

# NATIONAL PARK OVERFLIGHTS

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## HEARING

BEFORE THE

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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OCTOBER 3, 2002

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ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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## NATIONAL PARK OVERFLIGHTS

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THURSDAY, OCTOBER 3, 2002

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:30 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, presiding.

### OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Good morning. 15 years ago, Congress passed the National Parks Overflight Act of 1987. This act, among other things, took steps to protect one of the crown jewels in our national park system, the Grand Canyon. The bill was cosponsored in the House by my friend Mo Udall, a strong protector of the pristine beauty of the Grand Canyon and our other national parks.

In that law, Congress prescribed that within 30 days of enactment the Secretary of the Interior shall submit to the Administrator of the Federal Aviation Administration recommendations regarding actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights.

The recommendations were to provide for substantial restoration of the natural quiet and experience of the park, and protection of public health and safety from adverse effects associated with aircraft overflights. 90 days after reporting, the FAA Administrator was to prepare and issue a final plan for the management of air traffic in the air space above the Grand Canyon to implement the recommendations. Congress prescribed a 120-day period to get this done. Within 2 years, the Park Service was to have submitted a report to Congress discussing whether the plan succeeded.

Some might have argued that this time table was too short, but I do not believe that anyone—anyone—believed that the goal of the law would not be met 15 years later. Instead of fulfilling the mandated 120-day time frame, it took 1 year for the plan to be developed. The plan was not implemented until September 1988, and then the report that was to have been submitted by the National Park Service by 1990 was not submitted until 1994, 4 years after its due date. The FAA then responded to the report with a final rule in 1996. The rule committed to meeting the substantial restoration of natural quiet by 2008, 21 years after the passage of the law.

It seems to me, given the past history on this issue, that that date also may be in jeopardy. Subsequent rules issued by the FAA

in 2000 were challenged by the air tour operators and environmental groups, and a court decision was recently issued requiring the FAA to revise its rules further.

Congress passed the National Parks and Air Tour Management Act 2½ years ago to help regulate air tours over the rest of the National Park System. In it, we required the FAA to designate reasonably achievable requirements for the use of quiet aircraft technology within the Grand Canyon within 1 year of passage. If the FAA could not meet that deadline, it was to notify us of the fact within 1 year. The FAA did not meet the deadline. It told us last October that the rule would be out at the beginning of 2002. We are now late in the year, and there is still no sight of a quiet technology rule, yet quiet technology could go a long way toward reaching a solution to this issue. It at least deserves strong consideration.

It seems that everyone can take the credit or blame for the delay in this issue. Everyone has pointed fingers at everyone else. Inaction, court challenges and lack of attention have all led us to where we are now. I am not particularly concerned about who is responsible. What I do care about is that we have not reached our goal 15 years after we established this as law. Deadlines have been set and consistently not been met. What I want to know is when and how we will reach the final resolution.

The sponsors of the National Parks Overflight Act and the National Parks Air Tour Management Act believe that we could have a strong air tour industry and also protect the natural resources of our national parks. We believe that a fulfilling and enjoyable experience at the Grand Canyon and our other national parks is possible for all park visitors, whether they visit by foot or by air.

Our witnesses today represent the major stakeholders in this issue. I believe that everyone involved wants to put this issue to rest. The air tour operators are looking for consistency and some guidance about quiet technology, the environmental groups would like some finality about protection of the parks, and I am sure the FAA and the National Park Service would like to devote their resources to other areas. All of the stakeholders must work together to reach the goals set out in the law. I look forward to hearing from the witnesses to learn how and when this seemingly never-ending process might come to an end.

This is also the last hearing that our dear employee, Mike Reynolds, will be with us. Mike, we wish you every success as you move over to work in the administration, and hopefully when you are over there you can goad them into some action on this issue as well as others, and we thank you for your years of service to this Committee.

We now have my friend and colleague from Nevada, Senator Harry Reid, who is with us today, and before I recognize Senator Reid I just want to comment again, in 1987 I never believed 15 years later that we would be sitting here still without this issue having been resolved, and again, I do not want to point fingers at people because I am not sure that is productive, but if we do not at least review to some degree why we have not acted, then I am not sure we would have a way of curing the problem that exists. And again I want to say to all my friends who are involved in this

issue, quiet technology is one of the factors that should be considered, not the only factor, but quiet technology is something that seems to me to have been somewhat ignored, particularly when it was explicitly written in the law.

Senator Reid, welcome.

**STATEMENT OF HON. HARRY REID,  
U.S. SENATOR FROM NEVADA**

Senator REID. Thank you, Mr. Chairman. We in Nevada consider Grand Canyon part ours. We really consider this gem of nature something very special, and one of the most thoughtful, enjoyable times of my life was to float that with my sons. It is a time I will never forget, and Mr. Chairman, you should understand that no one—and I should not say that. I certainly do not question the reasons for your moving forward on this.

I think what you did was far-sighted and, as you have indicated, who in the world would expect that now, 15 years or more later, nothing has been resolved, so I am here today to testify because I am concerned that the Federal Aviation Administration has failed to develop the incentives for quiet technology aircraft. The statutory deadline, as you indicated, is long since passed.

Senator Ensign and I are very concerned. We have introduced legislation and, Mr. Chairman, the legislation is only a message to everyone, we all know that, and that is why I so much appreciate this oversight hearing to see what we can do to get some finality to this. We need to designate reasonably achievable requirements for fixed wing and helicopter aircraft for such aircraft to be considered quiet aircraft technology and, second, to establish corridors for commercial air tour operations by fixed wing and helicopter aircraft that employ quiet aircraft technology or explain to Congress why this cannot happen. The agency has failed to comply with these provisions, and I have to say, Mr. Chairman, it is equal opportunity failure. You cannot blame it on a Republican administration or a Democratic administration. They have all failed, and it should not be that difficult.

The act also provides operators employing quiet technology shall be exempted from operational flight caps. This is essential to the very survival of many of these air tour operators. By not complying with these congressional mandates, the FAA places viability of the Grand Canyon air tour industry in jeopardy and, Mr. Chairman, that industry is very important to Nevada and to Arizona. It is part of the commercial enterprises that both States enjoy.

Senator Ensign and I have sought to work out with the Federal agencies something that, we would try to do it in a cooperative manner, but frankly our repeated overtures have been summarily ignored by the FAA and, I am sorry to say, the National Park Service. We have met with them, we have cajoled, we have begged, and it has not done any good, I am sorry to say. It has to come from this Committee. This is the Committee of jurisdiction. We need the FAA and the National Park Service to work together to identify reasonably achievable quiet technology standards and provide relief for air tour operators who have spent many years and millions and millions of dollars to voluntarily transition to quieter aircraft to help restore quiet to the Grand Canyon.

The National Park Air Tour Management Act is what we have introduced. It calls for implementation of reasonably achievable quiet technology incentives, but Mr. Chairman, that comes through this Committee and, in my view, I would hope that we would not have to worry about getting that out of this Committee. I would hope that they would arrive at something without new legislation. The original intent, as you have indicated, was to help restore natural quiet to Grand Canyon, and as the 1916 Organic Act directs, to provide enjoyment of our national parks, quote, "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

There is broad support for ensuring the survival of Grand Canyon air tour industry, recognizing air touring is consistent with the Park Service mission. Based on current air tour restrictions, more than 1.7 million, almost 2 million tourists will be denied access to Grand Canyon during the next decade, at a cost to Arizona and Nevada operators of \$¼ billion, and since the September 11 attacks, air tour operators are still experiencing substantial economic losses. The first quarter following September 11 the air tour industry experienced up to a 70 percent decline in passengers. The unavoidable ground stops while waiting for passengers alone cost these companies about \$1½ million in lost revenue. The documented losses through this first quarter of 2002 exceeded \$20 million.

The tour industry is vital, as I have indicated. I would hope, Mr. Chairman, that I—first of all, I want to repeat—I should not say first of all, but again I want to repeat my appreciation for your holding this hearing, and I hope that the two important objectives are completed, No. 1 to preserve the natural quiet of the Grand Canyon, and No. 2, ensure the viability of those air tour operators who have invested, as I have indicated, millions and millions of dollars of their own money to transition their fleet to quieter aircraft.

Thank you, Mr. Chairman.

Senator MCCAIN. Thank you very much, Senator Reid, and I want to thank you and Senator Ensign both for your involvement in this issue, and I believe that if we continue focusing our attention on this issue we can perhaps get some kind of resolution to it, but I believe that hearings like this are necessary and I do know that a lot of people who come and visit your State take advantage of the opportunities to come and visit the Grand Canyon, both from the air and on the ground, and I know that it does have an impact not only on the economy of your State but also on the ability to provide this unique Grand Canyon experience to many hundreds of thousands of Americans and foreign visitors. And I thank you for your commitment and involvement on this issue.

Senator REID. Mr. Chairman, let me just say one thing. Senator Ensign was expected to be here. He is testifying in another hearing, and if he does not come it is not because he is not interested.

Senator MCCAIN. Thank you very much, Senator Reid. We appreciate your taking the time.

Our first witnesses will be Mr. Paul Hoffman, Deputy Assistant Secretary for Fish and Wildlife and Parks, and Ms. Margaret Gilligan of the Federal Aviation Administration.



We will have two panels. We will have first Mr. Hoffman and Ms. Gilligan, and then we will have Mr. Stephens, Mr. Robinson, and Mr. Bosak.

Welcome. It is the practice of this Committee to have administration witnesses first and then others in separate panels, and so we will continue that practice.

Welcome, Mr. Hoffman or Ms. Gilligan. Whoever wants to speak first, please proceed.

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

Mr. HOFFMAN. Thank you, Mr. Chairman. I appreciate the opportunity to be here today to testify on behalf of the Department of the Interior regarding the implementation of the provisions of several laws regarding park overflights at the Grand Canyon National Park. I have submitted written testimony, which I would like to have entered for the record.

Senator MCCAIN. Without objection.

Mr. HOFFMAN. I will spare you my rather brief summary of the legislative history, which you know all too well, sir, and go right to some of the challenges we face, and you have articulated some of them already. The goal here is to substantially restore quiet to the Grand Canyon while retaining the opportunity for a significant population of park visitors to enjoy the park via air tours. That goal contains many substantial challenges, including the definition of substantial quiet, as well as the definition of what a viable air tour industry is and how much opportunity we expect to end up with.

Congress recognized the appropriate yet different roles that the NPS and the Federal Aviation Administration have in regulating park overflights. Nonetheless, this is probably one of the rare times where these two agencies have had to work together. We have rather distinct missions. We certainly have different corporate cultures, if you will, and there are overarching effects of restoring quiet that bring to bear impacts on civilian operations of airports and/or military preparedness and training exercises that we need to be considerate of as we go forward.

Probably one of the most significant challenges has been the evolution of this new science of what exactly is natural quiet. There have been several definitions that the Park Service has put together over the years, and as they continue to expand their science and analysis of this issue, those definitions have changed.

There have been unsettled standards for measuring substantially quiet. We started out with the noticeability standard, which is when an aircraft sound could be noticed, ambient plus 3 decibels, it was called. Then the Park Service determined to actually divide the park into zones, with zone 1 applying the noticeability standard, and zone 2, the back country area, applying a more strict aircraft detectable standard, which is known by some as the ambient minus 8 decibels standard.

There have been at least three different models tested for measuring aircraft noise in the Grand Canyon area. Those models have been ground tested, which requires substantial time. It requires

putting people out in the park, logging data and logging sounds over time, so that we can best know which model appropriately measures those sounds.

There has been debate over whether we should measure the sound over average day or peak day. There has been debate over what the length of the day is over which we wanted to define substantial quiet. There has been debate over commercial aircraft noise and their impact on substantial quiet in the park, and there is debate over which noise level assumptions you plug into those models. Currently, they use noise levels that are defined as, under takeoff with a full load, which is probably more noise than occurs when the planes are cruising over the park during a tour.

Certainly there remain unsettled legal issues that present challenges to us all. These are a complex set of challenges that can lead otherwise reasonable people to disagree, and we have had a lot of disagreement in the park. The good news is that under the Bush Administration the Department of the Interior and Department of Transportation are committed to working together to resolve this nagging and complex issue.

I am kind of a new kid on the block. I just started 6 months ago. I have got this fresh naivete and this reckless optimism, and I am committing my time and resources to help try and resolve this issue personally. For better or for worse, depending upon which side you are on, of course, the courts have clarified some of the issues that I have raised here today, and with those guidances in place, that should help us get over some of the impending hurdles.

Lastly, I would like to interject a possibility for everybody to consider. I have visited with many of the players in the Grand Canyon overflight issue, you being the exception, sir, and discussed the idea of the possibility of exploring using an alternative dispute resolution process to help us all get to yes on this. And the purpose behind this would be not to delay the process at all, but to hopefully get us all together sitting around a table, work through these things, and try and stay out of the courtrooms, which seem to bring huge delays in terms of time.

Thank you for the opportunity to testify, sir, and I would be happy to answer any questions you may have.

[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

I wish to thank the Committee for the opportunity to appear today to discuss the implementation of public laws regarding overflights of national parks. Since 1975 Congress has addressed the issue of aircraft overflights of national parks three times, with particular emphasis on Grand Canyon National Park. I would like to summarize for the Committee the Department's progress on implementing these laws both at Grand Canyon National Park and across the entire National Park System.

Passed in January, 1975, Public Law 93-620, "The Grand Canyon National Park Enlargement Act", requires the Secretary to determine whether aircraft overflights are likely to pose a threat to visitor safety and whether there is a "significant adverse effect to natural quiet and experience of the park." If such threats are found, the Secretary has a responsibility to make recommendations to the Federal Aviation Administration (FAA) for any rules, regulations, or any other appropriate actions to mitigate these impacts. In accordance with Public Law 93-620, acoustic and sociological studies were completed and a public planning process was progressing. However, the studies and process were truncated by a mid-air collision between two air

tour aircraft in 1986 and Pub.L. 100-91, the National Parks Overflights Act of 1987, was passed the following year.

Section 3 of Public Law 100-91 specifically addressed the restoration of natural quiet at Grand Canyon National Park. Under this law, the Secretary is directed to submit recommendations to the Administrator of the FAA regarding "actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights." The Act requires the FAA to implement the recommendations of the Secretary without change unless the Administrator determines that implementing the regulation adversely affects aviation safety. The Department forwarded recommendations to the FAA in December, 1987, which became part of Special Federal Aviation Regulation 50-2 (SFAR 50-2). The regulation, which became effective in September, 1988, established fixed routes, altitudes for air tours, and flight-free zones.

Public Law 100-91 also required the National Park Service (NPS) to submit a report to Congress on whether the FAA's SFAR 50-2 "has succeeded in substantially restoring the natural quiet in the park," and to suggest revisions to the regulation. The National Park Service conducted extensive acoustical and sociological research between 1989 and 1993 to meet this requirement. The NPS submitted a Report on Effects on Aircraft Overflights on the National Park Service to Congress on September 12, 1994. The report to Congress recommended many revisions to SFAR 50-2 to substantially restore natural quiet at Grand Canyon National Park.

FAA Final Rules (1996) established reporting requirements, changed airspace restrictions and routes for air tours, capped the number of aircraft authorized for air tours at Grand Canyon, and set curfews for air tours in the eastern Canyon. Some of the airspace and route changes were implemented, while others were deferred in order to permit further discussions with DOI on proposed new routes and further consultation with Indian tribes bordering the Park. The 1996 Final Rule has been the subject of several legal challenges that were unsuccessful.

Title VIII of Pub.L. 106-181, the National Parks Air Tour Management Act, addresses the management of aircraft overflights for the entire National Park System. Specific provisions for Grand Canyon National Park affirm the requirement to achieve substantial restoration of natural quiet. In addition, it requires a definition of "quiet aircraft technology" and the creation of quiet aircraft technology incentive routes, provided these routes would not negatively impact substantial restoration of natural quiet, Native American lands, or safety.

Litigation on the two FAA Final Rules issued in 2000 was filed by the U.S. Air Tour Association (USATA) and an environmental coalition led by the Grand Canyon Trust. The USATA sought to have the flight caps rule set aside largely for procedural reasons. The environmental coalition asked the court to order the FAA to follow the wording of Pub.L. 100-91, and use the annual peak day, rather than average annual day, in modeling the achievement of substantial restoration of quiet. Use of annual peak day levels sets a higher standard, which means that summer visitors, and visitors on any day, will experience substantial restoration of natural quiet.

In August, 2002, the U.S. Court of Appeals issued a decision regarding the suit filed by the USATA which had two significant outcomes. The court held that the use of an annual average day for measuring "substantial restoration of the natural quiet" appears inconsistent and remanded the issue to the agencies for further consideration and clarification. Second, the court concluded that exclusion of non-tour aircraft from the noise-model was arbitrary and capricious and must also be reconsidered by the agencies.

The courts ruled in favor of the NPS as the appropriate agency to set the goal for substantial restoration of quiet. The NPS has determined that having 50 percent of the park quiet for 75 percent of the time would meet the goal of having substantial restoration of quiet in the Grand Canyon National Park. Various factors impact the attainment of this goal, including the choice of acoustic model, whether average day or peak day measurements are used, and which sound data are used for modeling aircraft noise. The NPS is currently reviewing the impacts of these factors.

The FAA and NPS are jointly funding a computer model validation study at Grand Canyon National Park. The study compares modeling results with field acoustic observations to determine the degrees of accuracy and precision that existing computer models provide. The study compares models developed by the FAA, NPS, and the U.S. Air Force and National Aeronautical and Space Administration. A Technical Review Committee (TRC), a panel of internationally recognized experts in acoustics and experimental research design, has provided their technical expertise to validate the research methodology and review study results. It is expected that the revised report will be available to the public in the fall of 2002.

Regarding the nationwide implementation of the National Parks Air Tour Management Act of 2000 (Pub.L. 106–181), we continue to work closely with the Federal Aviation Administration in many ways to implement the Air Tour Management Plan provisions that would establish a requirement of an air tour management plan for all commercial air tour operations over national parks to mitigate or prevent any significant adverse effects on natural and cultural resources, park visitors or affected tribal lands.

The FAA has been working through the process of developing regulations to implement provisions of the National Parks Air Tour Management Act with some delay resulting from the change in Administration. Consistent with the Administration's objective in encouraging interagency collaboration in these matters, the Department of the Interior is working with the Department of Transportation to establish cooperative procedures for the preparation of the Air Tour Management Plans. With respect to Grand Canyon National Park, use of an Alternative Dispute Resolution process is currently under consideration as a vehicle for reaching collaborative agreement on the best way to restore natural quiet and to retain the opportunity for the public to enjoy the park via air tours.

Thank you, Mr. Chairman, for this opportunity to testify and we would be most happy to answer any questions the Committee may have for us.

Senator McCAIN. Thank you. Ms. Gilligan.

**STATEMENT OF MARGARET GILLIGAN, DEPUTY ASSOCIATE ADMINISTRATOR FOR REGULATIONS AND CERTIFICATION, FEDERAL AVIATION ADMINISTRATION**

Ms. GILLIGAN. Thank you, Mr. Chairman, Senator McCain. I am Margaret Gilligan, Deputy Associate Administrator for Regulation and Certification at FAA, and I am pleased to be here today to discuss with you our efforts at the Grand Canyon. We have submitted written testimony for the record as well.

Sir, I wish that I were here to report to you success, to say that we have restored natural quiet to the Grand Canyon. I know the Department of the Interior wishes that. I know the panelists who will be on your next panel wish the same, but as you know, we are not yet in a position to claim success. Accomplishing the goal that was set by this legislation has been more difficult, more complicated, and involved more people than we had ever expected.

Having said that, I do think we need to point out we have had some real accomplishments. The park is quieter now than when we started. There are no tours at night. There are no tours in expanded flight-free zones over the park. There has not been an increase in the number of tours since 1997. There are no longer any tour routes over the middle of the park. There are none over the Havasupai Reservation, and there are none over a portions of the Hualapai Reservation.

There are new, limited, restricted routes in the west end, and we have been able to accomplish all of this while protecting the Native American traditional cultural properties, and while fulfilling our trust responsibilities by continuing the aviation support needed by both the Havasupai and Hualapai Tribes.

Before we had this legislation, FAA had already focused on the canyon because of a series of accidents that reflected its challenging aviation environment. In response to those accidents, FAA began limiting routes and setting altitudes. We required additional communications among operators, additional training for pilots, and other safety initiatives. These initiatives have been very successful in enhancing the margin of safety over the canyon.

After this legislation, as we moved forward to implement the mandate to substantially restore natural quiet, it was FAA's role to also ensure that any changes we made in the aviation operations either maintained or improved the level of safety over the park, and I can tell you we have met that responsibility as well. None of the changes that we have made have reduced the margin of safety in any way, and FAA and Park Service agree that any changes that will be made must support or enhance the level of safety of air tour operators while accomplishing our goal related to noise.

Over the last several years, we and the Park Service have learned much about measuring and reducing noise in the park. Over time, the Park Service has refined its measurement of substantial restoring of natural quiet and in response to those changes we have proposed and implemented new routes and new altitude limits. We have limited areas where tours may operate, and we have limited the times when they could fly.

Before this most recent court decision, FAA and the Park Service together believed that the actions we have taken have restored natural quiet to 43 percent of the park. That was short of the full goal, but it was well on the way. The new court decision is yet another stumbling block in accomplishing our goals. The court has remanded some of our rules and directed that we reevaluate some of the work we have done.

FAA and Park Service have not yet completely decided how we will respond to that court decision, but we do know that the Park Service will determine how to measure the substantial restoration of quiet, and we know that FAA will develop procedures and limitations to meet that standard while ensuring continued safe operation of the remaining tours. We are going to continue to work together as Mr. Hoffman has indicated to take whatever the next steps are that need to be taken.

Sir, that concludes my testimony, and we are ready to answer any questions.

[The prepared statement of Ms. Gilligan follows:]

PREPARED STATEMENT OF MARGARET GILLIGAN, DEPUTY ASSOCIATE ADMINISTRATOR  
FOR REGULATIONS AND CERTIFICATION, FEDERAL AVIATION ADMINISTRATION

Chairman Hollings, Senator McCain, Members of the Committee:

I am pleased to be here to discuss the status of the implementation of the National Park Overflights Act that was passed in 1987. My name is Margaret Gilligan and I am the Deputy Associate Administrator for Regulations and Certification. My office, along with several others at FAA, is currently responsible for working with our colleagues from the National Park Service (NPS) to achieve the goals set forth in the legislation, namely the substantial restoration of natural quiet to the Grand Canyon National Park (GCNP). At the outset, I would like to say that FAA has worked and will continue to work diligently and cooperatively with NPS on this very important goal.

National parks in this country are truly a national treasure. They provide people from all over the country and all over the world the opportunity to experience the magnificence and splendor of this great country, from the vistas of the Grand Canyon, to the beauty of mighty redwoods, to the monuments that grace this city. In 1987, Congress enacted the National Park Overflights Act (Act), recognizing the importance of preserving a pristine experience for visitors to the GCNP. The Act recognized that it was essential for visitors to experience the beauty of the park without the distraction of aircraft noise and directed that NPS and FAA work together to achieve a substantial restoration of natural quiet in the park. Toward that end, the legislation directed NPS to define the term substantial restoration of natural quiet and to submit recommendations to the FAA that would achieve that goal. FAA is

responsible under the Act for implementing the NPS recommendations and ensuring that they are consistent with safety. Never before had FAA been directed to accomplish such a goal—restoring natural quiet to a sizable land area where aviation tour operations were frequent and extensive. This task has proven more controversial and challenging than anyone thought it would be at the time it was passed. It is true that we have not yet fully achieved what Congress directed us to do in 1987. Critics have charged that we have been lax in our implementation of the Act. However, I assure you that we have been investing substantial time and resources on this issue for some time—even before enactment of the Act. I hope that my testimony today will show the complexity of the issues we face and that our efforts have brought us closer to achieving the worthy goals of the Act. To give you a graphical overview of the level of activity the FAA has been devoting to this issue, we have attached a matrix listing the work that has been completed with regard to GCNP.

The FAA had been working to enhance the level of safety in the airspace over the park since before the legislation was passed. The operating environment over the canyon can be very challenging. After several air tour accidents over the Park during the mid-1980's, the need for further FAA regulation was evident. At that time, general aviation aircraft were operating below the canyon's rim where pilot options—should something go wrong—were extremely limited. Consequently, when Congress passed its legislation in 1987, FAA had already issued operating restrictions that prohibited aircraft operations below the canyon's rim and established fixed routes for aircraft to follow in order to reduce mid-air collisions and improve overall safety.

Following passage of the Act, the FAA issued a Special Federal Aviation Regulation (SFAR) 50-2 in May 1988 in response to NPS recommendations. This SFAR restricted where and at what altitudes pilots could fly. At that time, we believed that this response to the NPS recommendations met the stated goal of the legislation.

In 1994, NPS set forth its definition of substantial restoration of natural quiet—that 50 percent of the park achieve natural quiet (no audible aircraft noise) for 75 percent to 100 percent of the day—and issued recommendations on how to achieve the goal. As the Act requires, the FAA must follow the NPS definition of natural quiet and implement NPS recommendations unless the FAA identifies a safety problem with the recommendation. In 1994, NPS determined that aircraft noise would be audible at three decibels above the average natural ambient sound level (a so-called “noticeability” standard). While the FAA initially believed substantial restoration had been met with the implementation of SFAR 50-2, an environmental evaluation of commercial air tour operations in the park in 1996 indicated that SFAR 50-2 had not achieved that goal. At that time, the noise assessment concluded that only 31 percent of the park experienced natural quiet for at least 75 percent of the day and that the percentage was likely to decline in the years to come without additional measures being taken.

Based upon this assessment, in December 1996 the FAA issued a final rule that adopted the NPS definition and instituted additional operational restrictions for air tours, such as establishing new flight free zones, setting curfews that prohibited operation from sunset to sunrise, and limiting the number of aircraft that could be used to fly commercial air tours. At that time, we estimated that with these restrictions, in addition to the development and use of quiet technology, a substantial restoration of natural quiet would have been achieved by 2008. Unfortunately, the following year we determined that we had underestimated the number of air tour aircraft operating in the park, which resulted in the restrictions being less effective than had been predicted.

After the publication of the 1996 final rule, the FAA was sued by both the Grand Canyon Trust and the Air Tour Coalition. The Grand Canyon Trust alleged that the government had not done enough fast enough and the Air Tour Coalition alleged that the government had done too much too soon. The Court found in favor of the government in this action.

In 1999, NPS announced it was refining its methodology for assessing the noise impacts related to substantial restoration of natural quiet. NPS decided, after it had gathered additional data, that different thresholds of impact should be applied in different parts of the park: Zone One, approximately one-third of the park, would continue to apply an aircraft audible, or noticeability, standard—three decibels above the ambient sound level; and Zone Two, which is mostly the backcountry areas of the park, would have a “detectability” standard applied because visitors in these more remote areas are likely to be more active listeners who would be disturbed by aircraft noise. NPS data indicated that an active listener could detect aircraft noise at eight to eleven decibels below ambient noise levels. Consequently,

NPS decided that the threshold for impact in Zone Two should be eight decibels below ambient noise levels.

In January of 2000, the NPS issued a technical report on the *Change in Noise Evaluation Methodology*. This report suggested that quiet should be attained on “any given day”—a change from the standard used in the Environmental Assessment we had issued. In February 2000, FAA issued a Final Supplemental Environmental Assessment in which FAA continued as it had in previous assessments to use the “average annual day” to determine the percentage of the day that would be substantially restored to natural quiet. The assessment did not consider noise from aircraft other than air tour operators because such noise was considered to be minimal.

On April 4, 2000, FAA issued an Airspace Rule, which modified flight paths over the park, and a Limitations Rule, which imposed a cap on the total number of commercial air tours that may be operated over the park. Based on the noise modeling in the environmental assessment, which reflected the NPS change in noise evaluation methodology, FAA and NPS concluded that everything we had done would result in approximately 43 percent of the park being restored to natural quiet. NPS was a cooperating agency, and concurred that the model we were using was appropriate.

In May of 2000, FAA was sued by both the Air Tour Coalition and the Grand Canyon Trust. Both challenged the validity of the Limitations Rule. The Air Tour Coalition stated that the rule was unlawful for several reasons, including its reliance on what they believed was an improper change in the definition of natural quiet, and argued that the acoustic methodology was scientifically flawed. The Court of Appeals dismissed this challenge. The Grand Canyon Trust charged that the rule was unlawful because the FAA improperly altered the NPS definition of natural quiet by using an average day, rather than an any given day standard in our noise methodology, and because we failed to consider aircraft noise that came from aircraft other than those used by air tour operators. The Court of Appeals upheld this challenge and remanded the case to the FAA in order for the rule to be modified consistent with the court’s ruling. That decision was issued on August 16, 2002, less than two months ago.

Obviously, the court decision will require NPS and FAA to reevaluate the issues that were remanded to us. FAA is trying to determine how to obtain noise data that includes aircraft other than air tour operators. Throughout our preparation of the Limitations Rule FAA and NPS agreed on the use of an average day standard. We are trying to work out whether we should analyze noise on an average day or any given day or against some other standard. Once NPS clarifies the “day” it intended for us to use, we will apply it.

Until FAA and NPS survey the available data and FAA obtains guidance from NPS, FAA can only say that the percentage of the park that has achieved a substantial restoration of natural quiet ranges between 19 percent and 43 percent, depending on the methodology applied. A strict interpretation of “day” will almost certainly mean that to close the gap between where we are now and where we need to be will require placing additional operating restrictions on the air tour industry. As I have emphasized, NPS will determine the noise standard that is applied. The supplemental notice of proposed rulemaking on Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park (proposing definitions of quiet technology) is undergoing executive review. While the implementation of a quiet technology designation will not by itself achieve substantial restoration of natural quiet in the park, we believe that the quiet technology standard is a vital component in the establishment of incentives and other mechanisms to achieve the goal.

I do not underestimate the frustration this Committee feels about the fact that a statutory direction that was enacted in 1987 has yet to be fully implemented. This has been a challenging process in which the definition of success has evolved over time and the government has faced repeated legal challenges. The fact that substantial restoration of quiet has not yet been achieved does not mean that there has not been a significant reduction in aircraft noise at GCNP. The extent of our progress truly depends upon how it is measured. Our work will continue and I am confident that, in the end, visitors to the park will enjoy the experience envisioned by Congress and this Committee.

*MATRIX OF FAA ACTIONS REGARDING GRAND CANYON NATIONAL PARK*

FAA Action	Date of Action	Purpose of Action	Status of Action
Established GCNP SFRA (altitude border and area border) SFAR 50	March 1987	Create a protected environment for commercial air tours. Further study of environmental impact of noise necessary	General shape of SFRA is still there but has been enlarged.
Established SFRA ceiling of 9,000 feet MSL in late 1980's with SFAR 50-1	June 1987	Maintain protected environment for air tours with other traffic above	Has been raised twice as recommended by NPS.
Established minimum terrain clearance req. of 500 feet AGL	June 1987	To ensure safety of air tours	In effect.
P.L. 100-91 enacted	August 1987	To enable agencies to substantially restore natural quiet to the Grand Canyon National Park	Ongoing process.
DOI submits initial recommendations	December 1987	To meet goal of P.L. 100-91	FAA responds with SFAR 50-2.
Raised SFRA ceiling to 14,499 with SFAR 50-2	June 1988	Protect noise sensitive areas of the Park as determined by NPS	Was raised by final rule issued December 1996.
Establish flight free zones and corridors	June 1988		FFZ's have been modified to accommodate new route system and expanded to provide more protection of natural quiet as recommended by NPS.
Establish certain routes for air tours	June 1988	Routes established that would provide safe air tours while avoiding areas that NPS deemed to be noise-sensitive	Route structure developed in SFAR 50-2 is currently in effect for the east end of the Grand Canyon National Park (Dragon corridor, east, including Marble Canyon).
Establish communication requirements by requiring pilots to monitor established frequency	June 1988	Establish safety related communication requirements	In effect.
Final Rule published to create corridor into airport on Hualapai reservation	March 1989	Amends SFAR 50-2 to respond to Hualapai needs with regard to growing business at airport on reservation.	
Amend routing of Victor airway in vicinity of SFRA	April 1989	Needed to route traffic around SFRA.	
Final Rule extending SFAR 50-2	June 1992	Extension needed because FAA was waiting on NPS submission of final recommendations.	
ANPRM published seeking input on how to manage air tour noise in GCNP	March 1994	FAA seeks public input on how to respond to P.L. 100-91	
NPS Report to Congress on Recommendations for Restoring natural quiet to Grand Canyon	September 1994	FAA states that extension is necessary so that it can complete its review of NPS recommendations	These recommendations first establish the definition of substantial restoration of natural quiet and become the basis for further rule-making conducted by FAA.
SFAR 50-2 extended	June 1995	FAA and NPS hold public meeting to try and resolve differences between interested parties.	
Public Meeting on Grand Canyon rulemaking	August 1995	Seeks to push FAA and NPS to resolve differences and complete goal of achieving substantial restoration of natural quiet by 2008.	
Presidential Executive Order on controlling air tour noise issued	April 1996		



NPRM published to raise SFRA ceiling, establish curfews, establish aircraft cap and create reporting requirements for air tours Raised SFRA ceiling to 17,999 MSL in 1996 Final Rule	July 1996	NPRM is designed to further the goal of substantial restoration of natural quiet	See December 1996 final rule.
Establish curfews on east end air tours (Dragon and Zuni Point Corridors) Establish cap on number of aircraft operating in SFRA.	December 1996	SFRA raised to minimize non-air tour noise in the Grand Canyon National Park	This was implemented in May, 2000, after being delayed for some time due to difficulties tied to 1996 efforts to develop a new route system.
Establish reporting requirements for companies operating air tours in flight NPRM proposing new route structure	December 1996	Curfews established to create protected time-periods that would be flight-free	Curfews still in effect.
NPRM published that would establish definition of quiet aircraft	December 1996	Cap on aircraft established as a means of controlling growth and the amount of noise in the SFRA	Removed by the April, 2000 final rule because was not effective tool in controlling growth and noise.
Air Tour Coalition and environmental interests petition Court of Appeals for D.C. Circuit for review	December 1996	Data provision established to develop a database of air tours	The data for the first year collected was used, as the basis for capping the number of commercial air tours in April, 2000 Final Rule.
Clark County Dept. of Aviation files petition for reconsideration	December 1996	Tries to resolve environmental issues with existing route system	Ongoing process.
Grand Canyon Air Tour Coalition files request for stay of routes and airspace	December 1996	This NPRM is another step in NPS' plan to substantially restore natural quiet	Opposed by many interest groups. FAA has determined that the only way to proceed is to go out with an SNPRM.
Grand Canyon Trust files opposition to stay request	January 1997	Challenge to legality of 1996 final rule	Case is decided in early 1998 in FAA's favor. NPS was not a party to this case.
FAA stays effective date of Airspace and minimum altitudes of 1996 final rule	January 1997	Asks FAA to reconsider 1996 Final Rule.	
FAA publishes NPRM proposing incentive corridors for quiet technology aircraft and new route system for all air tour aircraft	January 1997	States that pilot training cannot be safely completed in given time.	
FAA resurveys air tour operators aircraft	February 1997	Asserts that Tour operators have not stated a valid reason for stay to be granted.	
Notice of Clarification	February 1997	Delay was necessary because FAA believed in light of comments further evaluation of proposed routes was necessary.	
Airspace adopted in 1996 delayed further Public Meeting	May 1997	Provides incentives for operators to convert to quiet technology aircraft. New routes for other air tour operations would be reduce noise in the Park	FAA prepares accompanying Written Re-evaluation and FONSI and determines there would be no significant environmental impact as a result of the FAA actions. NPRM is withdrawn in July of 1998.
Court issues decision in Grand Canyon I	May 1997	FAA wanted to verify the number of aircraft capped in the 1996 rule.	
	October 1997	FAA issues notice to explain that 1996 undercounted aircraft used in air tours in GCNP	FAA determines that overall conclusions reached in 1996 rule remain in effect. FAA and NPS delay selection of routes until 1998 pending further analysis.
	December 1997	Airspace delayed pending resolution of routes.	
	April 1998	Meeting held of all interested groups to resolve the routes problem in Grand Canyon	Meeting ended early because parties were unwilling to negotiate to reach a consensus solution.
	November 1998	Court upholds FAA's position.	

*MATRIX OF FAA ACTIONS REGARDING GRAND CANYON NATIONAL PARK—CONTINUED*

FAA Action	Date of Action	Purpose of Action	Status of Action
NPS issues Notice proposing a change in noise evaluation methodology for Grand Canyon FAA publishes NPRM proposing to establish cap on total number of air tours that can be conducted in the GCNP SFRA FAA publishes NPRM modifying Airspace in SFRA	January 1999 July 1999	Creates the two zone system for measuring noise in GCNP. Cap is designed to prevent growth in number of air tours in Park	Final Rule adopts cap in April, 2000.
FAA publishes NPRM seeking comment on new route system for GCNP SFRA. NPS finalizes its change in noise methodology for GCNP SFRA. Public meeting	July 1999 July 1999 August 18–19	Proposal is designed to modify airspace to accommodate new route system New route system responds to NPS recommendations to protect certain areas from noise Notice states that definition of substantial restoration of natural quiet is not changed. Public meeting held to accept comment on proposals issued.	Airspace designed adopted with minor modifications in April, 2000. Routes adopted with minor modifications in April, 2000, but east end routes later stayed. West and routes implemented May, 2001.
Establish limitation on number of commercial air tours that can operate in the SFRA in a given year Expand reporting requirements to cover all flights flown by air tour operators in the SFRA, including transportation, training, rescue, ferry Modify route system	April 2000 April 2000 April 2000	Limitation on number of air tours that could operate in any given year established at 90,000 as a means of freezing the number of tours and controlling growth Reporting requirements implemented as a means of improving quality of existing database with regard to type of aircraft noise Route system final rule adopted April, 2000 to further the goals of substantial restoration by moving traffic from near the flight free zones (by removal of blue 1). Route system also designed to accommodate tribal TCP's	Limitation rule was challenged in the U.S. District Court of Appeals for the D.C. Circuit and the environmental analysis remanded for further work on average annual day and cumulative analysis. Currently in effect.  West end of route system implemented April, 2001. East end stayed pending resolution of safety issues. Airspace Rule that accompanied this also stayed pending completion of routes. Airspace Rule also stayed before U.S. Court of Appeals for the D.C. Circuit, where it is being appealed. Environmental analysis at issue in the Limitation Rule also at issue here.
Petition for review filed by U.S. Air Tour Association and several air tour operators and by Grand Canyon Trust and several environmental groups in D.C. Circuit Court of Appeals FAA issues Administrative Stay of routes	May 2000 November 2001	Challenge to April 2000 final rules  FAA stays entire route system pending resolution of safety issues raised in litigation.	Court denies petition for review of operators. Court grants petition for review of Trust and remands EA back to FAA for analysis on cumulative impacts and for FAA and NPS to again determine whether the use of average annual day is the best methodology.
FAA publishes final rule implementing west end routes and staying east end routes	November 2001	Stay of east end routes necessary to modify routes in light of new safety issues raised by operators	West end implemented April, 2002. East end routes currently stayed.

Senator MCCAIN. Thank you very much.

Mr. Hoffman, why hasn't the noise modeling used by the Park Service been validated?

Mr. HOFFMAN. As I indicated, sir, there has been required a lot of ground testing to validate that model. I believe they are about to select a model. There were three models that were tested, the FAA model, the National Park Service model, and a third model developed by NASA and the Air Force, and preliminarily it appears that the NASA/Air Force model probably best measures natural quiet in the park.

Senator MCCAIN. Air tour operators believe no matter how quiet an aircraft can be, any air tour that is audible will not satisfy the Park Service or environmental critics in the industry. What is your reaction to that?

Mr. HOFFMAN. I do not believe that is true, sir. The goal is to restore 50 percent of the park quiet 75 percent of the time. That leaves 50 percent of the park noisy 75 percent of the time, or 25 percent of the time.

Senator MCCAIN. If you tried this alternative dispute resolution course, where would that happen?

Mr. HOFFMAN. In the canyon area would be my goal.

Senator MCCAIN. Do you have someone who oversees it, someone who is involved in it, or does everybody just sit around at the table?

Mr. HOFFMAN. It would be my intention to involve the U.S. Institute for Environmental Conflict Resolution, based out of the Udall Foundation, and we have used them successfully in the past on other issues. The key is to have a good facilitator who can keep people focused on the issues. The key is to develop better working relationships so that people can actually sit down and talk to one another without posturing and grandstanding. This issue has been going on for some time, as you well know, sir, and patience on everybody's part has grown thin. We need to work through that and stay focused on the goal.

Senator MCCAIN. Ms. Gilligan, you are very aware of the appeals court decision on the Grand Canyon overflights.

Ms. GILLIGAN. Yes, sir.

Senator MCCAIN. Is the noise from nontour aircraft truly incidental, or will that part of the court's ruling make it harder to restore natural quiet without severe restrictions on air tours?

Ms. GILLIGAN. Well, we are certainly looking at that piece of the decision. We did have some limited data collected back in the early Nineties where we did try to quantify the numbers and amount of general aviation traffic. Because, of course, this is not controlled airspace, we do not have the kinds of records we might have for airspace around major airports. We believe that we can develop some additional information that will demonstrate that non tour aircraft amount to a minimal amount of traffic over the park.

Regarding the other piece the courts asked us to look at, which is aircraft on our airways over the park, we believe we have tools that already measure the effect of aircraft at altitude, and we believe we can demonstrate, that, again there is a very minimal impact for aircraft passing at altitude over the park. But we will have

to look at how we can collect and quantify that data, if we do, indeed, have to respond to that element of the court decision.

Senator MCCAIN. In your testimony, you state the quiet technology rule is in, quote, "final review."

Ms. GILLIGAN. Yes, sir.

Senator MCCAIN. What does that mean? Former Administrator Garvey responded to a letter I wrote and told me the rule was in final coordination to implement the National Parks Air Tour Management Act of 2000. Six months later, there has been no action. What does "final review" mean, Ms. Gilligan?

Ms. GILLIGAN. Well, sir, actually we are required to review our significant rules with the Department of Transportation and in some cases even the Office of Management and Budget. This rule has been with the Office of the Secretary.

We also now have a new Administrator in place. She has asked that we brief her in detail on both the statutory requirement and that final rule, and so we are trying to get on her schedule to do that. Obviously, this hearing brought that to her attention. She was very troubled that that rule continues to be delayed, and we will be working with her to get this out as quickly as we can now.

Senator MCCAIN. So we do not know what final review means, because you have to get on her schedule.

Ms. GILLIGAN. Yes. I have to schedule some time with her, but I do not think that will be difficult. She is very aware of your interest, and she is the one who has asked us to get on her schedule, so I am sure we will do that shortly.

Senator MCCAIN. Are there issues between the FAA and the Park Service that have complicated and therefore delayed the promulgation of the final rule?

Ms. GILLIGAN. Sir, I think, as you started in your earlier comments, there is plenty of blame to go around. I think it is certainly accurate to say that at the start of this process that FAA was probably slow in getting involved as deeply as we could have or should have. Having said that, we did then begin to work with the Park Service.

Another complicating factor has been the evolution of the measurement process around which there has been much discussion and debate among technical people, and reaching conclusions on those issues has been slow. But ultimately we and the Park Service reached agreements, we got through the process, we proposed to take action, and invariably everything we have done has been litigated. So, each of the people you will hear from today, both this panel and the next, has played a part in causing this to be a very slow and cumbersome process.

Senator MCCAIN. Once a final rule is issued, how soon will the two agencies be ready to develop an air tour management plan?

Ms. GILLIGAN. For the overflight statute we are well prepared to begin to implement. We have spent the time while we finalized the rule preparing extensive plans for how to approach this. We have a program manager, as does the Park Service. The individual superintendents and their FAA counterparts have already been in touch, and so we are ready to get going.

It will be an expensive process because, of course, for each park there will be an environmental evaluation that will need to be

done, so we have also tried to add to our budget to support that. We are ready to start those as soon as the rule becomes final.

Senator MCCAIN. Concerning the general overflights issue, Ms. Gilligan, I have received reports that new air tour operations have begun at certain national parks since the act was passed in 2000. I have heard existing air tour operators have expanded operations since the law was designed to impose a moratorium on new or expanded operations, pending the development of air tour management plans at affected parks. How will the FAA deal with new or expanded operations once the final rule has been issued?

Ms. GILLIGAN. Well, sir, once a rule is issued every tour that is operating must, of course, apply for their interim authorities, and we will be monitoring that process very closely. I have not heard that there were new startup operations. Certainly we will look into that when I get back to the FAA, but the process is quite clear, very well set out in the statute. The rule does require that operators identify themselves and come in for their interim authorities within, I believe it is 90 days of the publication date of the rule. From that we will know what the scope of the potential operations over a particular park might be as we do, then, the planning.

Senator MCCAIN. Mr. Hoffman, do you believe that the issue of quiet technology has been given enough priority in this whole discussion?

Mr. HOFFMAN. I think it has taken a back seat to the definition of substantial restoration of quiet. The people I talked to indicate that quiet technology plays a very key role, but in and of itself will not get us to substantial restoration of quiet.

There are two ways to look at quiet technology. One is quieter aircraft, the other is what they call noise efficiency. In other words, maybe a larger aircraft carrying more people making the same amount of noise might be a more cost-effective and actually more substantive way to achieve quiet than actually trying to implement whatever mechanical technology may exist, but I do know that in the industry they are working on quiet technology. I personally witnessed a demonstration of a quiet technology helicopter here this spring, and I think they are taking it very seriously at this time.

Senator MCCAIN. My understanding is that with the proper incentives there is quiet technology out there that could be adopted by air tour operators if there were incentives for them to do so, and that—well, I can assure you that that was the intention of the authors of the legislation. I know it was for Mo Udall and myself. I believe that it is an issue that should be given more consideration as we go about trying to obtain what all of us are seeking.

**STATEMENT OF HON. JOHN ENSIGN,  
U.S. SENATOR FROM NEVADA**

Senator ENSIGN.

Senator ENSIGN. Thank you, Mr. Chairman, and thank you for holding this hearing. I sense the frustration in some of your questions, and I share some of those same frustrations, as I think almost everybody who has dealt with this issue shares those frustrations.

I want to ask a couple of questions, and a lot of it does have to do with the quiet technology, the rule now being 18 months over-

due. Just to get a little more specific on that rule, can you give us a guess on time line?

Ms. GILLIGAN. Sir, I found myself faced with this question oftentimes in this kind of setting, and I can promise you that it does have the Administrator's interest. She has been on the job now for 3 weeks, and she has, as a result of this hearing, come to understand that there is a rule, that we must pay attention to. We have the mandate from her to get a focus on this rule and get it moving, and we will do that as quickly as we can.

Senator ENSIGN. When I was in business, or now when I run my office, if I tell my staff, I want you to really get on that, and I do not give them a time line, I find that things do not get done.

Ms. GILLIGAN. I share your concern. There are people beyond—

Senator ENSIGN. Do you have a goal for the time line?

Ms. GILLIGAN. Yes. I have a goal to get it out as soon as I possibly can.

Senator ENSIGN. What does that mean? Soon could be 2 years to some people.

Ms. GILLIGAN. I understand, and again I share the frustration. Some of it involves individuals beyond the FAA. For those, the Administrator is going to have to use her good offices to influence decision making, and she has, I believe, every intent to do that, and so it is beyond our control to set a specific date, but I can assure you it is a project that we are not going to let fall by the wayside. It is a project that the Administrator will support pushing through the administration as quickly as we possibly can, but I do not have the ability to set the dates for others who are involved in the process.

Senator ENSIGN. What are your goals, then, for the dates of your part of the process?

Ms. GILLIGAN. Our rule is already out of the FAA. It is already in the hands of others for their review. We have accomplished that. Now we are going to see if we can get them to set some time lines that we might be able to stick to.

Senator ENSIGN. According to the quiet aircraft technology, if an air tour operator is not meeting that, there are the caps. What are you doing about the caps? Do you have rules proposed for the caps being alleviated for those people who are able to meet those, or do we have to go through this again with that rulemaking process?

Ms. GILLIGAN. No, sir. The statute in fact allows the link between the use of quiet technology and the release from the caps, and actually what we are going to set in the rule is a performance standard. If you meet that standard, then the aircraft will be determined to be quiet technology and, based on that, the statute would allow for a change to the limitations on the caps.

Senator ENSIGN. Getting to what Mr. Hoffman said, though, when you just talked about—you know, one of the ways to meet the quieter technology is to have a larger airplane, but it is just as noisy. How do you certify that an aircraft is quieter if it is just bigger?

Ms. GILLIGAN. Actually, the work that has been done in support of this rule does, in fact, demonstrate that there is a fairly natural cutoff among certain types of currently operating aircraft, and so below the line they are substantially quieter than aircraft that are

above the line, and that would be the standard that we would propose to set the rule.

Senator ENSIGN. Maybe I am just not following in some way. I understand normally defining—you have got above certain decibels, it does not meet quiet below certain decibels, but with what Mr. Hoffman said about, to meet that same amount of noise during the day, you are looking at, instead of an individual aircraft, you are looking at the total noise during the day, and you could have something five times the size for one aircraft, but it only goes in there a lot less often. Then you could meet the total number for the day, but how does the FAA define that as far as according to the caps and things?

In other words, now I am meeting the caps, but I take that noisier airplane in there more often. I do not understand how that squares.

Ms. GILLIGAN. Actually, I think again when the project is published the data will show that there are some larger aircraft that are also substantially more quiet, so you are right—unfortunately, we have a really nice diagram that I am sorry I did not bring,—there are some aircraft already in operation that have a fairly high number of seats but are much quieter than many of the other aircraft operating in the Grand Canyon or over other parks.

Senator ENSIGN. Correct, but that is not what Mr. Hoffman is saying. He is saying the same kind of airplane, noisier. You would just make the point—and correct me if I am wrong, you were making the point that total noise during the day, if you bring in the same kind of noisy aircraft in but it is bigger, but you bring it in less often—isn't that what you were saying?

Mr. HOFFMAN. I am falling into the same trap of giving a goal without necessarily a solution to getting there. It may be that what we need to do is work together to look at noise per air tour visitor kind of a measurement in order to do that. The caps right now are on the number of aircraft operations, and you are exactly right, that poses a significant challenge there, so maybe we ought to look at caps in terms of numbers of visitor flights so that you would have more visitor flights per larger aircraft.

Senator ENSIGN. Whichever way we do it, I think what the air tour operators are asking for is, they are just asking how do we meet this? In other words, I am trying to write a business plan, and I have got—I mean, I understand the concern of people for quiet technology and all of that, wanting a wonderful experience at the parks.

I do not like sitting in my backyard and having airplanes fly over my backyard. I live near the North Las Vegas Airport, and occasionally they direct the traffic over our backyard and I do not like that, so I understand people do not like overflights.

But at the same time I have got to be empathetic to the air tour operators who are trying to run a business, and they are just trying to say, hey, what are the rules and how do we meet those rules and we will try to do our best. Is there technology, what are the rules going to be? And I think that is where the frustration of a lot of people is coming in, is that every time they seem to be trying to meet something, the rules seem to be maybe changing a little bit,

sliding a little bit, and I think that is where a lot of the frustration you are hearing out there is coming from.

I asked this question—we had a hearing with Jim Hansen in Southern Utah a few years ago on this same issue, and I would ask the question, how many complaints a year does the National Park Service get on noise complaints? Can you give me the latest numbers on those?

Mr. HOFFMAN. I do not have those numbers available. I have asked the Park Service to conduct a back country survey to ascertain exactly what the visitor experience is at this point in time, because that seems to me part and parcel with the issue of restoration.

Senator ENSIGN. What about complaints that the Park Service gets in without actually going out and asking?

Mr. HOFFMAN. That is a good question. I have not asked that one. We will ask that and get you the answer.

Senator ENSIGN. How many visitors a year do they have?

Mr. HOFFMAN. 800,000 three years ago.

Senator ENSIGN. That is overflights. I am talking about visitors to the park on the ground.

Mr. HOFFMAN. 5 million.

Senator ENSIGN. The reason I asked and bring up the question is, I asked how many complaints that they were getting a year, and they said between 20 and 25, and I said, 20 and 25,000 complaints a year, and they said, no, 20 to 25 out of 5 million, because I had just come out of the hotel industry. I was thinking, 20, well, I would kind of take those numbers if I had 5 million visitors a year, because the way that you figure—I do not care whether it is Disneyland, what resort industries you are in, when you have got the number of complaints, they have got formulas to figure out actually how many people—you multiply, usually, the number of complaints for every one person that complains you figure about 20 people would have complained, and so if we multiply that by 20, it is still a pretty low number, in other words 400 to 500 out of 5 million.

So that was just—what are we doing with—I mean, we want to restore as much as we can, possibly, there is no question about that, but we have just got to be reasonable about this thing and let us get it done so that people know how to run their businesses.

Mr. HOFFMAN. There is a lot we can do in the area of determining what the visitor experience is and how much we have improved the visitor experience, and that certainly I believe has a bearing on this.

Senator ENSIGN. If you could get me the numbers, because things supposedly are better. We should have fewer complaints than we had 4 or 5 years ago.

Mr. HOFFMAN. One would think.

Senator ENSIGN. If you could get me those numbers, I would appreciate it.

Thank you, Mr. Chairman.

Senator MCCAIN. I would just add, Senator Ensign, the reason why Mo Udall and I passed this bill is because being outside El Tobar Lodge was like being at the end of the runway at Phoenix Sky Harbor Airport. I mean, it was disgraceful, and it was in direct



contradiction to Teddy Roosevelt's admonition about our treatment of the park, so there was a reason for the legislation being passed, and it was a serious reason, and the air tour operators recently have been very helpful.

At first, they were entirely negative, and one of the reasons why the 15 years has passed is because of the absolute recalcitrance early on of the air tour operators, and I would be glad to have Mr. Stephens, who I have dealt with for many years, respond to that when he comes forward, but that has been my experience as the author of the initial legislation.

I respect Teddy Roosevelt's admonition, and I am sure, although he did not know that much about airplanes in those days, he did not want a continuous, and it was continuous, noise of helicopters and airplanes over the areas that were most visited over the Grand Canyon. But I do agree with you; we should be able to establish some balance here, and obviously over 15 years we have been unable to so far, and I thank you for your involvement in this issue.

Senator ENSIGN. And just real briefly, Mr. Chairman, if I may, I have only been involved in it, obviously, a lot shorter than you have been involved in it, and I understand that things happen, because when I asked that question—it was just a few years ago when we asked that question, and I think because of your legislation things have improved. Now it is just a question of finalizing everything.

Senator MCCAIN. I thank you very much, Senator Ensign, and again I hope, I know as an important member of this Committee that we will continue to work together and try and get some resolution of this issue.

I thank both of the witnesses. I understand that you are giving this a very high priority. Please do not make us come back with another hearing a year or so from now, and without any progress being made. We owe our constituents and the American people better service on this issue than they have been getting.

Thank you very much.

Mr. Stephens of Grand Canyon Airways, Mr. Tom Robinson of the Grand Canyon Trust, and Mr. Steve Bosak of the National Parks Conservation Association are our next witnesses. Welcome to all three witnesses. Mr. Stephens, if you would like to proceed, then Mr. Robinson and Mr. Bosak.

**STATEMENT OF ALAN R. STEPHENS, VICE PRESIDENT, GRAND CANYON AIRLINES, CEO, TWIN OTTER INTERNATIONAL, ON BEHALF OF UNITED STATES AIR TOUR ASSOCIATION**

Mr. STEPHENS. Thank you, Mr. Chairman. I submit my prepared statement, that outlines my 20-year history of my personal involvement in Grand Canyon over flights. I am reminded that, Ed Norton and I, together testified before the various enabling Committees back in 1986 leading to the 1987 Overflight Act and, as I outlined in our testimony, we saw early on that the debate between the Park Service and Native Americans, the environmental representatives and the air tour operators was contentious, it was unrelenting, it was unfocused, and through it all we had to have two things

happen: We had to bring safety to air touring over Grand Canyon, and we had to bring a restoration of natural quiet.

Your example of El Tovar is a good example, because that is exactly where we flew. By the air traffic protocol that we had to follow then, we finished our air tours of the Grand Canyon over El Tovar and the South Rim Village. Whether we flew from Las Vegas or out of Tuyenan, we came right up the middle of the canyon, right over the top of Phantom Ranch, right over the top of the South Rim Village. That resulted in 1,000, 1,200 written aircraft noise complaints a year that the Park Service was receiving and when we had to bring to an end complaints over aircraft sound. To my lasting chagrin, we never really defined what natural quiet was, but we agreed to restore it at Grand Canyon.

There is nothing in the Congressional Record about natural quiet. No questions about natural quiet were asked. None of us that testified at the time talked to the concept of natural quiet. I think in my own mind it just meant visitor experience, that we needed to provide for a balance between competing uses, and that if we established a limited number of routes instead of random flying over the Grand Canyon, if we selected where we flew so we did not go over impact areas—we recognized that there was going to be areas of the canyon that would have some air tour noise, but it would be minimal to the vast majority of ground visitors. That was in my mind how to achieve natural quiet.

We were the first organization to come out for special use air space so there would be a regulatory scheme at the Grand Canyon for making sure the air tour operators complied, and of course we supported the 1987 legislation. I have been also a strong proponent of the regulatory negotiation process. As you may recall, Senator, you asked us, the environmental community and the air tour people, to come together I believe it was in 1996 in Phoenix. You were with us by telephone. You asked us to see if we could find middle ground. We could not at that time. It was very frustrating.

Subsequent to that, because of President Clinton's executive order mandating that there be some regulatory scheme for national parks Nation-wide, a regulatory advisory Committee was created that had four representatives of the environmental community, one of the business community, one of the Native American community, and four of us on the aviation side. We were successful in coming together in a regulatory negotiation. It was contentious. But it was a learning process for all of us in understanding how the Park Service manages the national parks.

The environmentalists I think learned a lot about how we, the air tour industry, operate under a regulatory scheme at the FAA. I have outlined this in the testimony. We were successful in coming up with an air tour management plan process which, through your leadership, was enacted in law. As a result of that success, the Park Service and FAA invited us, again the environmental community, the Native Americans, and the air tour interests, to come together in a regulatory negotiation for Grand Canyon. I believe it was summer of 1998, and we did, in Flagstaff.

And my recollection of that meeting is pretty firm. We on the air tour side were willing to sit down and put everything on the table, the number of routes, hours of operation, number of flights but that

we needed to bring the Grand Canyon overflight matter to final resolution. It was evident that we were going down a road that was leading nowhere. Unfortunately the other side, the environmental interests, and not necessarily these gentlemen on the panel with me today, but representing organizations they represent, those representatives at the Flagstaff meeting felt that they could not represent their organizations and commit to a regulatory negotiating alternate dispute mechanism, or whatever you want to call it for Grand Canyon.

My view is, we would not be here today in 2002 had we been able to sit down then and hammer this thing out the same way we were able to hammer out in about a 15-month period the national overflight regulations.

I would like to just conclude with one thing that I believe you understand, and understand as well as anybody, if not better than most. Grand Canyon Airlines in the 1985 time frame was operating very noisy single engine Cessna 207s with just seven passenger seats. We were flying 10,000 flights a year. The owners of Grand Canyon Airlines, Elling Halvorson and John Siebold, felt strongly that we had to do something about air tour sounds outside the regulatory scheme of the FAA and Park Service. John and Elling developed the Vistaliner, which of course has become the predominant air tour plane of Grand Canyon, and it employs quiet aircraft technology.

We went from approximately 10,000 flights a year with the 207s to about half that number of flights with the Vistaliner, and actually hit our peak in passengers flown in the early 1990s with about 6,000 flights annually. We have never flown as many air tour flights as we were flying at the time that the National Parks Overflight Act was enacted. And today, because of the nature of the caps, arbitrarily picked—the cap number was the actual number of air tour flight flown from April of 1997 to May of 1998, we were locked into 3,165 flights, less flights that Grand Canyon Airlines has flown for almost 25 years. But the thing that is very frustrating is that we took the time to go into larger airplanes for less flights and developed quiet aircraft technology, and we have been a real proponent for recognizing that. But that voluntary effort has never been recognized in Grand Canyon air tour flight caps.

All these air tour regulations at Grand Canyon since 1987 have always treated all aircraft flying at Grand Canyon the same. We are under the same restrictions. We have no incentives, and I think that is time that something be done. I appreciated the recommendations that came from the Government witnesses this morning, but again I want to thank you and give you a little bit of my feeling on this matter after twenty years. Thank you for your attention. I would be happy to answer any questions you and Senator Ensign may have.

[The prepared statement of Mr. Stephens follows:]

PREPARED STATEMENT OF ALAN R. STEPHENS, VICE PRESIDENT, GRAND CANYON AIRLINES, CEO, TWIN OTTER INTERNATIONAL, ON BEHALF OF UNITED STATES AIR TOUR ASSOCIATION

Mr. Chairman and Members of the Committee, I am Alan R. Stephens, vice president of Grand Canyon Airlines, an air tour operator at Grand Canyon National park. I also serve as chief executive officer of Twin Otter International, Las Vegas,

NV, a leasing company that produces deHavill and Twin Otter aircraft in “Vistaliner” configuration used widely for aerial sightseeing, particularly at Grand Canyon. The Vistaliner employs quiet aircraft technology that we developed in making the Vistaliner among the quietest air tour aircraft flying today.

This hearing seeks testimony on the current rules and restrictions governing overflight of national parks and public lands. I would like to address that by speaking specifically first to the status of the rules at Grand Canyon and what impact these rules have had on the air tour business. Then I will address our thoughts on the process that is in place to manage air tours over national parks nationwide.

### **Grand Canyon Overflight Regulations**

I have spent the better part of the past two decades seeking to preserve a meaningful air tour experience at Grand Canyon while I have staunchly advocated air tour regulations that reasonably protect Grand Canyon ground visitors from aircraft sounds. It is in that context I speak today in total frustration about how our government has long ago lost its way in developing fair air tour management rules.

I first became involved in Grand Canyon overflight issues in the mid-1980’s. There was no special use airspace designated then by which air tour operators were regulated. Therefore individual operators were free to fly whatever routes at whatever altitudes they desired regardless of how those routes impacted sensitive visitor rim, trail, and river activities and the historical and cultural sites within and around Grand Canyon. The debate between the Park Service, environmental and native-American interests and the air tour industry on how to deal with overflights at the time was heated, unfocused and unending. That controversy was not good for air tour business because we were not perceived as good neighbors yet many in our industry felt that the flight restrictions that were being proposed would soon put them out of business.

Despite that debate, some of us in the air tour business recognized that something had to be done. The companies with whom I am associated were the first in the industry to seek creation of a special use airspace over Grand Canyon. We recognized that it was necessary for air safety reasons to restrict the number of, and to provide for, separate routes for fixed wing and helicopter operators, and to establish minimum operating altitudes and aircraft position reporting protocols. Importantly we felt that all air tours over Grand Canyon had to be regulated under the commercial aviation rules of Part 135 so operators would comply with commercial aviation standards for flight crew qualification and training. Under Part 135 and its power to bring certificate action, FAA could also enforce strict compliance with the Grand Canyon overflight regulations.

Our companies recognized that there needed to be finality in the debate over aircraft sound impact. We actively supported the passage of legislation that had as its objective substantial restoration of natural quiet and visitor experience at Grand Canyon. I so testified before this Senate Committee then and it became law as the National Parks Overflights Act of 1987.

The resulting air tour regulations at Grand Canyon are known today as special use airspace, “SFAR 50-2.” This rule has resulted in air tours being conducted for the past decade and a half in a safe and efficient manner for the confidence of the flying public. The route restrictions and establishment of flight-free zones have resulted in a stunning decline in visitor complaints over aircraft sound, from over 1,000 annually to about two dozen per year and that decline in noise complaints comes even as park visitation has doubled from 2.5 to about 5 million persons annually. Vast stretches of Grand Canyon are free today from air tour overflight and for the vast majority of Grand Canyon National Park visitors, air tour aircraft are inaudible.

Unfortunately, that result has not satisfied the critics of air tours at Grand Canyon and debate over “substantial restoration” and “natural quiet” has raged on. Over the years there have been numerous public hearings, congressional inquiries, sound studies, policy determinations and rulemakings and I have participated actively in virtually all of them. Unfortunately these actions have resulted in ever more severe and I believe largely unwarranted air tour flight restrictions. Let me cite a few examples:

- The most popular air tour route, Las Vegas to the Grand Canyon-South Rim, has been eliminated affecting 400,000 air tour passengers annually.
- Curfews have been imposed on South Rim-originating air tours that are neither tied to the hours of sunrise and sunset or dates for observing daylight savings; meanwhile motorized raft trips are free to operate during periods of the day air tours cannot.

- NPS would have the North Rim of Grand Canyon off-limits to air tours even though the North Rim is closed to ground visitors seven months per year because it is impassible due to snow.
- Caps on operations have been imposed unrelated to historical levels of activity leaving my company, Grand Canyon Airlines, limited to less than half the number of air tour flights than it conducted a decade earlier and despite our use of quiet aircraft.

Quiet aircraft technology to us has always been a key in permitting quality air tours over Grand Canyon to continue, while reducing air tour aircraft audibility to an acceptable level for most ground visitors. Quiet aircraft technology does not render any aircraft absolutely quiet and some of our critics are fond of saying so in opposition to quiet aircraft incentives. Yet, the flaw in such thinking is that the whole air tour regulatory scheme at Grand Canyon since 1987 has been that air tour restrictions have been applied without regard to how noisy or how quiet any particular air tour aircraft may be.

We were particularly pleased . . . and hopeful . . . when this Senate Committee initiated legislation in 1999 to require NPS and FAA to define quiet aircraft and provide meaningful incentives for air tour operators of conventional aircraft to retrofit them with quiet aircraft technology. I am sure you are as acutely aware, as we are, that two and one half years after the President signed that legislation into law, all we have to show for quiet aircraft technology is a report to Congress from FAA that it cannot comply with your directive.

This continuing debate over substantial restoration of natural quiet at Grand Canyon rages because each time the National Park Service sets out its definition, NPS inevitably changes that definition to ever lower thresholds of air tour sound detection. Even now, the noise modeling used by NPS at Grand Canyon has not been validated (by NPS's own admission in the Federal Register Notice that established minus 8 dB below ambient for measuring natural quiet) nor are the regulations for air tour restrictions final. Instead the latest round of flight restrictions we have fought so hard over these past four years would be only interim measures until a final "Comprehensive Noise Management Plan" for Grand Canyon is developed. I am no expert in the science of sound. As a layman, I suspect that as long as our aircraft are audible, no matter how quiet and far removed from the sites ground visitors frequent at Grand Canyon, we will NEVER satisfy the National Park Service and our environmental critics until air tours are eliminated entirely at Grand Canyon.

This is particularly troubling to me because I remember my discussions with Senate and House Committee chairs, Senator Dale Bumpers and Representative Bruce Vento regarding passage of the National Parks Overflight Act. I was assured that the legislation in no way was intended to put air tour operators at Grand Canyon out of business but that Congress had serious concerns over air tour flight safety and air tour aircraft sound it wanted FAA and NPS to address. Those problems were largely resolved by SFAR 50-2. Thus, its time to bring this matter to an end by adopting a set of reasonable and final air regulations based on real-world measurement of air tour aircraft sound and incentives for air tour operators to employ only quiet aircraft.

#### **National Parks Overflight Management**

President Clinton in 1996 signed an Executive Order directing the Departments of Interior and Transportation to develop a framework for regulating air tour activity over national parks nationwide. Wisely, these agencies recognized that the best chance for enacting such rules in a timely manner was to bring NPS and FAA together with aviation, environmental and native-American interests in developing such national air tour regulations. Thus the National Parks Overflight Working Group (NPOWG) was commissioned and I am proud that I was asked to serve as a member of that federal advisory Committee.

NPOWG worked because we all had a stake in the outcome of that process. Aviation members proposed that air tours nationwide be regulated using the Grand Canyon model: that air tours would be flown under FAA Part 135 rules and Operations Specifications that would prescribe tour routes, altitudes, and frequencies. Environmental and native-American interests brought to the table expertise regarding the mandate of the NPS to preserve and protect national park resources and sensitive historical and cultural sites within or adjacent to our national Parks. We all recognized that air tour regulation had to be developed in accordance with the National Environmental Protection Act (NEPA). We argued, but resolved, the matter of lead authority and cooperating authority of the Federal Agencies and what objectives were to be achieved in regulating national park air tours . Our sessions were frac-

tious, but productive. We finally agreed that air tours over National Parks should be permitted, but not in all circumstances, and that air tours should be conducted in accordance with the reasons our national parks were established; to protect for future generations unimpaired their unique resources whether geological, biological, historical or cultural.

The product of NPOWG, the "Air Tour Management Plan" (ATMP) process was not perfect, but we felt it was workable. We recommended that it become a matter of federal law and that the same interests, aviation, environmental and native-American, continue to have an advisory role in its implementation. Once again, this Senate Committee led the way in introducing that legislation and it too was signed into law two and one half years ago in the same legislation that provided for revitalizing our aviation infrastructure and directed FAA to adopt quiet aircraft incentives at Grand Canyon. Like we have proposed for so long as a solution in mitigating air tour sounds at Grand Canyon, NPOWG adopted strong language in support of quiet aircraft incentives as good public policy.

Unfortunately, the Air Tour Management Plan process has yet to be implemented at any national park and we await publication of the final rules that will define what types of operations over National Parks will come under it. FAA and NPS have established the advisory group as Congress directed, the National Park Over-flight Advisory Group (NPOAG), of which I am a member. In fact, I am leaving here immediately today to return to Grand Canyon to attend the second meeting of NPOAG being held tomorrow at which time I expect to learn what progress FAA and NPS have made in implementing the ATMP process.

Throughout the nearly two decades I have spent representing the air tour industry, I have always felt that aerial sightseeing was an environmentally sensitive and appropriate manner for national park visitation. Air touring permits visitors to appreciate the unique reasons our national parks have been established by seeing often remote and/or inaccessible sites and features. Air tours are consistent with the NPS mandate to protect and preserve park resources impaired for future generations since air tour passengers impose no long lasting impact on, or demand for, park resources. Air tourists require no roads or trails, campsites or sanitation services, leave no garbage, pick no flowers and take no souvenirs. Although aircraft sound is the sole short-coming of air visitation, air tour sound is temporary and can be mitigated by choosing appropriate routes and altitudes so any associated sound impact is brief, if not virtually inaudible, for the vast majority of park ground visitors.

That said, I recognize that there are times and places where air touring may not always be appropriate over national parks and public lands. I will continue to represent our industry's interests but with a keen appreciation for the concerns of others over how air tours can have adversely affects if not regulated properly. You have my word that I will continue to be committed to seeing through those objectives for Grand Canyon and as we apply the ATMP process to other national park locations.

Thank you for your interest in our testimony. I am pleased to answer any questions you may have.

Senator MCCAIN. Thank you, Mr. Stephens. I have appreciated the dialogue and communication we have had over a number of years, and I thank you for your contribution to it.

Mr. Robinson, welcome.

**STATEMENT OF TOM ROBINSON, DIRECTOR OF GOVERNMENT AFFAIRS, GRAND CANYON TRUST**

Mr. ROBINSON. Thank you, Senator McCain, Senator Ensign for the opportunity to testify on the status of the effort to restore the precious resource of natural quiet to a place that was once thought of as one of the quietest places on earth, the Grand Canyon. Before I actually read some of my testimony, I would like to speak directly to the issue of both quiet and quieter technology, because it is obviously, from what I am hearing, the most germane issue on the table right now, and maybe not surprisingly, maybe surprisingly, I want to start out by totally agreeing with what Alan just said. Alan flies what the FAA will probably at least certify as, if not the quietest plane in the air, at least the first step to what will eventu-

ally be the quietest plane in the air, and I believe that we do need to finish this quiet technology/quieter technology efficiency rule-making process sooner rather than later.

Quiet and efficient airplanes will not, in and of themselves, satisfy the noise problems, but they are key ingredients, because developing quiet technology is an expensive undertaking. Companies want regulatory certainty, obviously, before they make the financial investments in quieter helicopters and fixed wing aircraft. Some of these companies like Alan Brenda at Papillon have already started to do that.

According to the May issue of Rotor and Wing Magazine, and here is a quote: "The quiet and quieter helicopters is nothing if not easier and cheaper to promote than to achieve. Every new decibel down costs much more than the last. It is a very expensive proposition." I think that the agencies believe that there is probably more hope in efficiency than there is in quiet technology, and in fact Alan's planes probably represent the most efficient technology in the air. They seat 19 people, which is a lot of people and, in fact, they are quieter than other airplanes.

I believe that particularly given the latest court decision, that eventually the numbers of flights will probably have to come down. These are hard decisions that will be made by the agencies. One of the least painful approaches would be if some of these companies are going to go out of business for financial reasons, shouldn't those operation caps be reverted to the Government, the FAA, the Park Service, whomever? That is a fairly painless approach.

A big question I have is, should all companies be treated equally? Why should Alan receive the same noise cap restrictions that companies that have made no attempt to invest in technology receive? I do not believe he should.

Another issue which is obviously very touchy is, not all companies are paying the fees that are mandated. This has been through litigation. I went through a report recently that shows there are 6 or 7 companies that are not paying their fees. Alan is not one of them, and I am wondering if perhaps, given how tight things are, and how precious caps are in the Grand Canyon, why should Alan be penalized the same as companies that are not paying their fees? I feel very strongly about that one.

Getting back to the main body of my testimony, I would like to send three messages here to the FAA and the Park Service responsible for this process. 15 years is too long. Senator McCain already said that. We should not have to rely on litigation to move this process. The Federal appeals court has finally lost its patience, and they have made it very clear they will not tolerate further delay and, in fact, they will be looking very closely at even the science that will be developed, because they are very sensitive to political pressure that happens to agencies.

This Committee will have to continue its oversight. I believe that that is particularly important, given the different missions of the two agencies involved, if we are to move beyond what I would call their very dysfunctional working relationship over the past 15 years.

The last message is once again to the industry. The legal uncertainty I believe that has clouded this process is behind us now for

the most part and I believe, as Alan does, that it is time to work together. Perhaps 3 or 4 years ago it was not so right, because partly people thought they could do a better job in court. That is the classic approach to mediation. If people think they are going to get a better deal outside of the table, they wait. I do not really believe the courts have much role anymore now.

Speaking to a couple of key issues, the comprehensive noise management plan for substantial restoration of quiet in the Grand Canyon has not been released. This was to have been the core plan for which real improvements were to have been made, sequenced, and quantitatively assessed for achieving the final 2008 restoration of natural quiet at the canyon. This plan has not yet been developed, and it will most likely require at least 2 years before such a plan reaches an operative stage.

What is most outrageous is that the FAA has failed to input and aggregate for analysis any of the quarterly reports covering a ¼ million tour operations. The reports of individual operators have simply piled up in boxes. I believe there may be some progress now. I do not really know if the FAA can speak to that. There is no up-to-date record of trends and noise impacts for any day, season, or other period during the past 3 years. This lack of analysis guarantees the 2-year trial for the cap on operations cannot be reviewed. It guarantees the FAA cannot even evaluate flight congestion as promised in the rule. It is critical to computing the noise and percent substantially restored.

The East End route date, the target date for the much-delayed East End routes, which should have been done in 1997, is delayed. Much of the noise impact from air tours is experienced in the back country, on the rims, along the river at this end of the park. Further progress is clearly needed here.

I would like to conclude with a quote from Arizona's largest newspaper and, in fact, this issue has had so much coverage since August with the court decision that I could have listed any one of many editorials. "The canyon is anything but quiet. It is not even close to the tranquility that Congress envisioned for a meaningful experience for visitors. 15 years is much too long to wait for a quieter park and richer experience." This was written by the Arizona Republic, August 20, 2002.

I will agree that progress has been made, but not nearly as much as should have been made in 15 years.

Thank you.

[The prepared statement of Mr. Robinson follows:]

PREPARED STATEMENT BY TOM ROBINSON, DIRECTOR OF GOVERNMENT AFFAIRS,  
GRAND CANYON TRUST

Thank you Senator McCain, Senator Hollings, Senator Rockefeller, Senator Hutchison, and other Members of the Senate Commerce, Science, and Transportation Committee for the opportunity to testify on the status of the effort to restore the precious resource of natural quiet to a place that was once thought of as one of the quietest places on earth, the Grand Canyon.

My testimony today is intended to send three messages. The first message is to the FAA and the NPS, which are responsible for restoring natural quiet to the Grand Canyon. Fifteen years is way too long. We should not have to rely on litigation to move this process forward. The Federal Appeals Court for the District of Columbia, in its landmark August opinion, has demonstrated that it, too, has lost patience with this process and will not tolerate further delay or any effort by the NPS



and the FAA to weaken the planning process or the effort to include meaningful science in this process. The second message is to our elected representatives responsible for overseeing the NPS and the FAA. Your continued oversight will be necessary to ensure that these two agencies, with very different missions, finally move beyond their dysfunctional working relationship. Finally, the last message is to the air tour industry. The legal uncertainty that has clouded this process is now behind us and the parameters have been set. It is now time to work together. The FAA and the National Park Service need our help as they both search for creative solutions and at the same time face some very difficult decisions.

#### **The Work Ahead of us**

On May 1, 2002, the FAA and the Park Service were to have completed a comprehensive noise management plan for the substantial restoration of natural quiet in the Grand Canyon. This plan was promised in the 1996 Final Rule Preambles (from Federal Register, Dec. 31, 1996, Vol. 61, No. 252 at pages 69328 and 69329). The rule states that . . . on May 1, 2002, we are supposed to move clearly from the 5-year "interim" phase to a "plan implementation" . . . phase. This was to have been the core plan by which "real improvements" were to have been sequenced and quantitatively assessed for achieving the final April 2008 restoration of natural quiet deadline for the Grand Canyon. Unfortunately, this plan has not yet been developed and it will most likely require at least two years before such a plan reaches an "operative" stage.

During the past three plus years, the FAA has failed to input, and aggregate for analysis, any of the quarterly reports covering a quarter million tour operations. The reports of individual operators have simply piled up in boxes in the FAA's Las Vegas FSDO office. Thus, the FAA has no up-to-date record of air tour trends and/or noise impacts for any day, season, or other period during the past three plus years. This lack of analysis guarantees that the two-year trial term for the cap on flight operations cannot be reviewed. It also guarantees that the FAA cannot evaluate "flight congestion" as promised in the rule, as a matter of safety. This data is absolutely critical to computing the noise and the "percent substantially restored."

Another missing component is the noise model validation report and conclusion, which is based on sound monitoring studies at Grand Canyon National Park in the fall of 1999. Originally, this should have been prepared by spring 2000 to ground-truth the currently used model. However, the Park Service did not receive the final report from the contractor (HMMH) until June 5, 2002. Without this, there can be no determination about the noise levels. The release of this report will be a milestone in the scoring of substantial restoration.

Late September of 2002 was the target date for the much-delayed "East End Routes", which should have been developed in 1997. Most of the noise impact from air tours is experienced in the backcountry, on the rims, and along the river at this end of the park. Further progress is needed here if substantial restoration is to be achieved.

Finally, there are still no "quiet technology" (noise efficiency) specifications and/or rule. Although quieter helicopters and airplanes will not, in themselves, solve the noise problem, they are key ingredients. Because developing quieter technology is an expensive undertaking, companies want regulatory certainty before they make the financial investment in quieter helicopters and fixed wing aircraft. According to the May issue of *Rotor and Wing* magazine, "the quiet in quiet helicopters is nothing if not easier and cheaper to promote than to achieve . . . every new decibel down costs much more than the last . . . it's a very expensive proposition."

I would like to conclude my testimony with a quote from Arizona's largest newspaper, the *Arizona Republic*, August 20, 2002.

"The canyon is anything but quiet. It's not even close to the tranquility that Congress envisioned for a meaningful experience for visitors . . . Fifteen years is much too long to wait for a quieter park and a richer experience."

Senator MCCAIN. Thank you, Mr. Robinson, and thank you for all that the Grand Canyon Trust does for the Grand Canyon.

Mr. BOSAK.

**STATEMENT OF STEVEN BOSAK, ASSOCIATE DIRECTOR OF  
VISITOR EXPERIENCE PROGRAMS, NATIONAL PARKS  
CONSERVATION ASSOCIATION**

Mr. BOSAK. Mr. Chairman, thank you, Senator Ensign, thank you for the opportunity to present the views of the National Parks Conservation Association on the management of air tours in our national parks.

My name is Steven Bosak. I am the associate director for visitor experience programs at NPCA. We are America's only nonprofit citizen organization dedicated solely to protecting, preserving, and enhancing the national park system. I have submitted written testimony which I wish to be entered into the record.

I would like to thank you, Mr. Chairman, for your commitment to this important issue. The Committee has contributed greatly to our country's national park legacy by protecting the natural quiet in our national parks with past air tour overflight legislation, and I also wanted to say that I am honored to share this panel today with others who care deeply about our national parks. I think we all want to see progress here, and I do not dispute that.

Congress elevated two basic principles when it passed the overflights act of 1987 and the Parks Air Tour Management Act of 2001, that the sounds of nature are among the inherent components of the scenery and the natural and historic objects and the wildlife that form the core of the National Parks Service's conservation mandate. Second, within units of the national park system, natural quiet and 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, and they reflect the act's enduring importance to the world today.

Taken together, the Overflights and Air Tour Management Acts require the Park Service to exercise some control with the assistance of FAA over the commercial air tours that fly over the national parks. Both acts ordered a high level of agency cooperation. Unfortunately, that cooperation seems to have been difficult for both agencies.

You stated earlier, Mr. Chairman, that there has been much delay in the implementation of both air tour laws. We are very concerned that it has been nearly 2½ years since the passage of the Air Tour Management Act, and that there is no final rule out that defines the air space over national parks regulated by that act. I understand that the FAA says that now that rule is under final review. We would hope the Subcommittee demands a commitment from the FAA on the release date as well as an explanation, a better explanation for this prolonged delay.

As you said, Mr. Chairman, many parties have contributed to the delay in this issue, but the conservation community does believe that FAA's reluctance to follow the intent of these laws and apply appropriate resources has been a major stumbling block. Our past involvement in lawsuits was to ensure that the intent of Congress was followed.

We are particularly concerned about the delayed Air Tour Management Act rule because we see air tour operations increasing over other national parks. As you has mentioned earlier, parks

such as Yellowstone and Grand Teton are now facing new air tour operations. Air tour overflights continue to be a problem over parks such as Hawaii Volcanoes, Glacier in Montana, and Acadia National Park in Maine. It is a nationwide problem.

The parks Air Tour Management Act sought to avoid the unmanaged growth of air tour industry by forbidding the start of new operations over any park until the park had completed an air tour management plan, but parks cannot start air tour management plans until that air space rule is out.

I wish to submit to the record some written testimony from citizens near some of the national parks that are affected by this issue. Their comments attest to the frustration felt in local communities by those seeking to reduce the impact of air tours on park visitors and park neighbors. To prevent further delays in the implementation of both acts, Congress must keep a close eye on both agencies with a keen eye on which agency determines the standards and measurements used to assess air tour impacts on our parks. This issue has dogged the entire process. The recent decision that Mr. Robinson referred to earlier by the U.S. Court of Appeals was clear. FAA must give deference to the Park Service on the issue of natural quiet standards.

Mr. Chairman and Senator Ensign, park visitors want to hear the substantial restoration of natural quiet in the canyon by 2008. They want to see the National Parks Air Tour Management Act implemented in a timely fashion, and NPCA would like to see the air tour industry receive genuine incentives so they can see a future in cooperating fully in a program that enables their clients to enjoy the views from above while providing the national park visitors on the ground the opportunity to experience the undisturbed natural sounds in the parks.

We respectfully ask the Subcommittee to ensure that neither agency repeat the mistakes of the past. They must adjust their priorities and resources so that we can deal proactively with air tour management nationwide as Congress intended. I also ask the Subcommittee to consider in my written testimony a number of tasks and goals for the agencies that we feel are critical to breaking this cycle of delay.

In conclusion, I should emphasize that NPCA is not opposed to air tours over national parks per se. We do, however, feel that air tours over some park units are inappropriate, and we will participate in the air tour management process to express those views. It is critical the FAA and National Park Service fulfill the will of Congress by moving quickly on the implementation of these laws and by managing these issues proactively.

The FAA's role should be ensuring safety, the Park Service's role should be determining the impact on national park visitors and values. This is the intent of both laws.

Thank you for allowing me the opportunity to share our views.  
[The prepared statement of Mr. Bosak follows:]

PREPARED STATEMENT OF STEVEN BOSAK, ASSOCIATE DIRECTOR OF VISITOR  
EXPERIENCE PROGRAMS, 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 (NPCA) on the

management of tour aircraft flying over the national parks and the delay in implementing both the National Parks Overflight Act of 1987 (Pub.L. 100-91) and the National Parks Air Tour Management Act of 2000 (Pub.L. 106-181). My name is Steven Bosak. I am the Associate Director of Visitor Experience programs for NPCA, America's only nonprofit citizen organization dedicated solely to protecting, preserving and enhancing the National Park System.

I want to thank the Chairman and Senator McCain for your commitment to this important issue. This Subcommittee has contributed greatly to our country's national park legacy by protecting the natural quiet and natural soundscapes in our national parks with past air tour overflight legislation.

#### **Significance of Air Tour Legislation to National Parks**

Congress elevated two basic principles when it passed the Parks Overflight Act of 1987 and the Parks Air Tour Management Act of 2000. First: The sounds of nature are among the inherent components of the "scenery and the natural and the historic and the wild life therein," which form the core of the National Park Service's conservation mandate. Second: Within units of the National Park System, natural quiet—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 importance for the world today. Taken together, these two Acts both enable and require the Park Service to exercise some regulatory authority, with the assistance of the Federal Aviation Administration, over the commercial air tours that fly over national parks. Both Acts broke new ground in ordering a high level of agency cooperation. Unfortunately, this cooperation has been difficult for both agencies, resulting in delays in implementing the intent of Congress.

#### **Cause and Impacts of Delay**

As this Committee is well aware, it has been more than 15 years since the passage of the Parks Overflight Act, which specifically directed the Park Service and FAA to provide for the "substantial restoration of natural quiet" in the Grand Canyon. Yet the excruciatingly slow pace at which the Overflights Act and the Air Tour Management Act are being implemented contributes to the frustration and uncertainty for park visitors and air tour operators alike. While the Park Service bears some blame for the lack of progress, it has been our experience that the FAA has been reluctant to follow the intent of these laws and apply the appropriate resources to complete rulemakings in a timely and efficient manner.

It has been two and a half years since Congress passed the Air Tour Management Act, but the FAA has yet to release the final rule that would complete the definition of regulated airspace over national parks. This is a non-controversial rule that mostly enacts language already recommended by the National Parks Overflight Working Group, a federally convened advisory group made up of representatives from the air tour industry, the conservation community, Native American tribal governments, and the Park Service and FAA. NPCA has submitted comments to the FAA in support of the draft language (U.S. DOT Docket No. FAA-2001-8690).

Our concern over the delayed rule is intensified by what we have observed around the country over the past few years: That air tour operations over national parks are increasing, and in some cases new air tour operations have sprung up over parks where no air tours previously operated. Parks such as Yellowstone and Grand Teton are now facing new air tour operations. Air tour overflights continue to be a problem over parks such as Hawaii Volcanoes, Bryce Canyon in Utah, and Glacier National Park in Montana. These parks are all on the Park Service's priority list of units requiring air tour management plans.

An NPCA survey of national park superintendents in 1998 found that 55 park units reported adverse impacts from air tour overflights. That figure represents an increase in park air tour overflights from surveys we conducted 1994 and 1996.<sup>1</sup> As you recall, the Parks Air Tour Management Act sought to avoid the unmanaged growth of the air tour industry over parks and specifically forbade the start of new operations over any park until the park had completed an air tour management plan. The FAA, however, will not commence the air tour management planning process in any park until the delayed "airspace" rule is finalized.

Attached to my testimony is additional testimony I wish to submit for the record on behalf of citizens living near some of these affected national parks. These comments I am submitting attest to the frustration felt in local communities by those

<sup>1</sup>A National Park Service survey of its units for its 1994 report to Congress of the Effects of Aircraft Overflights on the National Park System found that 42 park units experienced commercial air tour activity.

who are seeking to reduce the impact of air tour overflights on park visitors and park neighbors.

#### **Meeting Congressional Intent**

To prevent further delays in the implementation of both Acts, Congress must keep a close watch on both agencies, with a keen eye on which agency determines the standards and measurements used to assess air tour noise impacts on the parks. The intent of Congress seemed clear enough. In Section 3(b)(1) and (b)(2) of P.L. 100–91, Congress required FAA to ‘issue a final plan for management of air traffic in the air space above the Grand Canyon that implements the recommendations of the Secretary (of Interior) without change unless FAA determines that those recommendations would adversely affect aviation safety.’ But still the question regarding which agency determines impacts has dogged the entire process. The conservation community took the issue to court to provide clarification. The recent decision in *U.S. Air Tour Association v. FAA* by the U.S. Court of Appeals for the D.C. Circuit should provide clarity to both agencies and motivation for finishing the job expeditiously.

That decision directed the FAA to give deference to the Park Service as it reconsiders its position on the standard for assessing restoration of natural quiet and the measurement of aviation noise in the Grand Canyon. Among other things, the court called upon the agencies to:

- Apply the “Peak Day” standard in place of the “Average Day” standard for assessing progress towards substantial restoration of natural quiet in the Grand Canyon. Judge Garland noted in the court decision that “People do not visit the Park on ‘average’ days, nor do they stay long enough to benefit from averaging noise over an entire year. For the typical visitor, who visits the Grand Canyon for just a few days during the peak summer season, the fact that the Park is quiet ‘on average’ is cold comfort.”
- Measure all aviation noise sources above the Grand Canyon when assessing progress towards substantial restoration of natural quiet.

Park visitors want to see progress at the Grand Canyon; we want the Park Service to realize the goal of “substantial restoration of natural quiet” to the Canyon by 2008. We also want to see the air tour industry receive genuine incentives so that they can see a future in cooperating fully in a program that enables their clients to enjoy the views from above while providing the national park visitor on the ground the opportunity to experience the undisturbed natural sounds of the Canyon. Those incentives, though—be they in the form of so-called “quiet technology” or “noise efficiency” regulations—must be fair and reasonable not just to air tour operators, but also to the national park visitors who visit the front and backcountry of national parks with the expectation of experiencing undisturbed natural sounds.

NPCA and its members also want to see forward movement on the implementation of the National Parks Air Tour Management Act. We respectfully ask the Committee to help ensure that neither agency repeats the mistakes of the past. Air tour management must receive the appropriate level of priority and allocation of resources so that we can deal proactively with air tour management nationwide, as Congress intended. We respectfully ask the Subcommittee to help ensure that the following goals are met to assist in the preservation of natural quiet in our national parks and restoration of natural quiet to the Grand Canyon:

- **Release of the National Parks Air Tour Management final rule:** The FAA must release this rule as soon as possible; a two-year delay is unacceptable. The rule will define the air space over parks regulated by the law and will allow the agencies to commence the air tour management planning processes at parks impacted by air tours. The Committee should demand explanations from both agencies for the cause of the delay.
- **Recognize the Park Service’s authority to determine air tour impacts:** During the development of air tour management plans and noise management plans, the Park Service must be the agency that determines air tour impacts to natural quiet in national parks and designates the desired solutions for eliminating or mitigating unwanted air tour impacts. The FAA must focus on ensuring the safety of air tour operations over national parks. The Court of Appeals has ruled on this point and both agencies should comply with their ruling.
- **Develop a Noise Management Plan for Grand Canyon National Park:** The Park Service, with FAA assistance, must develop a Noise Management Plan for the Grand Canyon National Park. Due date was May 1, 2002.
- **Analyze and release Grand Canyon air tour operations data:** The FAA must analyze and release the Grand Canyon air tour operations data that it has

collected since 1998. This data will enable NPS and FAA to gain a better understanding of the current air tour industry behavior and take appropriate management and noise mitigation actions.

- **Issue a Quiet Technology Rule:** The FAA and the NPS must develop and release the “Quiet aircraft technology and noise efficiency” final rule that would give air tour operators incentives for using more quiet aircraft over national parks; this rule could include incentives for using higher capacity aircraft for fewer flights.
- **Release of noise model validation report and conclusion:** This report would provide feedback on the effectiveness of the current noise impact model and help the agencies determine progress toward “substantial restoration of natural quiet”. The due date passed in spring of 2000. NPS received the final report from Contractor (HMMH) on June 5, 2002 but has not released its conclusions to the public.
- **Collect all current and past due air tour use fees at Grand Canyon and other air tour use fee parks:** Some air tour companies have not been paying the air tour passenger fees to NPS as required by law. NPS is entitled to these revenues. Those air tour operators who are unwilling to pay the appropriate fees to NPS should be denied the privilege of flying over the parks requiring air tour fees. The Park Service does not allow park visitors to enter parks requiring gate fees without payment; the same standard should apply to air tour passengers if the operators wish their clients to be considered “park visitors.”
- **Retire the allocations over the Grand Canyon for air tour operators who cease tour operations:** The Park Service and FAA can pick the “low hanging fruit” in restoring natural quiet by retiring allocations of air tour operators who go out of business.
- **Substantially restore natural quiet at Grand Canyon National Park:** The Park Service and the FAA should meet the April 22, 2008 target date committed to by both agencies in the Final Rule preamble of the FAA on Dec. 31, 1996. The “substantial restoration of natural quiet” must meet the Park Service definition that says “50 percent or more of the park achieve ‘natural quiet’ (i.e. no aircraft audible) for 75–100 percent of the day.” Unless the definite steps as outlined above are finalized, this target cannot be met.

In conclusion, I should emphasize that NPCA is not opposed to air tours over national parks per se; we do, however, feel that air tours over some park units are inappropriate. It is critical that the FAA and NPS fulfill the will of Congress by moving quickly on implementation and by managing these issues proactively. The FAA’s role should be to ensure the safety of air tour passengers over parks and of other aircraft in the vicinity. The National Park Service must determine what impacts commercial air tours have on national park visitors and values. This was the intent of both laws.

Thank you again for allowing me the opportunity to share NPCA’s views on this issue.

Senator MCCAIN. Thank you very much, and your full text, as well as the comments you wish included in the record, will be made a part of the record without objection.

Mr. STEPHENS, will the air tour operators appeal the recent Federal court decision affecting the FAA’s regulations governing air tour overflights in the Grand Canyon?

Mr. STEPHENS. The USATA, the Air Tour Association, is not a party to any appeal. Grand Canyon Airlines is not a party to any appeal. I believe there may be one operator at Grand Canyon that wishes to appeal that decision.

Senator MCCAIN. Mr. Robinson and Mr. Bosak, there has been conversation about the use of alternative dispute resolution as a way to end some of the difficulties that we face. How do you feel about that proposal? Mr. Robinson.

Mr. ROBINSON. I have actually spoken to Mr. Hoffman about that, and I have indicated that we would be interested in such a process. It should not be a process intended to somehow short-cir-

cuit or undermine what the agencies are responsible for doing and, in fact, what the court has very much reaffirmed and affirmed, but if nothing else it would be a way to show the agencies that people can work together, because these two agencies have not done very well over the last 15 years.

I am hoping that after this hearing that will change, but I think given the right people and the right parameters and issues, I think progress could be made. As I said before, a couple of years ago may not have been the best time, partly because the courts were involved, and I am actually sorry to hear there is an appeal, but people are entitled to do that.

Mr. BOSAK. Mr. Chairman, Mr. Hoffman has spoken to me also about ADR for the Grand Canyon issue. We are not opposed to it. We would like to see exactly what it would entail. We do feel that the court decision that was made recently makes it pretty clear what the agencies need to do, and it is a question of resources and priorities, so we welcome the ADR opportunity if there are certain parameters that bracket the discussion that goes on there, making sure that the agencies comply with the court-ordered mandates and also with the intent of Congress.

Senator MCCAIN. Mr. Bosak, the air tour operators believe no matter how quiet an aircraft may be, any air tour that is audible will not satisfy the Park Service or environmental critics of the industry. What is your reaction to that allegation?

Mr. BOSAK. I do not think that is true. We are supportive of the quiet technology regulations. We want to make sure they are fair to the air tour industry and to the park visitors on the ground. We certainly do not think that it is the cure-all for this situation. We believe there still may need to be some caps of some sort on what, there needs to be some sort of route structure to ensure that certain areas of the park remain quiet all the time, but we are open to that. We are open to quiet technology, and we are willing to be involved in discussions about it.

Senator MCCAIN. Well, let me just suggest to you on the alternative dispute resolution, I think everybody would go to the meeting recognizing that you are bound by court decisions. I mean, that is to state the obvious, so why not say, look, we will sit down and talk to you. Clearly, we are not going to be able to overturn court decisions. There is no possible way to do that, but to set, quote, "parameters," close quote, for discussions, it seems to me it might have a chilling effect. And this is to sit down and discuss things, it is not to commit yourself to a resolution, and so I hope that you would have a position that you would be willing to sit down and discuss these and every issue, recognizing fully that nobody is going to be able to reach an agreement that is in violation of the judicial process.

I hope that since we have been waiting 15 years at least, it cannot hurt to sit down and have a conversation amongst all interested parties without saying, we are not going to talk about this, we are not going to talk about that. Because then I think that does not have a beneficial effect on the atmosphere, because I do not think any of your constituents would expect you to agree to anything that is in violation or contravention to the gains, and there were significant gains you made in this court decision.

That is a little gratuitous and probably unneeded advice in this process.

Mr. STEPHENS. Mr. Chairman, the court really came across with a ruling which really is going to send us all back to the drawing boards. I do not think anybody in the Government and—I do not know how to deal on the air tour side with the idea of the court overturning the concept of average user day, which is the whole basis of the regulatory scheme at Grand Canyon that has been enacted. The court has thrown out how we measure whether or not we have restored natural quiet by overturning average user day. Thus I would like to sit down and hear the views of everybody, including the Government, and I would hope they would like to hear our views, because I am not sure how we get there. Now that the Court has issued an opinion I know I can think of a thousand ways we could go down a regulatory process that would be really counterproductive. We have to deal with this one way or another. The court has given us a mandate, and I agree we have to deal with it promptly. But I would like to deal with it in an open forum where we can hear ideas on what alternatives there are to coming up with a system of measuring natural quiet that fits with the court decision. Thus we believe an alternative process to more rule-making is now appropriate.

Mr. ROBINSON. May I respond to that?

Senator MCCAIN. Sure.

Mr. ROBINSON. I referred to this before. One of the tough issues here, and it is going to be tough for even people at the table to come to grips with, is that very difficult decisions are going to have to be made. Now that the court has said that averaging cannot be done, we have gone way back to which percentage of the park, way back in terms of percentage, is supposedly restored to natural quiet. That means that when you look around the landscape to figure out how do you get there, clearly quiet and quieter technology is one way. Another way is possibly to eliminate one of the East End routes. The question is, is that duplicative?

Another way is, and I mentioned this before, and this is a really tough one that I think this Committee and the Government is going to have to look at is, are all operators equal? I cannot make that decision. If I were a dictator right now, I would say, Alan gets more caps than other people because he is flying much quieter technology, much more efficient.

I would say that the folks that have not been paying fees for quite some time, if ever, should not be allowed to fly. That immediately increases the percentage of restoration. Why do they get to fly if they have basically snubbed their nose at the laws that have already been through the court system?

There are ways to make difficult decisions. I am not a dictator. I can make suggestions at the table, but I just do not think it is fair for someone like Alan to be brought down by some of his colleagues that are contributing noise but not contributing as good public stewards and citizens.

Senator MCCAIN. Well, thank you. On that subject I would just make two points. One of the reasons why I have discussed the issue of quiet technology, not because I believe that it is the answer. Clearly, it is not. I think it is one of many ways to address



this problem, but it has been our impression, either rightly or wrongly, that that aspect has been neglected to a large degree when clearly we wrote that in the law as to one of the factors that needed to be considered.

And to take your position one step further, it seems to me the free enterprise system indicates that if you want people to spend money, you have to have some kind of incentive for them to do so. I would hope that perhaps that would be part of the discussion in alternative dispute resolution. I cannot expect a business person to invest—how much does it cost you to quiet engines of one of your large aircraft, Mr. Stephens?

Mr. STEPHENS. In total investment we have about \$1.2 million in each one of our Vistaliner airplanes. We have six, so we have \$7 million plus invested in our aircraft, and about a million of that is in the quiet technology. That is just on the Grand Canyon side. On our Twin Otter side, where we produce Vistaliners that we lease to companies at Grand Canyon and at other locations and we have about 25 Visaliners, so we have invested quite a bit of money into quiet technology with the belief that it was the solution.

Senator McCAIN. And I am sure if one of the small operators was sitting at the table next to Mr. Bosak he would say, I cannot afford \$1.2 million per aircraft, I simply cannot do that. And I am not without sympathy for that situation, but it seems to me—and I am not speaking for Mr. Stephens or any other air tour company, but it seems to me they should have some incentive to acquire this technology, and it is a small item, Mr. Robinson, but I think there is a difference between quiet technology of a helicopter and quiet technology of a fixed wing aircraft.

We look at the stage 3 aircraft that now fly into National Airport. There is a huge difference—and there is going to be a stage 4 aircraft, and I am only talking about commercial airliners. There will be a stage 4. They are on the drawing board already. But helicopter, quieting a helicopter, I think the state of the art is a lot further along, to say the least. It is a minor point, but I thought I would throw that in.

Mr. Bosak, you have been quiet. What do you want to add to this conversation?

Mr. BOSAK. I would say I concur. As I said earlier in my testimony, we would like to see the quiet technology regulations move ahead, and I completely understand that businesses want some sort of certainty when they are trying to plan into the future, and it must be very difficult to exist under the regulatory regime that we have in place right now.

Mr. ROBINSON. Senator McCain, one other point. If there are not penalties along with incentives, then we keep moving the target away. If we give the folks flying quieter airplanes and helicopters goodies, then we have actually kept the levels up high. There will also have to be penalties, and those are the ones—it is actually easier to give—it should be easier to give Alan an incentive. It has not been done yet. It is harder to penalize someone.

Senator McCAIN. I think that is a very important point. The free enterprise system not only rewards but sometimes it punishes as well, as we are finding out in recent days.

Finally, one of the reasons why I focused more of the attention on this hearing, Mr. Bosak, on the Grand Canyon overflight, if we cannot get this issue moved forward, then it seems to me it is going to be extremely difficult to move the other parks forward, and I had always hoped that this would serve as a model of what to do.

Clearly, it is serving as a model of what not to do, but there is a whole lot of lessons learned here that I hope do not have to be relearned as we address Yosemite, Yellowstone, all of the other national parks that need varying degrees of attention, and it is disturbing to hear that since the law was passed, that there is increased activity over the parks, and if you would submit for the record the information you have about increased air tour activity over the parks since the passage of the parks overflight act, I would appreciate that.

Mr. BOSAK. Certainly.\*

Senator MCCAIN. Senator Ensign.

Senator ENSIGN. Thank you, Mr. Chairman.

Mr. Robinson, you mentioned something that is very important. We talk about incentives, we talk about punishment; we have done just the opposite. We have now punished good behavior. Now, Mr. Stephens—and it takes you back, if you think about the other air tour operator who maybe looks at Mr. Stephens and says, I am not going to do that because I get punished.

In other words, I will cut my own flights down and invest all this technology, and then they cut me down further, because—it reminds me of when we were enacting welfare reform, and that was one of the things that we had to be careful of, not to punish the States that had already enacted a lot of the reforms that we were asking them to enact. In other words, we did not cut their money back because they had already enacted those reforms.

In other words, we did not want to punish good behavior, but also we have to be careful why some of these people did not want to take the risk, because they probably looked at people like Mr. Stephens and said, you know, there is no way I am going to take that risk.

So we have got to try to bring everybody in to meet the goals that we are trying to meet, and you know, there always is a balance between punishment and incentive. You know, positive always is a better way to get people to do things, as long as you have the threat of the negative happening.

Mr. Stephens, or any of you could answer this, maybe, and it is a little different than the question Senator McCain just asked, but hopefully we have the statistics at least at Grand Canyon about this. Do we know, compared to, say, the last 5 years, 10 years ago, 15 years ago the number—Mr. Stephens, you quoted the number of your flights, but do we know the total number of flights that are going over, helicopter flights and fixed wing?

Mr. STEPHENS. Let me see if I can answer that, Senator. I appreciate the question. I believe the number used at the peak was about 90,000 air tour flights over Grand Canyon a year. Since then, several things have happened. One is, because of the economics there has been a real shift away from small airplanes to the larger

\*The information referred to was not available at the time this hearing went to press.

ones. Where there were a lot of five, six and seven seat Cessnas flown, today operators fly aircraft like the Beech 99s that seat 15, 44-seat Folker F-27s, and of course 19 seat Vitaliners. The bigger the aircraft, the fewer number of flights required.

The second thing, there has been massive consolidation and failure within the industry. I can name, back when we were dealing this 15, 16 years ago there were about 20 fixed-wing air tour operators flying at Grand Canyon. Today I believe there are 7. All the rest of them have gone out of business or have consolidated. Some failures came about because of the economics of this business, and then of course 9/11. If you look at the traffic statistics or passengers boarded, and this is probably the most telling statistic, the Grand Canyon air tour industry carried 800,000 passengers annually.

Structurally that market changed in the year 2000. The cost of air tours became pretty expensive, so we lost about 100,000 of our passengers a year to buses, so that reduced the number of passengers to 700,000 in the year 2000. This year, we will be lucky to hit 400,000 passengers. Since 9/11 foreign visitors are simply not coming to the United States in any numbers like they were, and that decline really rocked the air tour industry. The FAA to my knowledge has never released any air tour flight statistics beyond the original 90,000 air tour flight at the peak.

But these changes in the industry have reduced the number of flights today, tour flights over Grand Canyon to probably under 35,000, perhaps 40,000 from the peak of 90,000. It is hard to tell, because there has been an increase in helicopter flights, and by definition they are a little smaller, and so they are probably going to fly more flights for the same number of people than flown with typical larger air tour airplane.

And with the consolidation of the industry, where companies have outright failed, there has not been a reallocation of those air tour flights to remaining air tour companies. As you just asked, I would like to see the true numbers, because I think if we do sit down in a negotiation over what is happening at Grand Canyon, we have to have the current numbers to plug into the noise model to determine whether or not we have gotten to that definition of natural quiet . . . 50 percent of the park 75 percent of the time.

Senator ENSIGN. Do either of the rest of you know the numbers?

Mr. BOSAK. No. That is the data the FAA has which will help us validate the model and also determine how many overflights are going over the park in the last couple of years.

Senator ENSIGN. It would seem to make sense, because total number of passengers really does not work, because you may be carrying 30 percent loads instead of 90 percent loads, or whatever, and so you may have the same amount of air flights, depending upon the percentage that are on the airplanes.

Mr. Chairman, I think the message from this hearing, and hopefully everybody concerned as we go forward, is that we all want to get something done. I mean, the air tour operators obviously need to get it done for their business survivability.

Mr. Robinson and Mr. Bosak, your organizations want to get things done because you want to try to meet the goals along with the National Park Service, and I think that if we do this with some

balance, I think that we can achieve the goals that have been set out by the act, and hopefully set a model that we learn from, and when we finalize this thing we set a model that we can use for the other parks.

The last comment I would make, Mr. Chairman, is that when you are on the ground and you are enjoying natural quiet—and I totally understand why people want that experience. I ride my bike all the time to up around Red Rock Canyon Conservation Area. It is an absolutely beautiful area, and I certainly would not want flights going on all the time up there. It is a part of being just on a road bike, just the natural quiet that you just see the natural beauty and experience it, and I ride virtually every Saturday morning, and I love that aspect of it, so I understand why people want that.

But I also—I am healthy. I am able to do those kinds of things. I love to go up there and hike, and things like that. Well, the same thing, there has got to be a place for people that can do those things, where they can enjoy that, but for the senior citizen, or the disabled person, or whatever, there has got to be a way for them to enjoy the park as well, and that is one of the reasons for these air tour operators, that is where the balance has to come in, is we have to have those places for the people that can enjoy the truly natural areas, or the truly natural experience in those parks, as Teddy Roosevelt set out.

But recognizing that my 82-year-old grandmother, that there is no way she could do the hiking and things like that to enjoy the natural quiet, she has got to have some other way to really experience that, and I know that you cannot do some of that through the ground, but the air tour gives quite an experience as well, and we have to recognize that.

So thank you, Mr. Chairman.

Senator MCCAIN. Thank you very much, Senator Ensign. Is there any closing comments that the witnesses would like to make? Beginning with you, Mr. Stephens.

Mr. STEPHENS. Thank you for having this hearing. I am very pleased that my colleagues here and the Government witnesses have all indicated an interest in bringing this to a close through some type of a desperate negotiation.

I can tell Grand Canyon Airlines will be there. We have no preconceived notions. We want to preserve a quality air tour that we can sell to the public to take care of the people that want to see the Grand Canyon that do not necessarily want to do it by river rafting or ground visitation. As I have said in our testimony, we understand, and believe me, we understand the goal of making sure that our aircraft operations are as inaudible as possible so as to have the least impact number of people. The fastest way to get there is not the court. It is to get on with desperate negotiation.

Senator MCCAIN. Thank you, Mr. Robinson.

Mr. ROBINSON. I just want to thank you so much for holding this hearing. I am afraid you may have created a love fest.

Senator MCCAIN. Let us hope it lasts. Mr. Bosak.

Mr. BOSAK. I would like to thank you also, Mr. Chairman, for holding this hearing, and I wanted to say that we are open to new solutions on this problem, going out to the Grand Canyon actually

this afternoon to participate in the National Parks Advisory Group meeting for overflights, and look forward to meeting some of the air tour operators and other conservationists working on this, so I think the dialogue is going to begin pretty soon.

Senator McCAIN. Well, I thank you, and I thank all three of you for your involvement, and Mr. Stephens, I do want to say that I believe you all have come a long way, and I appreciate that, and Mr. Robinson, I want to thank you for all that the Grand Canyon Trust does for the Grand Canyon. I cannot state how much I admire and appreciate all of the many contributions. This is one of 100 that you have been involved in.

Mr. Bosak, we look forward to working with you. We find your expertise and knowledge very important, and let us hope we do not have to have another hearing like this ever again.

Thank you. This hearing is adjourned.

[Whereupon, at 11:00 a.m., the Committee adjourned.]



## A P P E N D I X

NATIONAL PARKS CONSERVATION ASSOCIATION  
*Protecting Parks for Future Generations, October 13, 2002*

Hon. JOHN MCCAIN,  
Ranking Member,  
Commerce, Science, and Transportation Committee,  
Washington, DC.

Dear Senator McCain:

Thank you again for chairing the October 3rd Aviation Subcommittee oversight hearing on air tours and national parks. I was honored to testify in front of the subcommittee on behalf of the National Parks Conservation Association (NPCA). My organization and its members appreciate you giving this issue the attention it deserves. Please find attached to this letter written testimony from other conservation groups regarding problems with new and existing air tour operations over national parks.

As I stated during my testimony, NPCA shares your concern regarding the lack of progress made on the implementation of the National Parks Overflight Act of 1987 and the delayed FAA rulemaking for the National Parks Air Tour Management Act of 2000. We are open to exploring new ways to move forward on air tour regulations at the Grand Canyon National Park and will communicate that to Mr. Hoffman at the Department of Interior. We are also hopeful that FAA will release the Air Tour Management Act rulemaking as soon as possible.

After the hearing last Thursday, I traveled to the Grand Canyon to participate in a meeting of the National Parks Overflights Advisory Group, an advisory group called for by Congress in the recent Air Tour Management Act. I was impressed with the work the FAA and Park Service have done to prepare for the development of air tour management plans at parks. It became apparent at that meeting, however, that FAA and the Park Service still have not settled the fundamental issue of which agency determines the impacts of air tours on park visitors and resources during the development of park air tour management plans. The National Parks Air Tour Management Act and its legislative history indicate that the Park Service should determine impacts and the FAA should use the Park Service's information and expertise when developing air tour management plans in cooperation with the Park Service.

The agencies must settle this "determination of impacts" issue before completing an interagency Memorandum of Understanding, (MOU). That MOU will create the foundation that guides the agencies as they cooperate on the implementation of the Air Tour Management Act. NPCA believes some guidance from the Aviation subcommittee might help both agencies resolve this issue and avoid the mistakes that have impeded progress in the implementation of the Overflights Act of 1987.

We are also concerned that the inter-agency cooperation required by the Air Tour Management Act might be compromised by the great imbalance of personnel and resources the agencies are bringing to the process. If the Park Service is to have a real opportunity to fulfill its responsibilities under the Act, it clearly needs to dedicate more resources to the task.

Should you or your staff have any questions regarding our position, please feel free to contact me.

Sincerely,

STEVEN BOSAK,  
Associate Director, Visitor Experience Programs

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PREPARED STATEMENT OF CARL A. SCHNEEBECK, PROGRAM ASSOCIATE, JACKSON  
HOLE CONSERVATION ALLIANCE

This statement is submitted for inclusion in the record of the oversight hearing on overflights of national parks. The Jackson Hole Conservation Alliance (JHCA) is dedicated to responsible land stewardship in Jackson Hole, Wyoming, to ensure that human activities are in harmony with the area's irreplaceable wildlife, scenic and other natural resources. JHCA was founded in 1979 and has more than 1800 members nationwide.

This community is nearly unanimous in its opposition to commercial air tours over Grand Teton and Yellowstone National Parks. JHCA has been involved with the issue of commercial air tours over Jackson Hole, including portions of Grand Teton and Yellowstone National Parks, since they were first proposed in May 2000. JHCA has attended airport board meetings, analyzed documents, submitted comments, and proposed an amendment to the Teton County land development regulations prohibiting commercial air tours from operating out of private helicopter landing facilities in the county. Thanks to the support of an array of economic and political segments of the community, the local regulations were enacted last year. In addition, JHCA collected over 6,000 signatures from residents and visitors opposing commercial air tours over Jackson Hole.

**Threats Emerging**

In May of 2002, JHCA noticed flight maps on the web site of a scenic tour operator that showed egregious violations of the National Parks Air Tour Management Act (NPATMA). Specifically, the maps advertised air tours over sections of Yellowstone and Grand Teton, including a flight directly over Old Faithful. The day that we made the FAA aware of these maps they were removed from the web site. The intent of the operator to fly over these parks is evident and will be an increasing threat to the parks until air tour management plans can be completed.

When our organization first learned of the proposed scenic tours in Jackson Hole, we were relieved to learn of the Parks Air Tour Management Act and the protections that it seemed to provide for Grand Teton National Park. We quickly learned that the final rule for the Act had not been completed and that until that time, an air tour management plan for the park could not be completed. We have patiently waited for the final rule, submitting comments on June 8, 2001 supporting the FAA's proposal of an altitude of 5,000 feet AGL to define how low an aircraft may fly over a national park without triggering the Act.

**Conclusion**

Without the final rule in place for the Parks Air Tour Management Act, local communities have grown increasingly frustrated with the inability to draft air tour management plans for national parks. The vast majority of the tourism economy in Jackson Hole is reliant on the tranquility and quiet of national parks. Without the implementation of the final rule for the Act there is very little that citizens can do to start an air tour management plan for a park. Nor can the FAA enforce the act until such a rule is in place. JHCA believes that after two and a half years, it is time to truly implement the Act by implementing a final rule.

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GREATER YELLOWSTONE COALITION  
Bozeman, MT, October 2, 2002

Hon. JOHN D. ROCKEFELLER IV,  
Chairman,  
Senate Subcommittee on Aviation,  
Commerce, Science, and Transportation Committee,  
Washington, DC.

Re: Testimony for the October 3, 2002 Aviation Subcommittee oversight hearing on air tours and national parks

Mr. Chairman and Members of the Subcommittee, I submit this letter on behalf of the Greater Yellowstone Coalition to be considered as testimony in the Senate Aviation Subcommittee's October 3, 2002 oversight hearing on air tour management and national parks. The Greater Yellowstone Coalition (GYC) was founded in 1983 to protect Yellowstone National Park and the surrounding Greater Yellowstone Eco-



system. GYC has 12,500 members throughout the Greater Yellowstone region and around the country, as well as over 100 business members.

We greatly appreciate passage of the National Parks Air Tour Management Act of 2000. The ability of national parks to control air tours in order to protect park resources, primarily natural quiet, and visitor experience is essential. The delay in promulgating final regulations to implement the Act, however, is placing Yellowstone and Grand Teton national parks at risk from commercial air tours. In the time between passage of the Act and today, Vortex Aviation, Inc. set up a commercial air tour operation in and around Yellowstone and Grand Teton. The absence of a final rule has hamstrung the National Park Service and Federal Aviation Administration from taking action to regulate the company. This failure to act has frustrated park visitors, employees and area residents. Flights over Yellowstone have been witnessed by park employees in the summer of 2001 and the company's recent publicization of park tours alarmed park visitors and local residents alike. As a result, there is broad support among area residents in Jackson, WY and Yellowstone's gateway towns for a ban of commercial overflights. We urge the Subcommittee to expedite the final rule so that the Park Service and FAA may proceed with action necessary to protect park resources.

In addition, we encourage the Subcommittee to closely watch the rulemaking process to ensure that the high standards of National Park Service management are being upheld. NPS directives, policy and mission must form the strong framework which guides design and implementation of the final rule.

*NPS Management Policies of 2001* direct that "The Service will restore degraded soundscapes to the natural condition wherever possible, and will protect natural soundscapes from degradation due to noise (undesirable human-caused sound) . . . . The Service will take action to prevent or minimize all noise that, through frequency, magnitude or duration, adversely affects the natural soundscape or other park resources or values, or that exceeds levels that have been identified as being acceptable to, or appropriate for, visitor use at the sites being monitored." (NPS Management Policies at 4.9) *Director's Order #47* on Soundscape Preservation and Noise Management also provides important guidelines and delineation of NPS standards for resource protection.

We appreciate the opportunity to submit testimony on this important matter. In Yellowstone and Grand Teton national parks there is a pressing need for a final rule implementing the National Parks Air Tour Management Act and Congressional oversight to ensure that park values and guiding laws are upheld. Please contact us if you would like further information on the situation in Yellowstone and Grand Teton national parks.

Sincerely,

HOPE SIECK,  
*Association Program Director.*

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PREPARED STATEMENT OF RILEY MCCLELLAND, WILDLIFE BIOLOGIST, NATIONAL PARK SERVICE (RETIRED)

Mr. Chairman and Members of the Committee, I am Riley McClelland, retired after 25 years for the National Park Service as a wildlife biologist. I reside close to Glacier National Park. I am a long-time member of the National Parks Conservation Association (NPCA), and I support NPCA's mission to protect national parks, including their wildlife and their natural soundscapes

In 1999 Glacier National Park adopted a new General Management Plan that included a decision to ask the Federal Aviation Administration to prohibit commercial sightseeing tours over the park. The helicopter overflight issue was one of two park issues that attracted the vast majority of public comment on the Plan. This decision was responsive to the 861 comments received, more than 90 percent of which opposed the intrusion of scenic overflights.

The Glacier community, including neighbors, visitors and Glacier National Park itself, strongly supported the National Parks Air Tour Management Act of 2000, which would begin to give the National Park Service jurisdiction over commercial air tour operators flying over national parks. I am providing this testimony today primarily to express my frustration and the community's frustration that final rules implementing this law have not been published more than two years later.

Every year, as autumn approaches, I am reminded of the urgency of completing the rule-making process and allowing Glacier National Park to complete an air tour management plan that phases out all commercial air tour operations. October is the month that Glacier's skies become a continental migration route for thousands of

eagles, hawks and falcons. At peak times, more than 100 eagles per hour pass given locations in these corridors. On many occasions I have witnessed commercial helicopters fly directly through the Park's migration corridors at altitudes coincident with the flight paths of the birds. Although FAA issues a voluntary request for pilots to stay 2,000 feet above ground level, I have personally documented dozens of instances in which the helicopters have hovered less than 500 feet above prime wild-life habitat, including the raptor migration corridors.

Research had documented that helicopter overflights have adverse impacts on big-horn sheep, mountain goats, nesting birds and bears. Studies conducted in Glacier National Park in the 1980s found that over 80 percent of grizzly bears observed in a remote section of the park elicited a "strong" reaction to helicopters.

The impact of helicopter overflights on the experience of park visitors to Glacier National Park is equally negative. Every year I hear visitors in front country areas, such as the Going-to-the-Sun Road, vocalize their disgust at the noisy intrusion of overhead helicopters. Some of the most spectacular views of America's wildest mountains, lakes and valleys can be had from the Sun Road. There is little sympathy among park visitors to the argument that helicopters provide essential access for the elderly or disabled, when the Sun Road provides world-class access to all.

Backcountry park users are especially impacted by commercial overflights. Since its establishment, Glacier has been a symbol of wildland values: the sounds and fragrances of Nature among magnificent peaks, lakes, creeks, and a unique flora and fauna. The NPS has characterized park wilderness (exemplified by Glacier) as "solitude, and the music of stillness." Solitude and stillness now are hard to find in much of Glacier, even though NPS has recommended more than 95 percent of the park for wilderness designation and seeks to manage it today as wilderness. The major and controllable factor responsible for this loss of wildness is low altitude helicopter flying.

A 1957 NPS document entitled "The National Park Wilderness" clearly states the appropriate policy stance in a place like Glacier:

*Some strange proposals find their way to the National Park Service, often suggesting activities completely inappropriate to the best use of the parks . . . for instance, we can find requests for gambling concessions, helicopter sightseeing service . . . . The National Park Service immediately rejects such proposals, and it requires no rare understanding of park objectives to make the decisions.*

Unfortunately, the current regulatory environment precludes Glacier National Park from rejecting helicopter sightseeing services today, even though it would like to do so. That is what the 2000 legislation promised to fix, and that's what we're still waiting for today.

We look forward to a federal rule that provides Glacier National Park with jurisdiction over all commercial air tours operating within 5,000 feet above ground level over the park. This should apply to airspace 5,000 feet above the highest terrain and within 5,000 feet laterally of the route of flight. With respect to valleys, ground level should refer to the highest point on the ridges immediately adjacent to the valleys.

Mr. Chairman, I urge the Subcommittee to determine the cause of the delayed rulemaking process and to act expeditiously to resolve it. Thank you for the opportunity to share my concerns.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
MARGARET GILLIGAN

*Question 1.* The National Parks Overflights Act of 1987, mandated that the FAA and the National Park Service work together to substantially restore natural quiet to the Grand Canyon. It has now been 15 years since Public Law 100-91 was enacted. Has the statutory mandate been achieved? If not, what are the reasons and when will this objective be accomplished?

Answer. As currently measured, the standard has not been met. Accomplishing the goals established by the National Parks Overflights Act of 1987 has been more difficult, more complicated and involved more people than we had ever expected. Initially, when the Act was passed, the Federal Aviation Administration (FAA) developed Special Federal Aviation Regulation 50-2 that controlled the location and altitude of flights, moved flights above the rim of the canyon and placed those air tour flights on specific routes.

Over time, FAA and the National Park Service (NPS) have learned much about measuring and reducing noise in the park. NPS has refined its measurement of substantial restoration of natural quiet. In response, we have proposed and in some

cases implemented new routes and new altitude limits. We have limited the areas where tours may operate and the times they can be flown. In fact, before the recent decision by the Court of Appeals for the D.C. Circuit, FAA and NPS believed that the actions taken restored natural quiet to 43 percent of the park. That was short of our goal, but well on the way. Now, the Court has remanded some of our rules and directed that we reevaluate the work we have done. FAA and NPS are developing a response to the Court.

### Grand Canyon Issues

*Question 2.* In a case decided on August 16, 2002, (*United States Air Tour Association, et al., v. Federal Aviation Administration*), the Court of Appeals for the D.C. Circuit concluded that the FAA'S use of "average annual day," in lieu of "any given day," in its definition of the substantial restoration of natural quiet at the Grand Canyon "appears inconsistent with both the Park Service's definition of the term and the premise on which that definition was based." The court also concluded that the FAA's decision to exclude non-tour aircraft from its noise model is "arbitrary and capricious and requires reconsideration by the agency." What does the Park Service need to do to assist the FAA in resolving issues remanded back to the agency for reconsideration by the Court?

Answer. NPS must provide guidance to FAA in choosing how to define substantial restoration of natural quiet. This definition will determine the extent to which the goal of substantial restoration of natural quiet has been achieved. Prior to the court decision, FAA and NPS jointly estimated that substantial restoration of natural quiet had been achieved in over 43 percent of the Grand Canyon National Park based on the decision to use the "annual average day" for measurement. Once NPS clarifies the "day" it intends for us to use, we will apply it.

*Question 2a.* Is the noise from non-tour aircraft truly incidental, or will that part of the Court's ruling make it harder to restore natural quiet without severe restrictions on air tours?

Answer. We believed that noise from non-tour aircraft was incidental as concluded by our technical experts after a review of available evidence that suggested that general aviation flights account for about 3 percent of all aircraft in the park and that aircraft flying over 30,000 feet have no impact. The Court's ruling requires the agencies to conduct additional analyses to quantify the contribution of other aircraft overflights.

*Question 3.* The National Parks Air Tour Management Act of 2000 requires the FAA to designate within 12 months of the enactment of the law, "reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology for purposes of this section." The law also requires the FAA to "establish routes or corridors for commercial air tour operations . . . that employ quiet aircraft technology for . . . tours of the Grand Canyon . . ." What progress has been made toward these two statutory requirements? What, if anything, remains to be done and when can we expect to see these mandates accomplished?

Answer. In 1996, the FAA published the NPRM, *Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park*, which was the predecessor to the current quiet technology concept. Following the publication of the NPRM, as well as a number of other related rulemakings, it became clear that there were long-term significant issues yet to be resolved before the quiet technology rulemaking could be finalized. The FAA and NPS jointly agreed that the best approach to substantially restore natural quiet to the Grand Canyon was to devote resources to final rules that addressed critical near-term needs. The agencies determined that considerable steps in reaching the substantial restoration of natural quiet in the Grand Canyon could be achieved by modifying the airspace over the park, creating larger flight-free zones, changing the route structure through GCNP, and establishing limits on the numbers of commercial air tours that could be flown in the park.

The joint FAA/NPS quiet technology rulemaking team reconvened in 2000. After successfully addressing a myriad of technically complex issues, the joint FAA/NPS quiet technology rulemaking team prepared a supplemental notice of proposed rulemaking (SNPRM) to define quiet technology designation for aircraft types in commercial air tours at Grand Canyon National Park. The SNPRM is undergoing review by the Office of Management and Budget. Since FAA did not meet the 12-month deadline set in the Act, the FAA prepared a report to Congress on Quiet Aircraft Technology for Grand Canyon to explain the delay. This report was submitted in October 2001. Also, in accordance with the Act, FAA and NPS established, in June 2001, the National Parks Overflight Advisory Group (NPOAG) to, in part, provide advice, information and recommendations on the establishment of incentive

routes and corridors in Grand Canyon National Park. The FAA has briefed the NPOAG on its key role in the implementation of the quiet technology standard once that standard becomes a final rule. The Act also directed that, two years after enactment, FAA and NPS were to submit to Congress a report on “the effectiveness of this title in providing incentives for the development and use of quiet aircraft technology.” The second report has not been prepared because it is also dependent upon the promulgation of a final rule on the designation of quiet aircraft technology.

*Question 4.* Why has the FAA failed to analyze any of the data in the quarterly reports made by Grand Canyon air tour operators regarding their operations? Hasn't this failure jeopardized the agency's ability to review interim caps and other rules affecting operations?

Answer. FAA has been collecting data since 1997. The first round of data collected was used to support the final rules published in April 2000. For example, the data was the basis for the operations cap imposed on the air tour operators. Data collected since May 2000 is being compiled and analyzed by a full time data analyst dedicated to the Grand Canyon. This data will be used in our determination of any additional action needed to achieve substantial restoration of natural quiet.

*Question 5.* What is your view of the Park Service's proposal to use an alternate dispute resolution process to resolve disputes between FAA and the Park Service regarding the restoration of natural quiet at the Grand Canyon?

Answer. FAA is receptive to the proposal to use an alternative dispute resolution (ADR) to resolve issues regarding the restoration of natural quiet at the park. To clarify, however, we believe that ADR was proposed to resolve the many diverse interests in the park and not to resolve potential conflicts between the agencies. FAA is mindful, that how noise is measured in achieving the overall goal of substantial restoration of natural quiet affects a number of regulatory issues and competing interests such as the economic impact on small businesses, costs and benefits analysis, the impact on endangered species, and the impact on Native American traditional cultural properties and sacred, religious sites.

*Question 6.* In your testimony, you state that the quiet technology rule is in “final review”. What does that mean? Similarly, former Administrator Jane Garvey responded to a letter I wrote and told me that a rule was in “final coordination” to implement the National Parks Air Tour Management Act of 2000. Six months later there had been no action on that rule. Is that what we can expect with regard to quiet technology? How long will “final review” take?

Answer. The rule was transmitted to OMB for their review on December 17, 2002. We expect the OMB review to be completed within 90 days.

#### **National Parks Air Tour Management Issues**

*Question 7.* This past January, Senator Akaka and I wrote to the FAA Administrator to express our concern that the final rule to implement the National Parks Air Tour Management Act of 2000 had not yet been issued. Another nine months have gone by since then and it is our understanding that the rule has still not been published. Many people consider that this law, which was enacted 2½ years ago, is largely self explanatory.

- On April 10, 2002, then FAA Administrator Jane Garvey responded to this letter, saying that the National Parks Overflights rule was in “final coordination.” Yet no further action appears to have been taken until I called this hearing. Why is that so? Do I need to have a hearing every month in order to ensure that action is being taken?
- Are there issues between the FAA and the Park Service that have complicated and therefore, delayed the promulgation of the final rule?
- Why is the rulemaking process taking so long?
- When can we expect to see the final rule published?
- Once the final rule is issued, how soon will the agencies be ready to start developing Air Tour Management Plans?
- How many air tour management plans do the agencies anticipate being able to complete with in the first 24 months?
- What is the estimated cost to the agencies per Air Tour Management Plan?

Answer. I am pleased to tell you that the final rule was published on October 25, 2002, effective January 23, 2003.

While the rule was in development FAA established an Air Tour Management Plan (ATMP) office that would be responsible for the development of guidance material for the public and FAA personnel. The ATMPs office is up and running and in cooperation with NPS will formally initiate the first ATMPs at two parks in Hawaii

in February 2003. Preliminary data collection activities are already underway at those parks. Additionally, to ensure smooth implementation of the rule, the ATMPs office published an Advisory Circular for the public and internal guidelines for the FAA personnel involved. The organization also developed video training material and established a web site at <http://www.atmp.faa.gov> to provide the public with answers and other information.

Current plans call for ten ATMPs to be initiated in Fiscal Year 2003 and 20 in Fiscal Year 2004. The FAA will make every effort to complete these ATMPs within 24 months.

We estimate that the average cost to the agencies will be \$300,000 per Air Tour Management Plan.

*Question 8.* I have received reports that new air tour operations have begun at certain National Parks since the National Parks Air Tour Management Act of 2000 was enacted. Further, I have heard that existing air tour operators have expanded operations. Since the law was designed to impose a moratorium on new or expanded operations pending the development of Air Tour Management Plans at affected parks, how will the FAA deal with such new or expanded operations once the final rule has been issued?

Answer. With the publication of the Final Rule in October, FAA is beginning to receive applications for Operating Authority. The initial application deadline is January 23, 2003. Following this initial deadline, FAA will make an initial inventory of National Parks and Tribal Lands locations for which ATMPs will be required, air tour operations, and new entrant air tour operations as defined in the Act. The FAA and NPS are working on a plan to prioritize the development of ATMPs.

Any operators who initiated service after April 5, 2000, will be considered new entrants for purposes of applying the rule, since they would not meet the statutory definition of an existing operator. Such operators must cease commercial air tour operations over the national park unit or tribal land unless they request and receive interim operating authority in accordance with conditions established in the Act.

Likewise, unless otherwise authorized by FAA, existing operators will be limited to the greater of the number of operations conducted within the 12-months preceding April 5, 2000 or the annual average for the three year period preceding April 5, 2000.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
ALAN R. STEPHENS

*Question 1.* Why has FAA taken so long to develop a rulemaking regarding the use of quiet aircraft technology at Grand Canyon?

Answer. We have advocated quiet aircraft incentives since 1986. We put our money on the line and voluntarily developed propeller technology that make our Vistaliner aircraft the quietest large air tour aircraft flying over Grand Canyon and we did so in 1986. Everyone acknowledges that our aircraft are quiet and that quiet aircraft incentives must be a priority in restoring natural quiet to Grand Canyon. Thus it simply baffles us that nothing has been done about quiet aircraft incentives at Grand Canyon.

When FAA finally issues rulemaking to define quiet aircraft and provide quiet aircraft incentives, Grand Canyon Airlines will give the matter the highest priority.

*Question 2.* The Department of Interior is proposing Alternative Dispute Resolution as a possible solution to this history of slow progress. How do the air tour operators feel about this?

Answer. The air tour industry is firmly on record as being in favor of using a process like the FAA Aviation Rulemaking Committee, or ARC, as a means of bringing air tour interests, the environmental lobbyists and native American interest together to resolve the issues that divide us at Grand Canyon. The process that is employed needs to have unbiased rules, have an impartial facilitator and importantly, bring only those interests to the table that can speak for the organizations they represent. For all too long we have seen that the environmental lobbyists have never been able, or willing, to make an attempt at negotiating a solution to the issues that divide them and us on air tour regulations at Grand Canyon. Thus the focus must be on bringing these environmental interests to the table. One more thing, this alternative dispute resolution process must lead to a final set of air tour regulations at Grand Canyon.

*Question 3.* What would you recommend being done to ensure that the interests of the air tour operators are being addressed?

Answer. A fair alternative dispute resolution process will ensure that we have a full opportunity to represent our concerns and importantly our recommendations for developing a permanent air tour management plan at Grand Canyon. However, that said, until the junk air tour noise modeling at Grand Canyon is replaced with science that is dependable and accurate, all we will be doing is akin to rearranging the deck chairs as the Titanic is sinking. Junk science produces junk results. Even the Park Service admits that its aircraft noise models at Grand Canyon remain unvalidated. That must be the first step in negotiating a good air tour management plan at Grand Canyon.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
STEVEN BOSAK

*Question 1.* Air tour operators believe that no matter how quiet an aircraft may be, any air tour that is audible will not satisfy the Park Service or environmental critics of the industry. What is your reaction to this viewpoint?

Answer. The National Parks Conservation Association supports the timely completion of the “Quiet Technology” regulations for air tour operators so that air tours can lower their noise impact on park visitors and resources, however, we do not think that less noisy aircraft will be the solution for entire parks or at every park.

At the Grand Canyon, the Park Service interprets the National Parks Overflights Act to require that 50 percent of the park experience natural quiet for 75 percent of any given day. Regardless of adaptations that air tour operators may make to quiet their aircraft, the Overflights Act requirement for the Grand Canyon remains the same. Quieter aircraft may contribute to reducing the area on the ground in which aircraft are audible, but noise modeling suggests that quieter aircraft alone, without significant reduction in air tours and elimination of certain tour routes, will not achieve the goal.

With regard to the implementation of the National Parks Air Tour Management Act, the appropriateness of air tours at any park—or in different areas of a given park—is a site-specific determination. It has everything to do with the nature of the resource being protected. For instance, the Park Service does not allow family picnics on the Chickamauga battlefield. There is nothing inherently wrong with a family picnic; it is simply inappropriate for the purpose and meaning of that park unit. So, there will be areas of certain parks and even entire parks where NPCA opposes the presence of air tours, regardless of how much noise reduction an air tour can achieve. We will express our views on the appropriateness of air tour operations at other parks through the air tour management planning process that was called for by the National Parks Air Tour Management Act. This is exactly why the air tour management plan was the correct course of action to make these determinations.

*Question 2.* In your prepared testimony, you state that the Park Service bears some blame for the lack of progress in the implementation of the National Parks Overflight Act of 1987 at the Grand Canyon. In what ways has the Park Service impeded progress?

Answer. The National Parks Conservation Association believes the Park Service has not given adequate staff and management time to implementation of the Overflights Act of 1987. Measuring and mitigating aviation noise in backcountry locations has been a new and complex task for which NPS leadership has not allocated sufficient resources.

Moreover, NPCA believes the Park Service should have been more forceful in its debate with FAA over which agency has authority to determine air tours impacts in Grand Canyon. (It took the recent D.C. Circuit decision to settle that debate).

*Question 3.* What is your position on Alternative Dispute Resolution as a way to end some of the deadlock that consistently seems to come up in this process?

Answer. We think that the recent D.C. Circuit decision on this issue made clear what the FAA and Park Service must do to implement the Overflights Act. They must substantially restore natural quiet, as that term has been interpreted by the Park Service. (They are already more than 15 years late in doing so.) NPCA would be open to a stakeholder discussion regarding ways to achieve that statutory mandate consistent with the Park Service’s interpretation of “substantial restoration of natural quiet” in Grand Canyon National Park, as upheld by the D.C. Circuit Court. We would oppose any effort to reopen for “negotiation” issues regarding interpretation of the Overflights Act and its key terms that have already been resolved by the D.C. Circuit.

I would note that we have not yet received any formal invitation from NPS regarding an “ADR” process for the Grand Canyon.

*Question 4.* Do you believe that the National Parks Air Tour Management Act faces the same hurdles and obstacles as we have faced in the implementation of the law governing air tours at Grand Canyon? What can be done to ensure that this process is not bogged down?

Answer. There appear to be many parallels between the Grand Canyon overflights issue and implementation challenges facing the National Parks Air Tour Management Act (the Act). To avoid delays in implementation of the National Parks Air Tour Management Act, we suggest the Committee take the following steps:

- Resolve the issue of which agency has the authority to determine air tours' impacts on parks. The Park Service has the expertise for managing national park resources, visitors, and values. Congress has recognized the Park Service's responsibility to protect national parks according to the mandate of the Organic Act of 1916, yet the FAA is reluctant to acknowledge formally the Park Service expertise in natural quiet preservation.
- Ensure that both the FAA and NPS make air tour management planning a priority and agree to follow the spirit of the Act. Perhaps a "truce" document signed at multiple levels—high levels—of both agencies would create a mutual understanding of past problems and help avoid repeating past mistakes.
- Ensure that the Park Service commits sufficient resources to implementation of the Act. Although FAA is the lead agency, the resources it is dedicating to the park air tour management process far outweighs the Park Services input. This lack of balance in resources may leave park managers at a disadvantage when advocating for the protection of natural quiet in park areas.

