\) However, the number of PWC accidents has raised concerns. There were 721 PWC injuries and 58 deaths reported for 2012, constituting 19% of reported accidents among all recreational boats.\(^85\) In addition to safety issues, critics of PWC use cite environmental concerns, including noise, air, and water pollution, as well as damage to land, plants, and wildlife. Supporters of access for PWC contend that technological advances enable manufacturers to produce cleaner, more efficient machines, and they point to economic benefits generated by the industry. Recent controversies have focused on regulatory actions that would restrict recreational use of or access for these vehicles, often in specific park units.

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\(^{81}\) P.L. 112-95, Title V, Sec. 501(c).

\(^{82}\) This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy, and Kristina Alexander, CRS Legislative Attorney.

\(^{83}\) A shallow-draft vessel is one in which the keel (the bottom of the hull) is not far below the waterline.

\(^{84}\) See http://www.nmma.net/assets/cabinets/Cabinet453/2012-US-Abstract-Preview.pdf, Table 1.3, “Recreational Boats in Use by Type,” from the NMMA 2012 Recreational Boating Statistical Abstract.

\(^{85}\) See U.S. Department of Homeland Security and U.S. Coast Guard, Recreational Boating Statistics 2012, May 2013, at http://www.uscgboating.org/assets/1/News/2012ReportR2.pdf, Executive Summary (p. 6), and Table 1 (p. 7), “Vessel Types with the Top Casualty Numbers.”
Administrative Actions

NPS has evaluated PWC use in units where motorized boats are allowed, and has issued park-specific regulations, partly in response to a lawsuit settlement that prohibited PWC in park units until these steps were taken. For 13 units, the agency has authorized PWC use in designated areas: Lake Mead, Glen Canyon, Lake Meredith, Lake Roosevelt, Amistad, Chickasaw, Bighorn Canyon, and Curecanti National Recreation Areas; Assateague, Fire Island, Gulf Islands, and Cape Lookout National Seashores; and Pictured Rocks National Lakeshore. One unit, Big Thicket National Preserve, is closed to PWC pending completion of environmental assessments and rulemaking.

In May 2008, a coalition of environmental groups filed a lawsuit in the U.S. District Court for the District of Columbia seeking reinstatement of PWC bans at two units: Gulf Islands National Seashore and Pictured Rocks National Lakeshore. In July 2010, the court held that NPS violated the National Environmental Policy Act by not fully considering PWC impacts on wildlife, water quality, air quality, noise, and visitor experiences at these park units. The court ordered NPS to re-evaluate environmental assessments justifying PWC use, but did not vacate or overturn the current rules allowing them. In February 2013, NPS issued a notice of intent to prepare an environmental impact statement concerning the use of PWC at Gulf Islands National Seashore.

Legislative Activity

No general legislation affecting PWC use has been introduced in the 113th Congress as of the date of this report, and none was introduced in the 112th Congress.

Mountain Bicycles

Mountain biking advocates, such as the International Mountain Biking Association (IMBA), actively support opening additional trails in the National Park System to mountain bikers. Other groups have expressed concern that increasing the number of trails for mountain bikes could cause resource damage, such as erosion, and diminish the enjoyment of visitors on foot or horseback.

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86 In 2000, NPS issued a rule (65 Fed. Reg. 15077) prohibiting PWC use in 66 of the 87 units that allowed motorized boats. The rule allowed PWC use to continue at the remaining 21 units while NPS developed regulations, but a 2001 negotiated settlement of a lawsuit by Bluewater Network and Earth Island Institute over the PWC rule prohibited PWC from the 21 areas unless the NPS initiated park-specific rules and environmental assessments. Bluewater Network v. Stanton, No. 1:00-CV-2093 (D.D.C. April 12, 2001) (stipulated settlement agreement). In 2002, NPS prohibited PWC use in 5 of the 21 areas that completed an environmental review process: Cape Cod and Cumberland Island National Seashores, Delaware Water Gap and Whiskeytown NRAs, and Indiana Dunes National Seashore. Two units, Padre Island National Seashore and Gateway NRA, took no action, thereby continuing the PWC ban, and one (Big Thicket National Preserve) is in the rulemaking process. The agency has authorized some PWC use in the 13 remaining areas.

87 Big Thicket is developing a draft general management plan and EIS. Additional information is available at http://parkplanning.nps.gov/projectHome.cfm?parkID=32&projectID=23065.


91 This section was prepared by Laura Comay, CRS Analyst in Natural Resources Policy.
General NPS Rule

On July 6, 2012, NPS finalized a rule broadly addressing mountain bicycles within NPS units. The final rule revises previous regulations and park management policies that required special regulations to designate bicycle trails other than those on park roads, in parking lots, and within developed areas such as campgrounds. The intent is to provide “park superintendents with a more efficient and effective way to determine whether opening existing trails to bicycles would be appropriate in the park unit they manage.” It authorizes park superintendents to open existing hiking and horse trails for biking without promulgating special regulations, although it continues to require input from the public and environmental assessments in conjunction with park-specific trail decisions. Special regulations continue to be required for any bicycle trails involving new construction outside developed areas.

Site-Specific Actions

Currently, more than 40 NPS units allow mountain biking on dirt trails and/or dirt roads. The IMBA and NPS renewed a five-year partnership agreement (through 2015) to explore additional opportunities for mountain biking in park units. A number of park units are contemplating or moving forward on bicycle-applicable rules and/or multi-use trails.

For example, in February 2013, NPS published a final rule designating the Sleeping Bear Heritage Trail, under construction at Michigan’s Sleeping Bear Dunes National Lakeshore, as a route for bicycle use. In March 2013, the agency published a final rule authorizing bicycle use at Chattahoochee River National Recreation Area, and designating several trail segments in the NRA as multi-use trails, open to pedestrians and bicyclists. Another final rule by the agency, in December 2013, authorized bicycle use at New River Gorge National River. It provided for the construction of three new trails for hiking and bicycle use, as well as allowing bicycling on certain existing park trails and administrative roads.

Some NPS actions to increase trails available for biking have been controversial. For example, NPS is re-evaluating a plan to construct a bike path in the Moose-Wilson Corridor of Grand Teton National Park, in response to concerns about the effects of path construction on wildlife habitat.

Legislative Activity

No legislation on the use of mountain bicycles in the National Park System has been introduced in the 113th Congress as of the date of this report, and none was introduced in the 112th Congress.

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94 For a list of units that allow mountain biking, see the IMBA website at http://www.imba.com/nps-trails-roads.
Conclusion

Motorized recreation on NPS lands sometimes brings into conflict the two parts of the NPS mission: to conserve public land while at the same time providing for its enjoyment by the public. In NPS units that permit ATVs; dune, sand, or swamp buggies; snowmobiles; aircraft overflights; personal watercraft; and/or mountain bikes, the desire for access to these recreational opportunities has clashed with concerns about resource damage and disturbance of non-motorized pursuits. Adding to the conflict are economic considerations, with some asserting that restrictions on motorized recreation harm local industries that serve vehicle users, while others contend that growth in motorized recreation damages valuable natural resources that also draw visitors to the parks and support gateway communities. NPS’s laws, regulations, and policies generally emphasize the conservation of park resources in conservation/use conflicts, and NPS has fewer lands open to off-highway vehicles than do other federal land management agencies such as the Bureau of Land Management and the Forest Service.

The 113th Congress has addressed motorized recreation in the National Park System through legislation and oversight. While oversight hearings have concerned broad topics, such as impediments to motorized recreation on federal lands generally, introduced legislation has focused on OHV use at specific units. Congress could consider other specific conflicts or broader topics, such as NPS management of motorized recreation, calls to increase motorized access, or impacts of motorized use on natural resources, in the remainder of the 113th Congress.

Author Information

Laura B. Comay
Analyst in Natural Resources Policy

Kristina Alexander
Legislative Attorney

Carol Hardy Vincent
Specialist in Natural Resources Policy

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