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NATIONAL PARKS
AIR TOUR
MANAGEMENT ACT

More Flexibility and
Better Enforcement
Needed



G A O

Accountability * Integrity * Reliability



Highlights of [GAO-06-263](#), a report to congressional requesters

NATIONAL PARKS AIR TOUR MANAGEMENT ACT

More Flexibility and Better Enforcement Needed

Why GAO Did This Study

Primarily because of concerns that noise from air tours over national parks could impair visitors' experiences and park resources, Congress passed the National Parks Air Tour Management Act of 2000 to regulate air tours. The act requires the Federal Aviation Administration (FAA) and the National Park Service to develop air tour management plans for all parks where air tour operators apply to conduct tours. A plan may establish controls over tours, such as routes, altitudes, time of day restrictions, and/or a maximum number of flights for a given period; or ban all air tours.

GAO was asked to (1) determine the status of FAA and the Park Service's implementation of the act; (2) assess how the air tour operators and national parks have been affected by implementation; and (3) identify what issues, if any, need to be addressed to improve implementation.

What GAO Recommends

To allow more cost-effective implementation, Congress may wish to consider amending the act to give the agencies authority to determine which parks should develop plans. GAO also recommends that FAA take several actions to improve compliance, enforcement, and implementation.

In commenting on the draft report, the Departments of Transportation and the Interior generally agreed with our recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-263.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin M. Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

What GAO Found

FAA and the Park Service have taken some steps to implement the National Parks Air Tour Management Act, but almost 6 years after its passage, the required air tour management plans have not been completed. FAA issued regulations implementing the act and the agencies began developing plans at nine parks. But implementation has been slow, in part, because FAA needed to address airline security after the September 11, 2001, attacks and because the two agencies disagreed over how to comply with environmental laws. Agency officials expect that future plans will be developed more quickly since they have drafted an implementation plan to guide their development. Nevertheless, because no plans have been completed, it is unclear how some of the act's key requirements will be addressed, such as creating incentives for air tour operators to adopt quiet aircraft technology.

FAA and the Park Service's slow implementation of the act has limited the ability of air tour operators to make major decisions, such as expanding or selling their businesses, while it has had little effect on the parks. For example, operators have been unable to increase their number of air tours beyond their pre-2000 levels or expand to additional parks. Also, air tour operators face uncertainty about whether they can legally transfer their authority to conduct air tours. In contrast, the implementation of the act has so far had little effect on the 112 national parks we surveyed. Most of the parks responded that they had not experienced any positive or negative effect of the implementation of the act, or that they were uncertain or did not know the extent of the effect. Nonetheless, 47 percent responded that their park could benefit by having a plan to mitigate or prevent potential adverse impacts on park resources, visitor experiences, and air safety.

GAO identified four key issues that need to be addressed to improve implementation of the act:

- *Lack of flexibility for determining which parks should develop plans.* Not all parks required to develop a plan may need one because they have few air tours or are more affected by other types of flights. Yet, the act does not provide the agencies with any flexibility to exclude some parks.
- *Absence of Park Service funding for its share of plan development costs.* The Park Service has not requested nor received funding for its share of the costs of developing plans.
- *Limited ability to verify and enforce the number of air tours.* Air tour operators are not required to report the number of tours they conduct. As a result, the agencies are limited in their ability to enforce the act. Based on information provided by operators, GAO found some operators had inappropriately exceeded their number of authorized tours.
- *FAA's inadequate guidance concerning the act's safety requirements.* FAA has not instructed its district offices or air tour operators on how to interpret the act's requirement that operators meet a specified level of safety certification.

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Abbreviations

ATMP(s) air tour management plan(s)
FAA Federal Aviation Administration
NEPA National Environmental Policy Act

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January 27, 2006

Congressional Requesters

Primarily because of concern that noise from air tours over our national park units could impair visitors' experiences and natural, cultural, and historic resources, the Congress passed the National Parks Air Tour Management Act of 2000 (the act) to regulate commercial air tours (air tours) over units of the national park system.¹ To regulate air tours, the act requires the Federal Aviation Administration (FAA), in cooperation with the National Park Service (Park Service), to develop air tour management plans (ATMPs) for national park units and abutting tribal lands where air tour operators apply for authority to conduct air tours. The purpose of an ATMP is to develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of air tours on national park units' natural and cultural resources and visitors' experiences, and on abutting tribal lands. An ATMP may establish controls over tours, including flight routes, altitudes, time of day restrictions, and maximum number of flights for a given time period, or prohibit air tours altogether.

In October 2002, FAA notified companies that conduct air tours (air tour operators) of the need to apply for authority to conduct air tours over national park units.² Before approving an air tour operator's application for authority to fly over a park unit (operating authority), the two agencies must create an ATMP for that park unit. When an operator that conducted air tours over the park unit before the act (i.e., an existing operator) applies for operating authority for that park unit, FAA must grant the existing operator interim operating authority, which lasts until 180 days after the ATMP is completed. In accordance with the act, the number of air tours FAA approves under interim operating authority is based on either an air tour operator's total number of air tours during the 12-month period before

¹Pub. L. No. 106-181, title VIII, 114 Stat. 185 (2000). "National park units" refers to all units in the National Park System, including national historic sites, memorials, monuments, parks, recreation areas, and other designations. The act also applies to all tribal lands within or abutting national park units—however, we limited the scope of our review to national park units.

²67 *Fed. Reg.* 65662 (Oct. 25, 2002). A "commercial air tour operator" is any person who conducts a commercial air tour operation, including individuals, companies, and corporations. A "commercial air tour operation" is any flight for hire carried out for sightseeing purposes over a national park unit below 5,000 feet above ground level; we refer to these operations as "air tours" in this report.

the act was passed, or the average number of annual air tours conducted in the 36 months before the act was passed, whichever is greater. The act also contains provisions for granting interim operating authority to operators who had not conducted air tours over a particular national park unit before the act (new entrants) and for granting increases in interim operating authority for existing operators over and above their pre-act level of activity. Once an ATMP is created for a park unit, an air tour operator may or may not be granted final operating authority, depending upon the restrictions the ATMP imposes. In addition, the act generally requires air tour operators to meet a specified level of safety certification, if they are not already certified.

As of November 2005, FAA had active applications for operating authority at 94 of the 388 national park units: applications from 77 existing operators for authority to conduct air tours at a total of 85 park units, and from 16 new entrants at some park units with existing operators, as well as 9 additional park units.³ FAA and the Park Service have not completed any ATMPs, and thus FAA has not granted final operating authority to any operator. In issuing its regulations codifying the act, FAA stated that all operators seeking to conduct air tours had to file an application for operating authority and have interim operating authority before January 23, 2003, almost 3 years after the act's passage, in order to avoid a break in operations. In oversight hearings in 2002 and 2004, Congress raised concerns primarily about the agencies' lengthy implementation process—the agencies had not completed any ATMPs—and the validity of the air tour data being used to establish ATMPs.⁴

In this context, you asked us to (1) determine the status of FAA and the Park Service's implementation of the act; (2) assess how the air tour operators and national park units have been affected by the implementation of the act; and (3) identify what issues, if any, remain to be addressed to improve the implementation of the act. You also asked us to report on compliance regarding payment of fees for air tours over national

³Six of the sixteen new entrants are existing operators that have received interim operating authority at some national park units but have requested authority as new entrants at additional park units, while 10 are solely new entrants that have no authority to conduct tours over any park units.

⁴U.S. Senate Committee on Commerce, Science, and Transportation, "National Park Overflights," October 3, 2002; and U.S. Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, "National Parks Air Tour Management Act," July 22, 2004.

park units. We will report on the fee issue separately because the air tour fee legislation is distinct from the National Parks Air Tour Management Act, and air tour fees are currently charged at only three national park units.

To determine the status of implementation, we analyzed FAA and Park Service policy and guidance documents, reports, data, and applicable laws and regulations. We also assessed the agencies' budget data, and FAA's data on both the number of air tours authorized under interim operating authority and the number of new entrant operators; we determined that these data were sufficiently reliable for the purposes of this report. To assess how the air tour operators are affected by the implementation of the act, we interviewed a sample of 29 air tour companies that conduct tours at 12 different national park units. This sample included different sizes of existing air tour operators based on the number of air tours they conduct annually, as well as all new entrant operators and existing operators that have requested increases in operating authority. To assess effects on national park units, we surveyed (and received responses from) all of the 112 national park units where applications for operating authority were valid as of July 2005. Since then, two operators withdrew their applications for operating authority at 15 park units, and FAA withdrew authority for one operator at 3 park units where there were no other applicants. This reduced the number of park units needing ATMPs to 94, as of November 2005. See appendix III for a list of the 94 park units. When reporting survey results, we refer to all 112 park units that were surveyed. Ten tribal lands within or abutting national park units have also been identified as needing to be part of the ATMPs developed at the relevant park units, but our review is limited to the implementation of the act at national park units. We also interviewed Park Service officials at 12 different national park units selected through nonprobability sampling.⁵ We selected these park units because 9 of the 12 were the first park units for which FAA and the Park Service chose to develop ATMPs, and the other 3 faced circumstances that differed from the first 9: one had a military flight restriction, one was a potential candidate for an alternative method for developing an ATMP, and one believed an ATMP was not needed because it had few air tours. To identify issues that remain to be addressed to improve the implementation of the act, we analyzed the agencies' policies, guidance, reports, and applicable regulations and laws. We also interviewed FAA and Park Service

⁵Results from nonprobability samples cannot be used to make projections about a population because in a nonprobability sample, some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

officials at headquarters and at field offices. A more detailed description of our scope and methodology is presented in appendix I, and the survey instrument and aggregate results are presented in appendix II. We performed our work from January 2005 through January 2006 in accordance with generally accepted government auditing standards.

Results in Brief

While FAA and the Park Service have taken some important steps to implement the provisions of the National Parks Air Tour Management Act of 2000, implementation has been slow and some key requirements of the act have yet to be addressed. Specifically, as the act requires, in April 2001, the agencies established the National Parks Overflights Advisory Group to advise them on the act's implementation. In October 2002, FAA issued a final rule that completed the definition of an air tour and informed air tour operators that they must apply for operating authority over national park units. Finally, in January 2003, FAA and the Park Service began developing ATMPs for nine park units. Officials at both agencies told us that implementation was initially slow because FAA needed to address airline security after the September 11, 2001, terrorist attacks and because the agencies disagreed over the procedures necessary to implement the act in compliance with environmental laws, such as determining what constitutes a significant impact on park resources. Agency officials expect to establish ATMPs more quickly in the future because they now have a draft implementation plan that will guide their creation. According to the agencies' current plans, it could take 5 more years to complete the development of ATMPs for all the 94 national park units with active applications from air tour operators. Furthermore, some key requirements of the act have not been fully implemented. Specifically, the act requires that FAA and the Park Service include in ATMPs (1) a competitive bidding process for awarding final operating authority if an ATMP limits the number of air tours over a national park unit and (2) incentives for air tour operators to adopt technologies that make aircraft quieter. The agencies expect to address these requirements on a park-unit-by-unit basis as each ATMP is developed.

FAA and the Park Service's slow implementation of the act has limited the ability of air tour operators to make major decisions such as expanding or selling their businesses, while implementation has had little effect on the 112 national park units we surveyed in July 2005. Specifically, existing operators cannot expand their air tour businesses over national park units, and new entrants cannot enter the business, because FAA, in cooperation with the Park Service, has granted neither increases in interim operating

authority to existing operators nor interim operating authority to any new entrants. The agencies have not agreed on whether or how they will grant any increases to existing operators, or operating authority to new entrants, before the appropriate ATMPs have been completed. Furthermore, air tour operators face uncertainty about whether they can legally transfer their authority to conduct air tours—which they believe should be valued in the marketplace—and are therefore having difficulty making decisions, such as whether to sell their businesses. In addition, the act requires operators to obtain a specified level of certification that has more stringent safety standards than some operators had previously met, and which takes an investment of resources to obtain. Otherwise, as an exception to this safety requirement, the act limits the number of air tours conducted by operators that do not meet this level of certification to a total of five tours per park unit per month with the agencies' approval. In contrast to these effects on air tour operators, the implementation of the act has had little effect on the 112 national park units we surveyed. Most park units responded to the survey that they had not experienced any positive or negative effect from the act's implementation, or they were uncertain or did not know the extent of the effect. In written comments in the survey, 14 park units attributed this lack of effect to their unit not having air tours. Only 15 percent reported a positive effect to some extent, while 13 percent reported a negative effect to some extent. However, 47 percent of the 112 park units also responded that they need an ATMP to mitigate or prevent potential adverse impacts on park unit resources, visitor experiences, and air safety. The agencies plan to first develop ATMPs at park units on the basis of the presence of new entrants, higher levels of air tour activity, and other factors.

We identified four key issues to be addressed by the Congress and the agencies to improve implementation of the act. Specifically:

- *Lack of flexibility for determining which park units should develop ATMPs.* The act requires that an ATMP be developed for any park unit for which an application for operating authority is filed, regardless of the requested number of air tours or their impact on the park unit. The number of air tours authorized at each park unit under interim operating authority ranges from more than 35,000 air tours per year to 5 air tours per year. In addition, when asked in our survey to identify the one or two types of overflights that had the most negative effect on their park unit, more park units reported general aviation (56 park units) and military (44 park units) overflights than air tours (33 park units). More than half of the 112 park units responded either that they did not need an ATMP

or that they were unsure, despite the act's current requirement. In our discussions with both agencies and air tour operators, we found that voluntary agreements at some park units had successfully established air tour routes and elevation levels to minimize impacts from air tours. These voluntary agreements, some of which were adopted prior to the act, are good management practices that could be replicated at other park units. However, the act does not provide the agencies with any flexibility to exclude some park units from the requirement. The agencies have raised questions about whether it is cost-effective to develop an ATMP for some park units—the first nine plans average an estimated \$405,000 each, implying a potential \$38 million cost for 94 ATMPs in current dollars. To save time and money in developing future plans, the agencies are considering alternatives to the ATMP approach used at the first nine park units, such as an expedited process at park units where there is little air tour activity or public controversy. The Congress may also wish to consider amending the act to give the agencies authority to determine which park units should develop ATMPs.

- *Absence of Park Service funding for its share of ATMP development costs.* The Park Service, in an interagency memorandum of understanding with FAA, agreed to fund 40 percent of the cost of developing ATMPs. However, the Park Service had not requested or received any dedicated funding for the ATMP program until fiscal year 2006, although it had contributed staff time. In contrast, by the end of fiscal year 2005, FAA had contributed \$29 million for the ATMP program—\$27 million to a contractor to record and analyze sounds in park units and other activities, and the remaining \$2 million for staff salaries, travel expenses, equipment and supplies, and in-house contractors. At that level, FAA has already received about 67 percent of the total estimated ATMP cost for the 94 park units. If the Park Service does not meet its obligation within the next 2 years, officials from both agencies said implementation may be hindered.
- *Limited ability to verify and enforce the number of air tours.* The agencies lack a mechanism to verify the number of air tours conducted before or since the act because FAA and existing laws and regulations do not require operators to record and report the number of air tours they conduct over national park units. Without these data, FAA and the Park Service cannot determine whether operators actually conducted the number of air tours prior to the act that they reported in their applications for operating authority, nor whether operators are violating

their interim operating authority. As a result, the agencies are limited in their ability to enforce the act. We determined that 3 of the 25 existing operators we interviewed were exceeding the number of air tours they were authorized to conduct under interim operating authority, flying over park units for which they did not have authority, or both. For example, one air tour operator told us it was exceeding its interim operating authority by more than 3,000 tours per year over a major national park unit.

- *FAA's inadequate guidance concerning the act's safety requirements.* FAA has not clearly communicated to its district offices or air tour operators how to interpret the act's requirement for operators to obtain a specified level of safety certification. The act allows an exception for operators not meeting this requirement to be restricted to a combined total of five air tours per park unit per month if they get approval from both agencies. However, we found three operators had neither applied for the increased safety certification nor met the conditions of the exception. Officials in FAA's district offices either were not aware of these circumstances or believed the operators were in compliance with the act. However, FAA headquarters officials disagreed, indicating these operators were in violation.

To allow more cost-effective implementation of the National Parks Air Tour Management Act, Congress may wish to consider amending the act to authorize FAA and the Park Service to determine which park units should develop ATMPs. In addition, we recommend that FAA take a number of actions to improve compliance, enforcement, and implementation of the act. In commenting on a draft of this report, the Department of Transportation agreed with our findings and agreed to consider our recommendations as they move forward with the program. The Department of the Interior (Interior), which oversees the Park Service, generally agreed with our findings and recommendations, but it questioned whether Congress needs to amend the act to give the agencies greater flexibility. However, Interior stated that it "... would agree to a general grant of authority which would provide the agencies discretion to make such determinations based on agency developed criteria that goes beyond simply the level of air tour activity." See the "agency comments and our evaluation" section and appendix VI for Interior's comment letter and our evaluation of these comments.

Background

Primarily out of concern that noise from air tours over national park units could impair visitors' experiences and park unit resources, the Congress passed the National Parks Air Tour Management Act of 2000 to regulate air tours conducted over national park units. The act mandates new responsibilities for FAA and the Park Service, including developing ATMPs for all national park units where air tour operators apply for authority to conduct air tours.⁶ The purpose of an ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, from air tours on the natural and cultural resources and visitor experiences at national park units, and on abutting tribal lands. To implement the act, FAA and the Park Service must, among other things:

- establish an advisory group to provide continuing advice and counsel on air tours over and near national park units;
- establish an ATMP at any national park unit whenever an air tour operator applies for authority to conduct an air tour over the park unit;
- grant interim operating authority to existing air tour operators to provide annual authorizations to operators until 180 days after an ATMP is developed at the relevant park unit;
- develop an open, competitive process for air tour operators interested in providing air tours over a park unit whenever an ATMP limits the number of air tours during a specified time frame;
- include incentives in an ATMP for air tour operators to adopt technology that makes aircraft quieter for tours over park units; and
- submit a report to Congress by April 5, 2002, on the effectiveness of the act in providing incentives for the development and use of quiet aircraft technology.

⁶The act does not apply to (1) the Grand Canyon National Park or tribal lands within or abutting the Grand Canyon National Park; (2) any air tour operator flying over or near Lake Mead National Recreation Area, solely as a transportation route, to conduct an air tour over Grand Canyon National Park; and (3) any land or waters in Alaska. The act prohibits any air tours over Rocky Mountain National Park. Grand Canyon National Park has separate legislation to regulate air tours over that park: the National Parks Overflights Act of 1987 (Pub. L. No. 100-91, 101 Stat. 676).

The act requires FAA and the Park Service to prepare each ATMP in accordance with the National Environmental Policy Act of 1969 (NEPA). NEPA requires each federal agency to prepare an environmental impact statement to assess proposed actions that will have a significant impact on the environment. If the agency is unsure whether the proposed action will have a significant impact, it prepares a briefer document called an environmental assessment. If the assessment concludes the action will have a significant impact, the agency must then prepare an environmental impact statement—otherwise it issues a “finding of no significant impact.” The act requires both FAA and the Park Service to approve the NEPA decision document associated with each ATMP; agency officials believe they will need to prepare an environmental assessment for most ATMPs.

The act defines an “air tour” as any flight conducted for compensation or hire in an aircraft where a purpose of the flight is sightseeing over a national park unit or within one-half mile outside the boundary of any national park unit—the agencies further defined air tours to include only flights below 5,000 feet above ground level. The act defines two types of air tour operators: existing and new entrant operators. Existing operators are those that were providing air tours over a national park unit at any time during the 12-month period ending April 5, 2000. A new entrant is an air tour operator that applies for operating authority but did not provide air tours over a national park unit during the same 12-month period. Before an ATMP is developed for a park unit, the act instructs FAA to grant interim operating authority to any existing air tour operator that applies for operating authority, which lasts until 180 days after an ATMP is developed. Interim operating authority provides existing air tour operators with an annual number of tours that can be conducted over a park unit. The number of tours authorized is equal to the number of air tours conducted by the operator during the 12-month period prior to the act’s passage on April 5, 2000, or the average number of air tours per 12-month period conducted by the operator for the 36 months before the act—whichever is greater. The act allows FAA and the Park Service to grant increases in interim operating authority to existing operators, and to grant interim operating authority to new entrant operators, under certain circumstances, but the agencies have chosen not to do so.

For safety reasons, the act requires certain air tour operators—known as Part 91 operators because they operate under safety rules in Part 91 of Title 14 of the *Code of Federal Regulations*—to apply for the more stringent operational and safety rules outlined in Part 135. Some of the more stringent safety rules under Part 135 include passing an annual flight check,

passing an instrument proficiency check every 6 months, maintaining copies of the aircraft's maintenance log, and flying no more than 8 hours in a 24-hour period. The act's ATMP and safety certification requirements do not apply to Part 91 operators that obtain a letter of agreement from FAA and the relevant park unit's superintendent describing the conditions under which their air tours will be conducted. The act limits air tours by Part 91 operators under this provision to no more than five air tours per park unit (not per operator) in any 30-day period.

To implement the act, FAA directed its Western Pacific Region to work with the Park Service's Natural Sounds Program. FAA's mission is to provide the safest, most efficient aerospace system in the world, which now includes managing air tours over national park units. It is pursuing its mission with an annual budget of over \$14 billion for fiscal year 2005, approximately \$8 million of which was budgeted for air tour management; FAA has provided a total of about \$29 million for implementing the act for fiscal years 2001 through 2005. The Volpe Center, a fee-for-service organization in the Department of Transportation, performs work primarily for the department, as well as other entities, and covers such issues as safety, mobility, security, and noise pollution. FAA contracted with the Volpe Center to perform, among other things, sound monitoring, environmental analyses, and economic analysis in support of creating ATMPs; FAA has allocated \$27 million of its \$29 million in funding to the Volpe Center for these activities.

The National Park Service is responsible for conserving the scenery, the natural and historic objects, and the wildlife in national park units, and for providing for the enjoyment of national park units in ways that leave them unimpaired for future generations. To accomplish its mission, the Park Service received a budget from Congress of about \$1.7 billion for fiscal year 2006, \$1.4 million of which is allocated to the Natural Sounds Program, according to a program official. The Park Service established the Soundscapes Program Center in 2000 (now the Natural Sounds Program) primarily to work with FAA's Western Pacific Region Manager to develop ATMPs, though the Natural Sounds Program's mission is not limited to creating ATMPs. The Natural Sounds Program works to protect, maintain, or restore natural sounds in the national park units by working in partnership with park units to increase scientific and public understanding of the value and character of sounds that are appropriate for a park unit and to eliminate or minimize noise intrusions. The program provides technical assistance to park units in managing sounds and assessing impacts from noise, and performing outreach and education on sounds.

FAA and the Park Service Have Begun to Implement the Act, but No ATMPs Have Been Completed

FAA and the Park Service have taken steps to implement the act, but implementation has been slow and some of the act's key requirements have not been addressed. Implementation of the act has been slow, in part, due to disagreements between FAA and the Park Service over the procedures necessary to implement the act in compliance with NEPA. While agency officials expect to develop ATMPs more quickly in the future now that they have drafted an implementation plan, they acknowledge that issues must still be addressed before the first ATMP is completed.

FAA and the Park Service Have Taken Actions to Implement the Act and Resolved Some Differences That Slowed ATMP Development

FAA and the Park Service have taken several actions to implement the act and addressed some of its requirements. Specifically:

- As the act requires, the agencies established the National Parks Overflights Advisory Group (advisory group) in April 2001 to provide, among other things, continuing advice and counsel about air tours over and near national park units. The advisory group is composed of a balanced group of representatives of general aviation, air tour operators, environmental concerns, and Indian tribes. Since 2001, the advisory group has met periodically to discuss issues related to implementation, such as interim operating authority, increases in operating authority, and noise monitoring in the park units.
- In October 2002, FAA issued a final rule that completed the definition of an air tour and informed air tour operators that they must file an application for operating authority over national park units by January 23, 2003, in order to avoid a break in conducting such tours.⁷ Operators that conducted tours prior to April 5, 2000, may still apply for operating authority and may be granted interim operating authority. Owing in part to some confusion over application requirements on the part of air tour operators, in January 2005 FAA notified air tour operators that they could self-correct the information they provided in their applications for operating authority.⁸ In June 2005, FAA published in the *Federal Register* for public comment the list of air tour operators and the number of annual air tours each operator received under interim

⁷67 *Fed. Reg.* 65662 (Oct. 25, 2002).

⁸70 *Fed. Reg.* 3972 (Jan. 27, 2005).

operating authority; the comment period closed October 31, 2005.⁹

- To meet the act's requirement for developing ATMPs, the agencies began developing plans in January 2003 for nine national park units—reduced to six in July 2005—for which air tour operators had applied for operating authority, with the goal of completing ATMPs at all park units by approximately 2010.¹⁰

Despite the progress made, officials at both agencies said that implementation has been slow because of (1) other priorities that took precedence over ATMP development and (2) disagreements between FAA and the Park Service over how to implement NEPA in assessing the impact of noise on park units. According to FAA officials, the agency temporarily suspended work on many rulemaking projects, including air tour management, and refocused its resources to address air passenger safety and security in the wake of the terrorist attacks on September 11, 2001. In addition, FAA and Park Service officials said the agencies' differing missions and environmental policies have delayed some actions to implement the act. For example, FAA and the Park Service have some procedural differences over how to implement NEPA in assessing noise impacts on park units, including the appropriate noise model to use and the noise metrics that are applicable. While NEPA requires the preparation of an environmental impact statement for actions having significant environmental impacts, the agencies could not agree on the criteria to use in determining when noise from aircraft would have a significant impact on the environment and park unit resources. To resolve their differences, the agencies developed new methodologies to assess the potential adverse impacts of air tour noise on park unit resources and visitors' experiences and agreed to a combination of FAA and Park Service guidance and practices to implement NEPA. Agency officials explained that the slow implementation was also due in part to the unexpected complexities of meeting some of the act's requirements. Thus, it took time to resolve these and other issues between the agencies. For example, FAA and the Park

⁹70 *Fed. Reg.* 36456 (June 23, 2005).

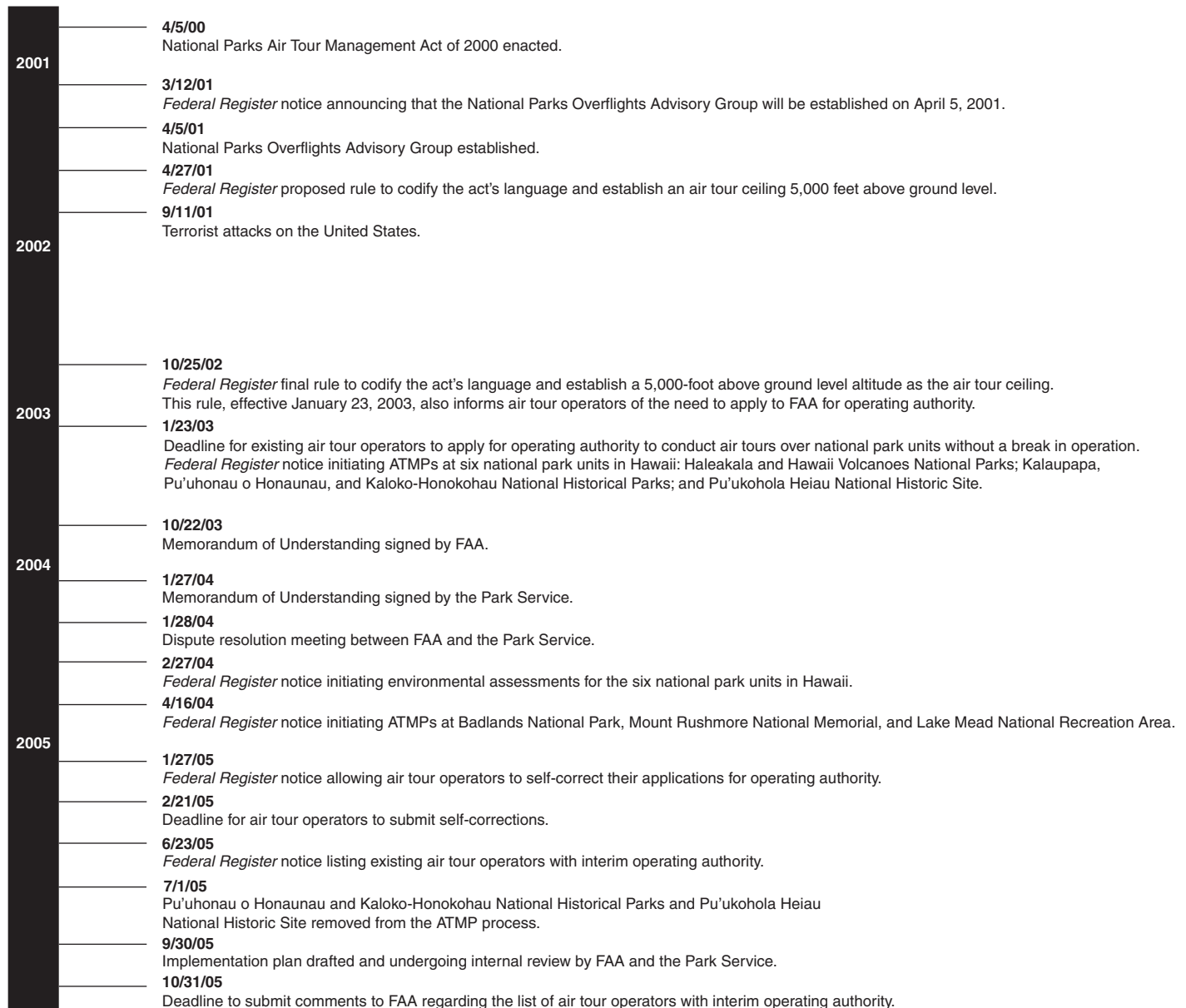
¹⁰The agencies began developing ATMPs at nine park units, but three park units in Hawaii were removed from the process in July 2005 when air tour operators withdrew their applications to conduct air tours over those park units and instead agreed to fly at least one half-mile outside those park units. The park units are: Pu'u'honau o Honaunau and Kaloko-Honokohau National Historical Parks and Pu'ukohola Heiau National Historic Site.

Service developed new procedures to calculate emissions for aircraft that conduct air tours.

FAA and the Park Service have taken steps to mitigate their disagreements and increase the efficiency of ATMP development. To establish a framework for cooperation and participation in implementation, the agencies signed a memorandum of understanding that addresses, among other things, the scope of work, financial terms, the process for developing and approving ATMPs, and outlines a dispute resolution process. Officials are to resolve their disagreements at the program level and elevate them to higher levels if they cannot resolve them. At the time of this report, the agencies had elevated one disagreement and were still working to resolve their differences over the language used in the environmental compliance documents that describes the purpose and need for an ATMP at a park unit. The lack of resolution on this issue could cause further delays, according to agency officials. Furthermore, the agencies drafted an implementation plan in September 2005 that will guide them through the process of developing ATMPs for the remaining park units that need them.¹¹ The draft implementation plan establishes criteria for determining the order in which park units will develop ATMPs, the roles and responsibilities of FAA and the Park Service in developing ATMPs, how to develop ATMPs and the supporting environmental compliance documents, how ATMPs will be implemented and enforced once completed, and how the plans can be changed. As a result, agency officials expect the implementation plan, once finished, to help them develop ATMPs at the remaining park units in less time than it is taking to develop ATMPs for the first set of park units. However, according to FAA officials, it may take 5 more years before all of the 94 national park units begin developing ATMPs. Figure 1 summarizes the steps taken to implement the act, as of November 2005.

¹¹FAA and the Park Service drafted an implementation plan in September 2005, and it was undergoing internal review at both agencies at the time of this report.

Figure 1: Factors Affecting FAA and the Park Service's Implementation of the Act as of November 2005



Source: GAO analysis of FAA and Park Service Information.

Key Implementation Issues Have Yet to Be Addressed

Despite the progress made, some of the act's key requirements have not been fully implemented. First, at the time of our review, it was unclear whether any of the six park units currently developing ATMPs will limit the number of air tours authorized, and if so, how competitive bidding will be handled. As agency officials acknowledge, they will eventually need to address this issue in the implementation plan and in ATMPs. Second, the agencies have not identified incentives for air tour operators to adopt technology that make aircraft quieter, such as enclosed tail rotors on helicopters. In general, air tour operators and FAA officials said that incentives are needed because of the high cost of retrofitting old aircraft with quiet technology or purchasing new aircraft already equipped with quiet technology. However, according to FAA officials, before incentives can be provided in an ATMP, noise studies must be conducted to determine what impact, if any, quiet technologies would have on park unit resources.¹² Although the draft implementation plan broadly addresses quiet technology incentives, it acknowledges that such incentives are yet to be devised for the first ATMPs underway. FAA and Park Service officials said they expect to develop a competitive bidding process and quiet technology incentives on a park-unit-by-unit basis and will address these issues before the first ATMP is drafted in fiscal year 2007.

Act's Implementation Has Limited Air Tour Operators' Ability to Make Major Business Decisions but Had Little Effect on National Park Units

FAA and the Park Service's implementation of the act has limited the ability of air tour operators to make major decisions, such as expanding or selling their businesses. FAA, in cooperation with the Park Service, has not granted increases in interim operating authority to existing operators, nor interim operating authority to new entrants. Furthermore, air tour operators face uncertainty about whether they can legally transfer their authority to conduct air tours. As a result of the slow implementation of the act and the current time frame for developing ATMPs, these adverse effects on operators have been prolonged. In addition, as a safety requirement of the act, Part 91 operators must apply for more stringent safety certification from FAA in order to initiate or continue conducting air tours. In contrast to these effects on operators, the implementation of the act has so far had little effect on the 112 national park units we surveyed in July 2005. Specifically, more than half of the park units reported that the act's

¹²"Quiet technology" is defined in regulations governing air tours in the vicinity of Grand Canyon National Park, and the agencies adopted this definition in June 2005 to apply to all park units that develop ATMPs.

implementation had no positive or negative effect on their park unit, and about 30 percent were uncertain or did not know.

Air Tour Operators' Ability to Make Major Business Decisions Has Been Limited by the Implementation Process

FAA and the Park Service's implementation of the act has limited the ability of air tour operators to make major business decisions because FAA, in cooperation with the Park Service, has not granted (1) increases in interim operating authority to existing operators who applied for such increases or (2) interim operating authority to new entrants. Furthermore, air tour operators face uncertainty about whether they can legally transfer their authority to conduct air tours—which they believe should be valued in the marketplace—both during the interim operating period and once an ATMP is established. In addition to these uncertainties, in order to maintain the level of air tour activity they held prior to the act, Part 91 operators have generally decided to invest resources for their operations to meet the more stringent level of safety certification required by the act.

Agencies' Slow Implementation Has Limited Air Tour Operators' Expansion

According to FAA data, four existing operators have applied to FAA for a total increase of 7,860 air tours during interim operating authority at two park units (see table 1). Although the act allows FAA, in cooperation with the Park Service, to grant increases if certain conditions are met, the agencies have not done so. As a result, existing operators have not been able to expand their air tour businesses over national park units. For example, one air tour operator told us it had expanded its air tour business over Hawaii Volcanoes National Park at an average annual rate of 22 percent in the 4 years before it applied for operating authority in 2003. FAA granted the operator interim operating authority based on its activity during the year prior to the act, and the operator then requested an increase in the annual number of tours authorized. Since no increases have been granted, the operator has had to reduce the number of tours in order to remain compliant with the act.

Table 1: Park Units Where Existing Operators Have Applied for an Increase in Air Tours as of November 2005

Park unit	Number of existing operators requesting an increase	Number of additional air tours requested
Glacier National Park	2	64
Hawaii Volcanoes National Park	2	7,796

Source: FAA.

Existing operators have faced uncertainty about their potential to expand their air tour businesses for a longer period of time than expected: nearly 6 years after the act’s passage, no ATMPs have been completed, and the process for developing the vast majority of plans has not even begun. FAA officials told us they would like to grant increases in interim operating authority, and Park Service officials told us they would consider such increases in order to minimize the negative effects of the act’s slow implementation on air tour operators. The act allows increases in interim operating authority only if it is agreed to by both agencies, and promotes safe air tour operations and the protection of national park unit resources. Park Service officials said that because such increases could have significant environmental impacts, the agencies would either have to prepare an environmental assessment or collect additional data on where operators propose conducting more tours—such as flight paths, frequency of tours, and times of day—to evaluate those impacts prior to approving the requested increase in air tours. The two agencies have not reached an agreement on how they will handle increases during interim operating authority; due to the time and cost involved with an assessment, the agencies may not be able to determine whether increases can be granted until the assessment associated with the relevant park’s ATMP is developed.

The agencies also have not issued interim operating authority to 16 new entrants that have applied for authority to conduct tours over a combined 46 national park units (see table 2). As a result, 10 operators have not been able to begin flying tours over any national park units, and 6 existing operators have not been able to expand their businesses to include additional park units. Among the former, for example, are two new entrant companies in Hawaii that told us they had refrained from flying within a half-mile of park units, despite customer demand and their own desire to grow their businesses. These two new entrants also said they were still waiting for official responses from FAA about the applications they filed in

January 2003. The longer it takes to fully implement the act in developing ATMPs, the longer these and other new entrants may be impaired.

Table 2: Park Units Where New Entrants Have Applied for Operating Authority as of November 2005

Park unit	Number of new entrants that have applied for operating authority	Number of annual air tours requested^a
Arches National Park	3	104
Aztec Ruins National Monument	1	8
Bryce Canyon National Park	6	956
Canyon de Chelly National Monument	2	840
Canyonlands National Park	4	104
Capitol Reef National Park	2	unknown
Casa Grande Ruins National Monument	1	8
Cedar Breaks National Monument	4	104
City of Rocks National Reserve	2	unknown
Colorado National Monument	1	8
Crater Lake National Park	1	8
Craters of the Moon National Monument and Preserve	2	unknown
Death Valley National Park	3	6
Devils Postpile National Monument	1	8
Dinosaur National Monument	1	unknown
Fort Laramie National Historic Site	1	unknown
Gila Cliff Dwellings National Monument	1	8
Glen Canyon National Recreation Area	4	944
Golden Spike National Historic Site	1	unknown
Grand Teton National Park	1	unknown
Great Basin National Park	1	unknown
Hagerman Fossil Beds National Monument	1	unknown
Haleakala National Park	2	4,140
Hawaii Volcanoes National Park	1	600
Hovenweep National Monument	2	unknown
Joshua Tree National Park	1	8
Lake Mead National Recreation Area	4	1,740

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Park unit	Number of new entrants that have applied for operating authority	Number of annual air tours requested ^a
Mesa Verde National Park	1	8
Mount Rainier National Park	1	unknown
Natural Bridges National Monument	2	unknown
Navajo National Monument	3	8
North Cascades National Park (includes Lake Chelan National Recreation Area)	1	unknown
Olympic National Park	2	48
Organ Pipe Cactus National Monument	1	8
Petrified Forest National Park	1	unknown
Pipe Spring National Monument	3	8
Rainbow Bridge National Monument	2	104
Sequoia & Kings Canyon National Park	2	16
Sunset Crater Volcano National Monument	1	unknown
Timpanogos Cave National Monument	1	unknown
Walnut Canyon National Monument	1	unknown
Wright Brothers National Memorial	1	unknown
Wupatki National Monument	2	unknown
Yellowstone National Park	3	8
Yosemite National Park	2	unknown
Zion National Park	6	959

Source: FAA.

^aMany of the new entrant operators did not request a specific number of air tours in their applications for operating authority, resulting in “unknown” for some of the park units listed in this table.

The act gives FAA, in cooperation with the Park Service, the authority to grant interim operating authority to new entrants if certain conditions are met: (1) FAA determines the authority is necessary to ensure competition, (2) the authority would not create a safety or noise problem, and (3) the ATMP has not been developed within 2 years of the act’s passage. Although the third condition has been met in all cases, and the first condition might be met in some cases, Park Service officials told us they interpret the clause regarding noise as triggering the same environmental analysis that is needed for an ATMP—unless new entrants provide more data about when and where they propose flying. Because the agencies have not reached an agreement on how they will handle new entrants during interim operating

authority, they may not be able to determine whether new entrants can be accommodated until they develop the relevant ATMPs. In the meantime, new entrants—like existing operators seeking increases in interim authority—are not able to make important decisions regarding their air tour businesses.

Operators Are Uncertain About Transferability of Air Tour Allocations

Air tour operators are uncertain about whether they can legally transfer their flight allocations under the act, both during the period of interim operating authority and once an ATMP is completed, because FAA has not adequately communicated its opinion on this subject to operators and its field offices. As a result, operators have not been able to make major business decisions such as retiring or selling their businesses—or have made inappropriate decisions to transfer, sell, or buy air tour allocations. FAA's opinion is that operating authority is not a property right or interest. However, as both FAA and aviation members of the advisory group stated at their June 2005 meeting, operators believe they should be able to transfer their air tour allocations if, for instance, an operator wants to go out of business. Now that air tours over national park units are regulated, they said, an existing operator's value lies in its pre-2000 level of activity, as well as in its pilots and personnel, equipment, reputation, and other business assets. If an operator is not able to transfer its air tour allocations, advisory group members said there might not be any business to sell.

FAA officials told us that operators' uncertainty about their ability to transfer their air tour allocations stems from the fact that the act, regulations, and formal FAA guidance to its flight standards district offices and air tour operators have not addressed this subject. The air tour community is aware that while regulations for air tours over Grand Canyon National Park specify that operators have no property interest in air tour allocations, the regulations nevertheless allow such transfers subject to FAA control. And in practice, operators have successfully bought and sold allocations for that park unit with FAA's knowledge. In addition, air tour operators have learned that some operators have successfully transferred or sold air tour allocations to other operators for other park units, causing further confusion about their permissibility. For example, we found one air tour operator had paid another operator in January 2003 for 10,911 air tours the latter conducted over 11 national park units prior to the act, including 7 park units over which the purchasing operator had not previously flown. Subsequently, the purchasing operator included all but three of these tours in its application for operating authority, with the FAA district office's knowledge. FAA granted the operator interim operating authority to

conduct a number of tours based on its own historical activity, plus the tours purchased from the other operator.

FAA senior officials and attorneys told us that transfers of air tour allocations, whether during the interim period or once an ATMP is established, are generally not allowed but should be handled on a case-by-case basis. In a letter to one air tour operator in January 2003, FAA described the limited circumstances under which an operator could obtain the existing operator status of another operator for the purposes of applying for operating authority. Specifically, FAA said both the operator and the purchased entity would have to be corporations, and the purchased corporation would have to continue to exist as its own legal entity, in order for the new owner to obtain the existing operator status. However, this letter did not address the broader issue of transferring air tour allocations once interim or final operating authority is granted. FAA headquarters officials told us they had not widely communicated this letter or the agency's broader position to its district offices or to air tour operators because the confusion had not been brought to their attention until our review. As a result of this lack of communication, the district offices have addressed this issue inconsistently, and there may be deviations from headquarters' position. For example, one operator in South Dakota acquired an existing air tour operator in 2001 and applied for operating authority, considering its predecessor's history of air tour activity to be an acquired asset. The FAA district office and headquarters officials initially considered this operator to be a new entrant and denied it interim operating authority, causing it to pursue alternative sources of income for 2-1/2 years. Then, in mid-2005, FAA headquarters investigated the case and granted the purchasing operator interim operating authority because it had met the agency's requirements for obtaining existing operator status. But in the example mentioned earlier in which one air tour operator paid another operator for 10,911 air tours, another district office was aware of the transfer before it issued operating authority. Finally, under the jurisdiction of a third district office, we found one operator with two companies has allowed one of his companies to use the other company's air tour allocations over several park units—effectively making an inappropriate transfer, according to FAA's position.

Operators Have Generally Opted to Invest Resources to Meet Higher Standards and Avoid the Five-Tour Limit

FAA officials told us that in order to continue their historic levels of air tour activity and income, Part 91 operators have to meet the higher standards of Part 135 regulations. According to FAA data, 68 of the 77 existing operators have been allowed to maintain their pre-2000 level of air tour activity over national park units because they were already certified under Part 135

regulations. Eight of the remaining nine operators that were Part 91 operators have applied for Part 135 certification, and one operator chose to remain a Part 91 operator. These eight operators have to invest resources in additional pilot training and check rides, aircraft inspections, safety manuals, record-keeping, and other activities to meet the Part 135 safety requirements that go beyond those required under Part 91 regulations.¹³ Although the amount of investment required to meet Part 135 standards varies from one operator to another, FAA officials told us the initial cost can vary from hundreds to tens of thousands of dollars.

Alternatively, if Part 91 operators had decided not to apply for the Part 135 standards required by the act, and they had a high level of air tours prior to 2000, their loss of air tour business could have been significant. For example, one air tour operator applied for operating authority under Part 135 and reported that it had conducted 5,200 tours over Mount Rushmore National Memorial strictly under Part 91 regulations in the year before the act. FAA then issued interim operating authority to this operator for 5,200 tours annually over that park unit because the operator applied for Part 135 certification.¹⁴ But if this operator had not applied for authority under Part 135, it would have been restricted to five or fewer tours per month over that park unit—if it had acquired a letter of agreement signed by both agencies. At the time of our review, FAA data showed that only one Part 91 operator had not applied for Part 135 certification and had received a letter of agreement from FAA for up to five flights per month at one park unit. However, Park Service officials said this operator had not obtained a letter of agreement from the Park Service.

Act's Implementation Has Had Little Effect on National Park Units

A majority of the 112 park units we surveyed in July 2005, as well as Park Service officials we spoke with, reported that FAA and the Park Service's implementation of the act has had neither a positive or negative effect on

¹³Pilots are required to pass a check ride compliant with Part 135 standards, in the company of an FAA inspector, in order to obtain Part 135 certification.

¹⁴FAA has implemented the act's safety requirement such that if a Part 91 operator applies for Part 135 certification at the time of its application for operating authority, the operator may be "grandfathered" during interim operating authority at its pre-2000 level of air tour activity, rather than be limited to the Part 91 exception. However, FAA officials said that once an ATMP is completed, such operators would have to be Part 135-certified in order to receive final operating authority.

the park units, yet many still want an ATMP.¹⁵ Specifically, 62 (55 percent) of the park units reported that the act's implementation had no positive effect on their park unit, and 64 (57 percent) reported no negative effect, while only 17 (15 percent) reported a positive effect to some extent and 14 (13 percent) reported a negative effect to some extent. Another 33 (29 percent) and 34 (30 percent) park units responded that they were uncertain or did not know the effect, positive or negative, respectively. In written comments in the survey, 14 of the 112 park units attributed this lack of effect to their unit not having air tours.¹⁶

The act's implementation may result in positive, negative, or no effects on park units because the level of air tour activity has been held constant over park units under interim operating authority. For those park units wanting to reduce air tours, interim operating authority has preserved a level of activity that those park units already consider too high. On the other hand, for those park units where a low level of air tour activity currently exists (as defined by those park units), freezing the level of air tours under interim operating authority has prevented the growth of air tours. Finally, some park unit officials told us there has been no effect and that the status quo is acceptable.

Regarding the act's requirement that FAA and the Park service establish ATMPs at all park units where applications for operating authority are made, 53 (47 percent) park units responded in the survey that they need an ATMP to mitigate or prevent potential adverse impacts on park unit resources, visitor experiences, and air safety. Fifty-nine (53 percent) of the park units stated that they had air tours over their park units and identified how air tours are affecting park unit resources. For example, as shown in table 3, 23 (39 percent) of the 59 park units reported a negative effect on visitors' experiences, and 3 (5 percent) reported a positive effect.¹⁷ Because the agencies plan to first develop ATMPs at park units on the basis of the presence of new entrants, higher levels of air tour activity, and other priorities, some park units are not likely to have a complete ATMP until

¹⁵Appendix I describes our survey methodology, and appendix II is a copy of our survey with the aggregate results.

¹⁶Of the 14 park units, 7 responded that there were no positive and no negative effects, 4 responded that there was no positive effect, and 3 that there was no negative effect.

¹⁷Fifty-one park units did not respond to this question. An additional two park units did not respond because they were unsure whether the flights over their park units were air tours or some other type of flight.

2012.¹⁸ Some park units we visited told us this delay does no harm because they are not substantially affected by air tours, and they are therefore satisfied with the act's limited implementation and the time frame for developing ATMPs.

Table 3: Effects of Air Tours on Park Unit Resources Reported by 59 Park Units in July 2005

Park resource	Number of park units reporting effects of air tours on park unit resources					
	Positive	Negative	Both	None	Uncertain/Don't know	No response
Visitors' experience	3	23	15	5	13	0
Cultural/Historical resources	2	15	0	16	25	1
Natural resources/Wildlife	1	23	1	9	24	1
Number of visitors to the park unit	3	3	1	23	27	2
Other resources	1	4	1	0	4	49

Source: GAO survey results for the 59 park units that responded there were air tours over their park unit.

Issues Remain to Improve Implementation and Enforcement of the Act

We identified four key issues to be addressed by the Congress and the agencies to improve implementation of the act: (1) a lack of flexibility for determining which park units should develop ATMPs, (2) an absence of Park Service funding for its share of ATMP development costs, (3) limited ability to verify and enforce the number of air tours, and (4) FAA's inadequate guidance concerning the act's safety requirements.

¹⁸FAA's goal is to draft ATMPs for all park units that had active applications for operating authority in 2005 by the end of fiscal year 2010. FAA expects that the rulemaking process for each ATMP will take an additional 1 1/2 years.

Lack of Flexibility for Determining Which Park Units Should Develop ATMPs

The act requires an ATMP to be developed for any park unit where an application for operating authority is made, regardless of the size of the park unit, the number of air tours or operators at a park unit, or their impact. Thus FAA and the Park Service are not authorized to exclude any park units from the ATMP process. The number of air tours authorized at park units under interim operating authority ranges from more than 35,000 to 5 air tours per year.¹⁹ Of the 94 park units currently expected to develop ATMPs, 49 park units (52 percent) have 61 or more authorized air tours per year under interim operating authority. Of the remainder, 36 park units (38 percent) have 60 or fewer authorized air tours per year, and 9 park units (10 percent) have no authorized air tours because only new entrants applied for authority at those park units.

According to the 112 park units we surveyed, more park units have other types of aviation than air tours, and more park units cited those other types of aviation as their biggest aviation concern. Specifically, more national park units reported having military, general aviation, and high-altitude commercial flights than air tours over their park units:²⁰ 89 park units (79 percent) had military overflights, 97 park units (87 percent) had general aviation overflights, and 95 park units (85 percent) had high-altitude commercial overflights.²¹ In contrast, 59 park units (53 percent) reported having air tours, and 59 park units had other types of overflights, such as pesticide spraying, search and rescue, and Park Service research flights.²² Furthermore, when asked to identify the one or two types of overflights

¹⁹The number of annual air tours authorized under interim operating authority at Lake Mead National Recreation Area and part of Parashant National Monument totals 68,814. However, at the time of our review, FAA officials believed that many of these flights over Lake Mead were actually transportation-only flights en route to the Grand Canyon National Park. Such flights are exempt from the National Parks Air Tour Management Act, but operators nonetheless applied for operating authority because of their uncertainty.

²⁰General aviation generally refers to small, private, or limited commercial aircraft operators that must comply with 14 C.F.R. Part 91 requirements. Commercial aviation is generally accepted to refer to medium or large aircraft used for air transportation purposes under 14 C.F.R. Part 121.

²¹The number of park units reporting different types of aviation exceeds the 112 park units surveyed, and the sum of the percentages exceeds 100 percent, because the park units were asked to identify all types of overflights that were applicable at their park unit.

²²Although existing operators had interim authority to conduct air tours over more than 59 park units at the time of our survey, the lower number of park units reporting air tours could be explained by operators not using their authority, Park Service officials having difficulty in identifying the type of aviation, or some other unknown factor.

that had the most negative effect on their park unit, 56 park units cited general aviation and 44 park units reported military flights, compared with the 33 park units that cited air tours.²³

More than half of the 112 park units we surveyed responded either that they did not need an ATMP or they were unsure if they needed one, despite the act's current requirement. Specifically, 43 park units (38 percent) reported not needing an ATMP, and 16 park units (14 percent) did not know or were uncertain about the need for a plan. In our discussions with Park Service and FAA officials and air tour operators, we found that voluntary agreements at some park units, such as Haleakala and Badlands National Parks and the Statue of Liberty National Monument, had successfully established air tour routes and elevation levels to minimize impacts from air tours on park unit resources and visitors on the ground. These voluntary agreements, some of which were adopted prior to the act, are good management practices that could be replicated at other park units. For example, Haleakala officials started working with air tour operators in the early 1990s in response to visitors' complaints about noise from helicopter tours over the park unit's crater, while recognizing that such tours provide an alternative means for visitors to enjoy the park unit. In 1998, the Haleakala officials and operators signed an agreement establishing routes that keep air tours outside the crater and away from visitor centers but still allow air visitors to enjoy the crater from 500 feet above ground level within one mile of its southern boundary. In addition, the helicopter companies agreed to take punitive action against pilots if there are complaints of violations, and Park Service officials and helicopter companies meet once a month to discuss issues. As a result of this agreement, Haleakala officials and air tour operators told us complaints have decreased substantially, and operators have been able to maintain their tour businesses.

If some park units find that they do not need ATMPs, then the agencies will save federal dollars if they have the option of not developing such plans. FAA estimates spending an average of \$405,000—ranging from \$257,000 to \$681,000—on the environmental analyses required at each of the first nine

²³Seventeen park units reported high-altitude commercial flights, 22 park units reported other types of overflights as being among the two types of overflights that had the most negative effect on their park unit, and 6 park units reported none.

park units that started developing ATMPs,²⁴ compared with the agency's original estimate of an average \$300,000 per park unit. Based on the current cost and the number of park units currently expected to develop ATMPs, the development of such plans could cost the federal agencies an estimated \$38 million in current dollars. Officials from both agencies and members of the federal advisory group have expressed concern about the cost and time required to fully implement the act by developing ATMPs at all 94 park units where applications for operating authority were still active as of November 2005. In particular, officials at both agencies have questioned whether it is cost-effective to develop ATMPs for park units where there is a low level of air tour activity or where there is greater concern about other environmental impacts, such as vehicular traffic or other types of aviation.

Within the confines of the act, officials from both agencies said they are considering alternatives to the ATMP development approach used at the first nine park units—alternatives that these officials believe would fulfill the act's requirements but potentially save the agencies time and money in developing the plans. Under NEPA, agencies may adopt procedures to determine which actions usually do not have any significant impact on the environment and therefore need not be the subject of an environmental assessment or impact statement; these actions are referred to as categorical exclusions. In cases where the stakeholders agree there are no significant impacts from air tours, agency officials said they may be able to issue ATMPs using their respective categorical exclusion procedures or they could issue an abbreviated environmental assessment. With this in mind, FAA has proposed creating an aviation rulemaking committee to pursue an expedited ATMP process at park units where there is low air tour activity and little public controversy. FAA envisions this rulemaking committee could be chaired by a park unit's superintendent and would comprise stakeholders from both agencies, the aviation community, environmental groups, the nearby residential community, and any other appropriate interest groups. The committee would hold a public hearing and create an ATMP that would be published for comment and then issued as a final rule. As precedent for this proposal, FAA officials pointed to the success of a rulemaking committee it convened in 1999 to address issues surrounding the regulation of operations conducted by fractional owners

²⁴While it is possible that future environmental analyses will cost less due to a park unit's size, increased efficiencies based on lessons learned or alternative methods put into place, or other factors, FAA did not have cost projections for future ATMPs at the time of our report.

and managers.²⁵ That committee, composed of 27 representatives of the aviation community and relevant federal agencies, drafted proposed regulations and provided the necessary funding to conduct environmental and economic analyses of the proposed regulations.

The two agencies are also considering three other approaches to expedite the ATMP process: (1) group several park units under one plan, (2) perform one environmental analysis to support multiple ATMPs, or (3) develop an environmental impact statement that could be used for as many ATMPs as possible nationwide. However, at the time of our review, the agencies had not committed to any of these approaches or agreed on when and where they might be applied; thus it is too early to know what results may come from these efforts. Furthermore, even if they are successful, the agencies will still have the responsibility of developing an ATMP for each park unit where an operator proposes to conduct air tours, then monitoring air tour operators' compliance with an ATMP and enforcing the ATMP's requirements. These responsibilities require resources beyond the creation of the ATMP. As a result, FAA and the Park Service have discussed the benefit of legislative changes to the act in order to give the agencies authority to determine which park units need an ATMP. FAA officials expressed concern that if the agencies were to recommend a legislative change to the Congress, it may trigger an environmental review under NEPA that is similar to what is already being done to develop the ATMPs, which is both costly and time-consuming.²⁶ This would effectively diminish the benefits of seeking such a change. FAA and Park Service officials concurred that this is an issue the Congress should handle without a formal legislative proposal from the agencies.

Absence of Park Service Funding for Its Share of ATMP Development Costs

The Park Service has not funded its share of the cost of developing ATMPs, despite its agreement with FAA to fund 40 percent of this effort. In a memorandum of understanding between FAA and the Park Service, the agencies agreed that FAA would fund 60 percent and the Park Service

²⁵Fractional ownership operations began in 1986 with the creation of an industry program that offered aircraft owners increased flexibility in the ownership and operation of aircraft. This program used current aircraft acquisition concepts, including shared or joint aircraft ownership, and provided for the management of the aircraft by an aircraft management company.

²⁶NEPA regulations require an environmental impact statement to accompany a legislative proposal that would have significant environmental effects.

would fund 40 percent of the cost of developing ATMPs. The agreement describes the qualifying costs as external contractor costs required to produce ATMPs. These qualifying costs exclude staff salaries, benefits, and travel for agency personnel; agency equipment and supplies; and any costs for in-house contractors hired by either agency. From fiscal year 2001 through fiscal year 2005, FAA has funded 100 percent of the initial ATMPs' development, which amounts to \$27 million through distinct budget appropriations,²⁷ while the Park Service had not requested or received any dedicated funding for the program until fiscal year 2006 when Congress provided \$500,000 toward air tour management. Although the Park Service has also contributed staff time to work with FAA on the development of ATMPs, the cost of doing so does not count toward its 40 percent obligation, according to the memorandum of understanding. FAA officials said at the current estimate of an average \$405,000 per park unit for ATMP development, the agency estimates it will cost an additional \$13 million for fiscal years 2006 through 2010, for a total program cost since 2001 of about \$38 million for 94 ATMPs. At that level, FAA has already received about 67 percent of the total ATMP cost—if the Park Service receives funds for the remaining \$13 million that FAA estimates is needed, that will be just 33 percent of the total cost. If the Park Service does not meet its obligation within the next 2 years, according to FAA and Park Service officials, implementation may be hindered. However, officials from both agencies said adoption of alternative approaches to the ATMP process could lower costs.

Limited Ability to Verify and Enforce the Number of Air Tours

FAA and existing laws and regulations do not require operators to record and report the number of air tours they conduct over national park units.²⁸ Consequently, FAA and the Park Service lack a mechanism to verify the number of air tours conducted over national park units, both historically and under interim operating authority. Of the 25 existing operators we interviewed, 23 told us they had used a variety of documents, such as flight logs and ticket sales receipts, to estimate their pre-2000 air tour activity in their applications for operating authority. However, FAA officials and

²⁷Of the \$29 million FAA has received through distinct budget appropriations to develop ATMPs, FAA has directed about \$27 million to the Volpe Center and approximately \$2 million to internal FAA costs.

²⁸Regulations do require air tour operators to record and report their flight activity over Grand Canyon National Park to FAA, but this park unit is exempt from the National Parks Air Tour Management Act of 2000.

operators said the quality of these data varied since there is no record-keeping requirement, and two operators told us they had no records of their pre-2000 activity. In addition, we found two operators had deliberately inflated their estimates to ensure some growth in future years—even though that action ran counter to the act’s intent. Specifically:

- According to one air tour operator, because of the act’s passage in 2000, the operator started keeping track of its air tours and deliberately inflated the number reported in its application for operating authority in 2003 to allow for future expansion. Without the documentation to verify this information, FAA issued interim operating authority to this operator for the inflated amount, and this operator has not had to limit its tours in recent years as it might have if it had reported actual numbers.
- Another operator with one pilot applied for operating authority at dozens of park units spanning 6 Western states totaling more than 1,500 air tours annually. FAA and Park Service officials said it was unlikely this operator could have conducted that many tours, and in their view, the company had inflated the amount of tours it reported. However, without reliable data to prove or disprove the operator’s claim, FAA granted the company interim operating authority for the reported activity.

In addition, without reliable air tour data, FAA and the Park Service cannot determine whether operators are violating their interim authority. As a result, the agencies are limited in their ability to enforce the act. We determined 3 of the 25 existing operators we interviewed were exceeding the number of tours they were authorized to conduct under interim operating authority, flying over park units for which they did not have authority, or both. For example, one owner told us his company was exceeding its interim operating authority by more than 3,000 tours per year over a major national park unit, and was conducting tours over two other park units for which it had no authority.

According to FAA officials, it is in an operator’s best interest to keep records of its tours over national park units to verify the number of tours conducted, and some operators are doing so as a good business practice. Without a requirement for operators to maintain and report such records, however, the agencies cannot take appropriate action to enforce the act or deter violations. Consequently, those operators who deliberately inflated their pre-2000 flight activity in their applications enjoy higher levels of activity under interim operating authority than the act intended, and thus

may have a competitive advantage over operators who provided more accurate data.

To address this problem, FAA told us, legislation or rulemaking is needed to require operators to maintain and report records during the interim operating period. Once an ATMP for a park unit is completed, agency officials believe each ATMP should include reporting requirements in order to make the act enforceable. However, at the time of our review, FAA, as the agency responsible for regulating air tour operators, had not decided how it would implement a reporting requirement.

FAA's Inadequate Guidance Concerning the Act's Safety Requirements

FAA has not instructed its flight standards district offices or air tour operators on how to interpret and enforce the act's requirements for Part 91 operators, which are now required to meet the safety standards of Part 135 regulations. Under an exemption in the act, Part 91 operators may continue to be regulated under Part 91 if they obtain a letter of agreement from FAA and the relevant park unit's superintendent and are limited to a combined total of five air tours per park unit per month. We found that 3 of the 29 companies we interviewed had not taken steps for all their pilots and aircraft to meet Part 135 standards, had not obtained letters of agreement from the two agencies, and were exceeding the five-tour limit using pilots and/or aircraft qualified only for Part 91 operations. Furthermore, we found that the number of tours conducted by one operator's Part 91 pilots and aircraft exceeded its interim operating authority. Specifically, this operator employed a single pilot and a single helicopter qualified for Part 135 operations, and seven pilots and three helicopters under Part 91 regulations, to conduct tours within a half-mile of a major national park unit. The operator's manager estimated those Part 91 pilots and aircraft had given hundreds of tours within one half-mile of a national park unit in the previous year. The manager believed the interim operating authority applied only to himself and his one Part 135-certified helicopter, and did not apply to the other pilots and aircraft.

Officials in the two FAA flight standards district offices overseeing the three operators mentioned above were either not aware of these circumstances or believed the operators were in compliance with the act because they had at least a single pilot and single aircraft that were Part 135-certified. According to officials at the district office who were aware of the circumstances, the fact that those operators used additional pilots and aircraft qualified for only Part 91 operations was immaterial and not a violation of the act. FAA attorneys and other agency managers disagreed,

indicating the operators mentioned above were in violation. They interpreted the act to mean that unless an operator chose to operate under the Part 91 restrictions, all pilots and aircraft conducting tours over national park units should meet Part 135 standards in order to increase safety. Until our review, FAA officials said the issue had not been brought to their attention, and they agreed that interpretation of the act by some FAA district offices seemed to be inconsistent.

We found that the guidance FAA headquarters provided to district offices and air tour operators regarding the requirements for operating authority applications was not clear about this issue. For instance, the guidance did not require the companies to identify the number of pilots they employed, or what specific certification level those pilots and their aircraft were qualified for. In the three cases where we found the companies were exceeding the five-tour limit using Part 91 pilots and aircraft, their applications for operating authority did not disclose their additional pilots, they did not specify the level of certification their aircraft met, or both. Furthermore, both the act and FAA guidance routinely use the term “operator,” which is broadly defined to refer to companies, corporations, individuals, and other entities. Agency officials said the scope of the act’s intentions was not clear on this matter, and the common use and interpretation of the term “operator” as a business—not an individual—could have caused confusion within the aviation community.

Conclusions

The National Parks Air Tour Management Act provided FAA and the Park Service with new authority to regulate air tours over national park units to ensure that the noise from such tours does not impair visitors’ experiences or damage park unit resources. However, some of the act’s requirements, and FAA’s and the Park Service’s slow implementation, have had unintended consequences on air tour operators and relevant park units.

The level of air tours over the park units has been held constant under interim operating authority at pre-2000 levels for nearly 6 years because no ATMPs have yet been completed. FAA and the Park Service, air tour operators, and some members of Congress did not envision that so many park units and air tour operators would be operating under interim operating authority for so long. Maintaining the level of air tour activity for those park units that were adversely affected by air tours may be justified while the agencies try to assess their impacts. However, according to the 112 park units we surveyed, many of the park units currently scheduled to get an ATMP may not need one for the foreseeable future—but the act does

not provide the agencies with any flexibility to determine which park units do not need ATMPs. While the agencies are currently considering more cost-effective methods for developing ATMPs within the confines of the act, it is too early to know what results may come from those efforts. Amending the act to authorize the agencies to determine which park units should develop ATMPs would go a long way to addressing the unintended consequences of the act at a number of park units, and could save federal dollars by not requiring the development of ATMPs for some park units. Park units identified as needing an ATMP would continue to be regulated under the act as they are now, while the other park units that do not currently need an ATMP would become unregulated, thus allowing existing operators at those park units to grow their businesses and new entrants to begin operating. At any time in the future, should the level of air tour activity at an unregulated park unit expand to such a level so as to warrant the development of an ATMP, the agencies would have the necessary authority to begin regulating the air tours at that park unit. This flexibility would also encourage park units and air tour operators, under the threat of becoming regulated, to negotiate and comply with voluntary agreements to mitigate the impacts of air tours.

In amending the act, the Congress could consider different processes and criteria for the agencies to determine which park units will develop ATMPs. For example, Congress, in consultation with the agencies, could establish a process with specific criteria that the agencies use to determine which park units should have ATMPs. Other options Congress could consider are a nomination process with approval by the National Parks Overflights Advisory Group, or a process whereby the agencies could assess the need for an ATMP based on the likelihood of potential significant adverse impacts.

FAA has determined, but not effectively communicated or consistently enforced, the circumstances under which air tour operators may or may not transfer or sell their air tour allocations. As a result, air tour operators do not know if they should plan to expand, reduce, or even sell their business. Since some air tour operators have assumed that their air tour allocations can be transferred or sold, they have been doing so, with the knowledge and approval of their local FAA flight standards district offices, contrary to the position of FAA headquarters.

For consistent enforcement of the number of air tours authorized under interim operating authority, and ultimately under ATMPs, FAA and the Park Service must be able to verify the number of air tours conducted over a

national park unit by each authorized operator. Since air tour operators are currently not required to maintain and report information on their air tours, FAA and the Park Service are unable to enforce the air tour allocations. By not enforcing the air tour allocations, the agencies are allowing operators that are exceeding their allocations to have an unfair business advantage over those operators that are complying with the act and may also have adverse impacts on visitors' experiences and park unit resources.

Finally, consistent enforcement of air tour operators' allocations over national park units, both under interim operating authority and once an ATMP is established, is vital to controlling the impacts from air tour noise on the national park units and in ensuring a level playing field among all the air tour operators. Nearly 6 years after the passage of the act, a great deal of confusion remains regarding the act's safety requirements. FAA has not provided definitive guidance to its flight standards district offices on how they should interpret and enforce the act's safety requirements and exemption for Part 91 operators. As a result, this provision has generally not been enforced, and some air tour operators are not in compliance with act.

Matter for Congressional Consideration

To allow more cost-effective implementation of the National Parks Air Tour Management Act, Congress may wish to consider amending the act to authorize the agencies to determine which park units should develop ATMPs.

Recommendations for Executive Action

To improve compliance, enforcement, and implementation of the National Parks Air Tour Management Act, we recommend that the Secretary of Transportation direct the Administrator of FAA to take the following three actions:

- Communicate the agency's position to its district offices on whether operating authority is transferable or sellable under both interim and final operating authority, and if so, under what conditions.
- Establish a procedure for air tour operators to record and report to FAA and the Park Service the number of air tours they conduct over national park units, under both interim and final operating authority.

-
- Clearly communicate to FAA district offices how to interpret, and thus enforce, the act’s requirements for Part 91 air tour operators.

Agency Comments and Our Evaluation

We provided the Departments of Transportation and the Interior with a draft of this report for review and comment. The Department of Transportation offered technical comments and otherwise generally agreed with the findings of this report and agreed to consider our recommendations as they move forward with the program. The Department of the Interior provided written comments that are included in appendix VI, along with our specific response. Interior generally agreed with our findings and recommendations, but it questioned whether Congress needs to amend the act to give the agencies greater flexibility. Interior commented that it was concerned that amending the act could “unnecessarily or unwittingly” jeopardize the protection of park resources and visitor enjoyment by excluding some park units from the ATMP process solely based on their level of air tour activity. Furthermore, Interior commented that there are several administrative remedies available to the agencies that might be best used to address those park units with low air tour activity. We agree that any amendments to the act should preserve the Park Service’s authority to develop an ATMP at any park unit it deems necessary and that park units should not be arbitrarily excluded from the process solely based on their level of air tour activity. However, we disagree that existing administrative remedies would provide the flexibility that is needed to achieve the most effective and efficient implementation of the act. The purpose of providing flexibility in the act is not to exclude park units that need ATMPs, but rather to provide the agencies the flexibility not to develop ATMPs for park units where the agencies deem them to be unnecessary. In its comments, Interior suggested support for this approach by stating that it “... would agree to a general grant of authority which would provide the agencies discretion to make such determinations based on agency developed criteria that goes beyond simply the level of air tour activity.”

Interior also provided technical comments and editorial suggestions that we have incorporated throughout the report, as appropriate.

We are sending copies of this report to the Secretaries of Transportation and the Interior, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

If you or your staff have questions about this report, please contact me at (202) 512-3841 or nazzaror@gao.gov. Key contributions to this report are listed in appendix VII.

Robin M. Nazzaro

Robin M. Nazzaro
Director, Natural Resources
and Environment

List of Requesters

The Honorable Daniel Inouye
Co-Chairman
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Jeff Bingaman
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Daniel K. Akaka
Ranking Minority Member, Subcommittee on National Parks
Committee on Energy and Natural Resources
United States Senate

The Honorable Lamar Alexander
United States Senate

The Honorable John McCain
United States Senate

Scope and Methodology

We identified and analyzed applicable laws, regulations, policies, and procedures to determine what actions the Federal Aviation Administration (FAA) and the National Park Service (Park Service) have taken to implement the act and what remains to be addressed. Specifically, we used the act to identify what actions the agencies were required to take. To learn what actions FAA and the Park Service have taken to implement the act's requirements, we reviewed notices and regulations published in the *Federal Register* and agency documents, and interviewed agency officials at FAA and Park Service headquarters, FAA district offices, and national park units, and air tour operators. We selected a nonprobability sample of 12 park units to visit because 9 of the 12 were the first park units FAA and the Park Service chose to develop air tour management plans (ATMPs), and the other 3 faced circumstances that differed from the first 9: one had a military flight restriction, one was a potential candidate for an alternative method for developing an ATMP, and one believed an ATMP was not needed because it had so few air tours. The 12 park units are: Great Smoky Mountains, Hawaii Volcanoes, Haleakala, and Badlands National Parks; Kalaupapa, Pu'uuhonau o Honaunau, and Kaloko-Honokohau National Historical Parks; Pu'ukohola Heiau National Historic Site; the USS Arizona Memorial; Lake Mead National Recreation Area; and Mount Rushmore National Memorial.

We assessed budget data describing the Park Service's requests for annual appropriations and FAA's funding dedicated to developing ATMPs, including those funds obligated to the Volpe Center. This budget information covered the fiscal years 2001 through 2006 and were obtained from budget appropriation reports, the agencies' budget requests, and budget summaries provided by FAA and the Volpe Center. We determined that these data were sufficiently reliable for the purposes of this report. We also assessed data describing the number of air tours by operators over various national park units. Of interest were data on numbers of air tour operators, including existing operators, new entrants, and total applicants, as well as numbers of annual authorized air tours and new or increased authority requested. We interviewed agency officials regarding a series of data reliability questions addressing areas such as data entry, data access, quality control procedures, and data accuracy and completeness. We asked follow-up questions whenever necessary. We determined that these data were sufficiently reliable for the purposes of this report.

To assess how air tour operators have been affected by the implementation of the act, we reviewed FAA and Park Service documents, documents provided by air tour operators, and interviewed a sample of 29 operators at

the 12 different park units we visited. Where appropriate, we used documents provided by the operators, FAA, and the Park Service to corroborate information we collected from interviews with the air tour operators. To choose the operators to interview, we divided the operators at each park into 3 groups based on the number of annual air tours they were granted under interim operating authority—small (3,000 or fewer air tours), medium (between 3,001 and 10,000 air tours), and large (more than 10,000 air tours). Next, we randomly selected operators in each group and met with at least three in each group; we also met with all new entrant operators regardless of the number at each park unit. The air tour operators we interviewed are: Adventure Air, LC.; Air Grand Canyon, Inc.; American Aviation, Inc.; Aris, Inc.; Aviation Ventures, Inc.; Badger Helicopters, Inc.; Big Island Air, Inc.; Black Hills Aerial Adventures, Inc.; Call Air, Inc.; Eagle Aviation, Inc.; Grand Canyon Airlines, Inc.; Great Smoky Mountains Helicopter, Inc.; Helicopter Consultants of Maui, Inc.; K & S Helicopters, Inc.; King Airelines, Inc.; Manuiwa Airways, Inc.; Maverick Helicopters, Inc.; Mauiscape Helicopters, Inc.; Mokulele Flight Service, Inc.; Rainbow Pacific Helicopters, Ltd.; Rambo Helicopter Charter, Inc.; Rushmore Helicopters, Inc.; Safari Aviation, Inc.; Scenic Airlines, Inc.; Schuman Aviation, Co. Ltd.; Vista Helicopter Services, Inc.; Skycraft Air Maintenance, Ltd.; Sunshine Helicopters, Inc.; and Windrock Aviation, LLC.

To assess how the national park units have been affected by implementation of the act, we reviewed FAA and Park Service documents, conducted a survey of all 112 national park units identified to develop ATMPs as of July 2005, interviewed representatives of the 12 park units we visited, and also interviewed FAA and Park Service officials at their headquarters offices. We surveyed all national park units where air tour operators had applied for operating authority, which includes existing and new entrant operators. Ten tribal lands within or abutting national park units were also identified as needing to be part of the ATMPs developed at the relevant park units, but our review is limited to the implementation of the act at national park units. Since our survey was conducted, some air tour operators withdrew their applications and other corrections were made by FAA, which resulted in a reduced number of park units that have been identified to develop ATMPs—as of November 2005, there are 94 park units identified to develop ATMPs, which are listed in appendix III.

We designed our survey with the assistance of a GAO methodologist. During its design, we reviewed a similar survey conducted by the National Parks Conservation Association and also obtained input from FAA and Park Service officials. Even though we surveyed all 112 national park units

identified to develop ATMPs as of July 2005, the practical difficulties of conducting any survey may introduce other types of errors, commonly referred to as “nonsampling error.” For example, differences in how a particular question is interpreted or the sources of information available to respondents can introduce unwanted variability into the survey results. We included steps in both the data collection and data analysis stages for purposes of minimizing such nonsampling errors. We pretested the content and format of the survey with three national park units. We also had the survey independently reviewed by a GAO survey specialist. Based on the results of these pretests and reviews, we revised the survey instrument as appropriate. All returned surveys were reviewed, and we called respondents to obtain follow-up information when questions were not answered or clarification was needed.

Our survey response rate was 100 percent. All survey data were keypunched, and then an additional sample of the data were verified as an added check for accuracy of the information. The data were then summarized and tabulated, and the aggregate results are included in appendix II. It is worth noting that not all park units surveyed responded to question 6. In this question, park units were asked to identify what effect, if any, air tours over the park unit have had on the following resources: visitors’ experience, cultural/historical resources, natural resources/wildlife, number of visitors to the park unit, and other resources. Fifty-one park units indicated that they do not have air tours, which would imply that the remaining 61 of the 112 park units surveyed do have air tours. Yet, 59 park units responded that they do have air tours and 2 park units did not respond because they were unsure whether the flights over their park units were air tours or some other type of flight.

We conducted our work from January 2005 through January 2006 in accordance with generally accepted government auditing standards.

Survey Instrument and Results from 112 National Park Units

Survey Instrument and Results from 112 National Park Units



United States Government Accountability Office

Survey of National Park Service on Air Tour Management

Introduction

Thank you for taking the time to complete the following brief survey, which the U.S. Government Accountability Office (GAO) is using to assess the effect of the National Parks Air Tour Management Act of 2000 on National Park Units nationwide. Senators Daniel K. Akaka (D-HI), Lamar Alexander (R-TN), Jeff Bingaman (D-NM), Daniel Inouye (D-HI), and John McCain (R-AZ) have requested GAO, as an independent Congressional agency, to review the implementation of the Act by the Federal Aviation Administration (FAA) and the National Park Service (NPS). This important survey will help inform our review of the Act and its implementation to date.

The following survey is designed to gauge the effects, both positive and negative, of commercial air tours on the National Park Units. For example, sound from such tours might have a negative effect on visitors' experiences, wildlife, or other Park Unit resources. On the other hand, air tours might have a positive effect by allowing elderly, disabled, and other persons to experience the Park Unit. Thus the effects could be positive and/or negative; please respond to the following questions with all effects that apply.

This survey should take about 15 minutes or less to complete. Please read the following instructions carefully before starting the survey.

Completing the Survey

This survey can be completed on your computer. To do this, first save the MSWord file containing the survey to your computer. You may then enter your responses directly to that file.

Completing the survey is very simple. There are only a few rules to follow.

- Please use your mouse to navigate by clicking on the field or check box you wish to answer.
- To select a check box, simply click on the center of the box and an 'X' will appear.
- To change or deselect a check box response, simply click on the checked box and the 'X' will disappear.
- To respond to a question that requires that you enter an answer or write a comment, click on the answer box and begin typing. You may type as much as you wish, the box will expand to accommodate your answer.

Please identify the individual at your particular Park Unit who is most knowledgeable of this subject area, if not yourself, to complete this survey by Friday, July 22, 2005; we would like only 1 response per Park Unit. Also, please answer these questions from your perspective as a National Park Service representative, rather than expressing your personal opinion as a private individual. If you need additional room for written comments, please use the last page and/or submit additional text, and be sure to indicate which question(s) your additional comments address.

**Appendix II
Survey Instrument and Results from 112
National Park Units**

Please email your completed survey to XXXX at XXXX, or fax it to: XXXX with Attn: XXXX on the cover sheet. Please complete and return this survey by **Friday, July 22, 2005**. We understand there are great demands on your time; however, your response is crucial to provide important information to Congress.

Thank you in advance for your cooperation.

Contact

If your response will be delayed, or if you have any questions, please call or e-mail:

XXXX

E-mail: XXXX

Phone: XXXX

State Contact

Please enter the following information in the event we need to clarify a response.

Park Unit Name:

Contact Name:

Contact Title:

E-mail address:

Telephone number (area code):

Fax number (area code):

Appendix II
Survey Instrument and Results from 112
National Park Units

Definition: For the following survey questions, the word *effect* refers to the positive and/or negative impacts of commercial air tours on visitors' experiences in the Park Unit, on Park Unit resources, and/or on the number of visitors to the Park Unit.

Survey Questions

1. Which of the following types of overflights are there over your Park Unit? (*Please check all that apply*):

N=89 Military

N=97 General Aviation (private, non-commercial flights)

N=59 Commercial air tours (sightseeing, fixed-wing aircraft or helicopters that fly less than 5,000 feet above ground level and within a National Park Unit or within a ½ mile outside its boundary)

N=95 High-elevation commercial (jets used for transportation; fly at least 5,000 feet above ground level)

N=59 Other — please specify:

N= 2 None → *Please go to question 4*

N= 2 Uncertain/don't know → *Please go to question 4*

** The number of responses for Question 1 is greater than 112 because the respondent could select more than one answer. The 59 respondents that answered other specified that other types of aviation include agricultural pesticide spraying, Park Service research, fire management, search and rescue, medical evacuation, law enforcement, hot air balloon, ultralight aircraft, and other federal agency flights.*

2. Of the types of overflights that you checked in Question 1, which one or two types of overflights have the most *negative* effect on your Park Unit? (*Note: For Questions 2 and 3, it is possible to view the same types of overflights as having both positive and negative effects.*)

1). N=107

2). N=73

** The number of responses for Question 2 is greater than 112 because the respondent could provide up to two answers. The responses included Military – 44, General Aviation – 56, Commercial Air Tours – 33, High-Elevation Commercial – 17, Other – 22, None – 6.*

3. Of the types of overflights that you checked in Question 1, which one or two types of overflights have the most *positive* effect on your Park Unit? (*Note: For Questions 2 and 3, it is possible to view the same types of overflights as having both positive and negative effects.*)

1). N=77

2). N=19

** The number of responses for Question 3 is greater than 112 because the respondent could provide up to two answers. The responses included Military – 4, General Aviation – 11, Commercial Air Tours – 9, High-Elevation Commercial – 4, Other – 30, None – 29, Uncertain/Don't Know – 2.*

Appendix II
Survey Instrument and Results from 112
National Park Units

4. Since April 2000, has your Park Unit received written complaints from visitors about any type of overflights?

- N=26 Yes → Please go to question 5.
- N=77 No..... → Please go to question 6.
- N= 9 Uncertain/don't know → Please go to question 6.

5. Please enter the number of written complaints for each type of applicable overflights that your Park Unit has received in the fiscal years listed below. (*Note: It is acceptable to provide estimates; however, please indicate if you are doing so by noting (E) after the number:*)

Type of Overflights	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Military	*	*	*	*	*	*
General Aviation	*	*	*	*	*	*
Commercial Air Tours	*	*	*	*	*	*
High-elevation Commercial	*	*	*	*	*	*
Other (please specify)	*	*	*	*	*	*

* Question 5 was not reported because the data were unreliable

6. If there are commercial air tours over your Park Unit, what effect, if any, have they had on the following? (*Please check all that apply:*)

	Positive	Negative	Both	None	Uncertain/ don't know
Visitors' experience.....	N=3	N=23	N=15	N=5	N=13
Cultural/Historical resources	N=2	N=15	N=0	N=16	N=25
Natural resources/Wildlife.....	N=1	N=23	N=1	N=9	N=24
Number of visitors to the Park Unit	N=3	N=3	N=1	N=23	N=27
Other—please specify: N=7 (Number of respondents who provided comments)	N=1	N=4	N=1	N=0	N=4

If there are commercial air tours over your Park Unit, please explain your answer: N=52 (Number of respondents who provided comments)

N=51 There are no commercial air tours over the Park Unit → Please go to question 8

Note: Fifty-one park units indicated that they do not have air tours, which would imply that the remaining 61 of the 112 park units surveyed do have air tours. Yet, only 59 park units responded. The remaining two park units were unsure as to whether the flights over their park units were air tours or some other type of flight. As a result, these two park units did not respond to question 6.

Appendix II
Survey Instrument and Results from 112
National Park Units

7. In your opinion as a NPS representative, does your Park Unit have a level of commercial air tour activity to warrant the cost of collecting business-use fees from air tour operators?

YesN=15
No.....N=26
Uncertain/don't know.....N=20

8. The National Parks Air Tour Management Act of 2000 requires FAA and NPS to jointly develop an Air Tour Management Plan for every Park Unit with commercial air tours. Regardless of this requirement, do you think your Park Unit needs an Air Tour Management Plan to mitigate or prevent potential impacts to Park resources, visitor use, and air safety?

YesN=53
No.....N=43
Uncertain/don't know.....N=16

Please explain your answer: N=83 (Number of respondents who provided comments)

9. Has your Park Unit entered into any agreements, formal or informal, with commercial air tour operators in recent years?

YesN=12
No.....N=99
Uncertain/don't know.....N=1

If yes, please briefly describe these agreements: N=15 (Number of respondents who provided comments)

10. Does your Park Unit collect fees upon entry from commercial **bus** tours using an Incidental Business Permit?

N=22 Yes →Please go to question 11.
N=86 No..... →Please go to question 12.
N=4 Uncertain/don't know →Please go to question 12.

11. How many commercial **bus** tours entered your Park Unit in fiscal year 2004, and how much did you collect in fees in fiscal year 2004 from these commercial **bus** tours? (*Note: It is acceptable to provide estimates; however, please indicate if you are doing so by noting (E) after the number.*)

Number of commercial **bus** tours in FY 2004: _____*
Amount collected in commercial **bus** tour fees in FY 2004: : _____*

* Question 11 was not reported because the data were unreliable

Appendix II
Survey Instrument and Results from 112
National Park Units

12. Since the National Parks Air Tour Management Act was passed in 2000, to what extent has the implementation of the Act had a *positive* effect on your Park Unit?

To no extent (no effect).....N=62

To a small extentN=9

To a moderate extent.....N=7

To a great extent.....N=1

To a very great extent.....N=0

Uncertain/don't knowN=33

Please explain your answer: N=60 (Number of respondents who provided comments)

13. Since the National Parks Air Tour Management Act was passed in 2000, to what extent has the implementation of the Act had a *negative* effect on your Park Unit?

To no extent (no effect).....N=64

To a small extentN=7

To a moderate extent.....N=5

To a great extent.....N=1

To a very great extent.....N=1

Uncertain/don't knowN=34

Please explain your answer: N=51 (Number of respondents who provided comments)

14. No questionnaire of this type can cover every relevant topic. If you wish to expand on your answers or comment on any other topic related to the National Parks Air Tour Management Act of 2000 or its implementation, please use the space below and/or submit additional text.

N=56 (Number of respondents who provided comments)

Thank you for your time and participation in this important survey – we greatly appreciate your input!

Applications for Operating Authority by National Park Unit

Name of park unit	Existing operators with interim operating authority	Air tours authorized under interim operating authority	New entrant operator applications	Air tours requested by new entrant operators ^a
Acadia National Park	2	4,585	0	0
Arches National Park	11	675	3	104
Aztec Ruins National Monument	1	83	1	8
Badlands National Park	2	4,117	0	0
Bandelier National Monument	1	126	0	0
Big Bend National Park	1	5	0	0
Big Cypress National Preserve	1	1,260	0	0
Biscayne National Park	1	200	0	0
Black Canyon of the Gunnison National Park	1	7	0	0
Bryce Canyon National Park	15	3,488	6	956
Canyon de Chelly National Monument	5	177	2	840
Canyonlands National Park	11	1,039	4	104
Cape Hatteras National Seashore	3	8,170	0	0
Capitol Reef National Park	8	334	2	unknown
Capulin Volcano National Monument	1	13	0	0
Carlsbad Caverns National Park	1	18	0	0
Casa Grande Ruins National Monument	1	6	1	8
Cedar Breaks National Monument	6	79	4	104
Chaco Culture National Historical Park	1	147	0	0
City of Rocks National Reserve	0	0	2	unknown
Colonial National Historical Park	1	147	0	0
Colorado National Monument	1	57	1	8
Coronado National Memorial	1	5	0	0
Crater Lake National Park	0	0	1	8
Craters of the Moon National Monument and Preserve	0	0	2	unknown
Death Valley National Park	7	67	3	6
Devils Postpile National Monument	0	0	1	8
Devils Tower National Monument	1	22	0	0
Dinosaur National Monument	1	9	1	unknown
Dry Tortugas National Park	1	100	0	0
El Malpais National Monument	1	43	0	0
El Morro National Monument	1	43	0	0
Everglades National Park	1	674	0	0

**Appendix III
Applications for Operating Authority by
National Park Unit**

(Continued From Previous Page)

Name of park unit	Existing operators with interim operating authority	Air tours authorized under interim operating authority	New entrant operator applications	Air tours requested by new entrant operators^a
Fort Bowie National Historic Site	1	5	0	0
Fort Davis National Historic Site	1	5	0	0
Fort Laramie National Historic Site	0	0	1	unknown
Fort Union National Monument	1	32	0	0
Gila Cliff Dwellings National Monument	1	26	1	8
Glacier National Park	8	1,793	0	0
Glen Canyon National Recreation Area	15	14,074	4	944
Golden Gate National Recreation Area (includes Alcatraz Island, Muir Woods National Monument, Presidio of San Francisco, and Fort Point National Historic Site)	1	2,900	0	0
Golden Spike National Historic Site	1	11	1	unknown
Governors Island National Monument	1	29,432	0	0
Grand Teton National Park	4	74	1	unknown
Great Basin National Park	0	0	1	unknown
Great Sand Dunes National Park and Preserve	1	16	0	0
Great Smoky Mountains National Park	2	1,920	0	0
Guadalupe Mountains National Park	1	18	0	0
Hagerman Fossil Beds National Monument	0	0	1	unknown
Haleakala National Park	10	26,325	2	4,140
Hawaii Volcanoes National Park	14	28,441	1	600
Hohokam Pima National Monument	1	5	0	0
Hovenweep National Monument	3	92	2	unknown
Hubbell Trading Post National Historic Site	1	27	0	0
Joshua Tree National Park	0	0	1	8
Kalaupapa National Historical Park	5	2,250	0	0
Lake Mead National Recreation Area (includes part of Parashant National Monument)	15	68,814	4	1,740
Lake Roosevelt National Recreation Area	1	12	0	0
Lassen Volcanic National Park	1	89	0	0
Mesa Verde National Park	1	63	1	8
Mojave National Preserve	1	15	0	0
Montezuma Castle National Monument	4	185	0	0
Mount Rainier National Park	6	173	1	unknown
Mount Rushmore National Memorial	3	5,608	0	0
Natural Bridges National Monument	6	195	2	unknown
Navajo National Monument	4	277	3	8

**Appendix III
Applications for Operating Authority by
National Park Unit**

(Continued From Previous Page)

Name of park unit	Existing operators with interim operating authority	Air tours authorized under interim operating authority	New entrant operator applications	Air tours requested by new entrant operators^a
North Cascades National Park (includes Lake Chelan National Recreation Area)	6	437	1	unknown
Olympic National Park	4	139	2	48
Organ Pipe Cactus National Monument	1	5	1	8
Pecos National Historical Park	1	32	0	0
Petrified Forest National Park	3	60	1	unknown
Petroglyph National Monument	1	45	0	0
Pipe Spring National Monument	2	26	3	8
Point Reyes National Seashore	1	2,900	0	0
Rainbow Bridge National Monument	9	10,175	2	104
Rio Grande Wild & Scenic River	1	5	0	0
Saguaro National Park	3	20	0	0
Salinas Pueblo Missions National Monument	1	17	0	0
San Francisco Maritime National Historical Park	1	2,900	0	0
San Juan Island National Historical Park	1	20	0	0
Sequoia & Kings Canyon National Park	1	10	2	16
Statue of Liberty National Monument (includes Ellis Island National Monument)	5	35,837	0	0
Sunset Crater Volcano National Monument	5	98	1	unknown
Timpanogos Cave National Monument	1	254	1	unknown
Tumacacori National Historical Park	1	5	0	0
Tuzigoot National Monument	3	62	0	0
Voyageurs National Park	1	60	0	0
Walnut Canyon National Monument	3	49	1	unknown
Wright Brothers National Memorial	0	0	1	unknown
Wupatki National Monument	3	60	2	unknown
Yellowstone National Park	5	148	3	8
Yosemite National Park	1	115	2	unknown
Yucca House National Monument	1	63	0	0
Zion National Park	14	742	6	959

Source: FAA.

^aMany of the new entrant operators did not request a specific number of air tours in their applications for operating authority, resulting in "unknown" for some of the park units listed in this table.

Note: Since our survey in July 2005, when 112 park units were expected to develop ATMPs, 15 park units have been eliminated due to two operators' withdrawing their applications for authority to conduct tours over those park units. The two operators had been the sole applicants at the following 15 park units: Bent's Old Fort National Historic Site; Cabrillo National Monument; Channel Islands National Park; Charles Pinckney National Historic Site; Chiricahua National Monument; Curecanti National

Appendix III
Applications for Operating Authority by
National Park Unit

Recreation Area; Gateway National Recreation Area; Lava Beds National Monument; Lower East Side Tenement Museum National Historic Site; Manhattan Sites (which includes Castle Clinton National Monument, Saint Paul's Church National Historic Site, Federal Hall National Memorial, General Grant National Memorial, Hamilton Grange National Memorial, and Theodore Roosevelt Birthplace National Historic Site); Manzanar National Historic Site; Pinnacles National Monument; Santa Monica Mountains National Recreation Area; Tonto National Monument; and Whiskeytown National Recreation Area. In addition, FAA withdrew interim operating authority in October 2005 for one operator at three park units where there were no other applicants. Those three park units are: John Muir National Historic Site, Redwood National and State Parks, and Rosie the Riveter/World War II Home Front National Historical Park. This information reflects applications for operating authority that were still active as of November 2005.

Applications for Operating Authority by Air Tour Operator

Name of air tour operator	Number of park units applied for as an existing operator	Number of park units applied for as a new entrant operator	Total number of park units	Total interim operating authority granted (number of air tour flights)
Above It All, Inc.	1	0	1	3,878
Adams, Bruce M.	50	0	50	1,888
Adventure Air, LC	0	26	26	0
Aero-Copters of Arizona, Inc.	5	0	5	1,556
Air Grand Canyon Inc.	21	0	21	330
Alika Aviation, Inc.	1	0	1	2,923
American Aviation, Inc.	20	0	20	4,536
Aris, Inc.	1	0	1	3,996
Arrow West Aviation	5	0	5	654
Aviation Ventures, Inc.	1	6	7	6,756
Badger Helicopters Inc.	1	0	1	4,099
Bar Harbor Aviation	1	0	1	2,000
Big Island Air, Inc.	1	0	1	1,643
Black Hills Aerial Adventures, Inc.	1	0	1	363
Burrus Flight Seeing Service	1	0	1	1,500
Call Air, Inc.	3	0	3	404
Carisch Helicopters Inc.	1	0	1	20
Classic Helicopter Corporation	1	1	2	32
Columbia Air Services-BHB, LLC	1	0	1	2,585
Corporate Air	0	1	1	0
Courtney Aviation, Inc.	3	0	3	114
Dairy Air Inc.	1	0	1	6,500
Eagle Aviation, Inc.	3	0	3	85
English, Daniel B.	1	0	1	89
Grand Canyon Airlines, Inc.	12	0	12	10,765
Great Smoky Mountain Helicopter, Inc.	1	0	1	120
Gretzke, Robert C.	4	0	4	2,234
Hawaii Helicopters, Inc.	2	0	2	5,823
Heli USA Airways, Inc.	4	0	4	7,481
Helicopter Consultants of Maui, Inc.	2	0	2	20,761
Helicopter Flight Services, Inc.	1	0	1	3,500

**Appendix IV
Applications for Operating Authority by Air
Tour Operator**

(Continued From Previous Page)

Name of air tour operator	Number of park units applied for as an existing operator	Number of park units applied for as a new entrant operator	Total number of park units	Total interim operating authority granted (number of air tour flights)
Homestead Helicopters, Inc.	2	0	2	30
Island Air, Inc.	4	0	4	42
Jamestown Flight Center	1	0	1	147
K & S Helicopters, Inc.	1	1	2	1,684
Kanab, Utah Air Service	0	7	7	0
King Airlines Inc.	7	0	7	4,452
Kruger, James W.	1	0	1	750
Lake Chelan Air Service Inc.	1	0	1	400
Las Vegas Helicopters Inc.	4	0	4	1,412
Laughlin Aviation LLC	1	0	1	3,015
Liberty Helicopters, Inc.	2	0	2	58,864
Manuiwa Airways, Inc.	1	0	1	800
Maui Island Air, Inc.	2	0	2	741
Mauscape Helicopters	0	1	1	0
Maverick Helicopters, Inc.	14	13	27	9,798
McClelland, John and Terri	3	0	3	8,700
Minuteman Aviation Inc.	1	0	1	717
Mokulele Flight Service, Inc.	1	0	1	60
Montana Aircraft, Inc.	2	0	2	66
Montana By Air LLC	1	0	1	12
Natures Designs, Inc.	2	0	2	100
New York Helicopter Charter, Inc.	1	0	1	2,655
North East Air and Sea Services LLC	1	0	1	125
Osprey Aero	1	0	1	60
Papillon Airways Inc.	8	0	8	11,435
Paragon Air, Inc.	3	0	3	1,968
Pavco, Inc.	2	0	2	87
Platt, Phil	1	0	1	170
Pro Aire Enterprises	0	3	3	0
Rainbow Pacific Helicopters, Ltd.	3	0	3	135
Rambo Helicopter Charter, Inc.	1	0	1	1,800
Red Eagle Aviation, Inc.	1	0	1	159
Reeder Flying Service	0	3	3	0
Rite Bros Aviation Inc.	3	0	3	80

**Appendix IV
Applications for Operating Authority by Air
Tour Operator**

(Continued From Previous Page)

Name of air tour operator	Number of park units applied for as an existing operator	Number of park units applied for as a new entrant operator	Total number of park units	Total interim operating authority granted (number of air tour flights)
Rogers Helicopters Inc.	1	0	1	9,000
Rushmore Helicopters, Inc.	1	0	1	5,200
Safari Aviation, Inc.	1	0	1	3,920
Scenic Airlines, Inc.	5	5	10	20,804
Schuman Aviation Company, Co. Ltd.	3	0	3	75
Selway Aviation LLC	1	0	1	20
Skycraft Air Maintenance	0	1	1	0
Slickrock Air Guides, Inc.	3	0	3	969
Solid Edge Aviation	0	5	5	0
Sphere One	0	4	4	0
Spirit Mountain Aviation LLC	2	0	2	90
Steve Winters d/b/a M & S Aero	3	0	3	361
Sundance Helicopters Inc.	4	0	4	895
Sunshine Helicopters, Inc.	3	0	3	8,205
Swanstrom, Paul N.	5	0	5	250
Van Air, Inc.	1	0	1	60
Ventura Air Services, Inc.	1	0	1	125
Vista Helicopter Services	0	4	4	0
Westwind Aviation, Inc.	3	0	3	8,540
Wilson Aviation, LLC	1	0	1	60
Windrock Aviation, LLC	14	7	21	47
Wings of Wenatchee, Inc.	3	0	3	40

Source: FAA.

Note: This information reflects applications for operating authority that were still active as of November 2005.

Air Tours Authorized under Interim Operating Authority by National Park Unit

Name of park unit	Total number of air tours authorized under interim operating authority per year
Lake Mead National Recreation Area (includes part of Parashant National Monument)	68,814 ^a
Statue of Liberty National Monument (includes Ellis Island National Monument)	35,837
Governors Island National Monument	29,432
Hawaii Volcanoes National Park	28,441
Haleakala National Park	26,325
Glen Canyon National Recreation Area	14,074
Rainbow Bridge National Monument	10,175
Cape Hatteras National Seashore	8,170
Mount Rushmore National Memorial	5,608
Acadia National Park	4,585
Badlands National Park	4,117
Bryce Canyon National Park	3,488
Golden Gate National Recreation Area (includes Alcatraz Island, Muir Woods National Monument, Presidio of San Francisco, and Fort Point National Historic Site)	2,900
Point Reyes National Seashore	2,900
San Francisco Maritime National Historical Park	2,900
Kalaupapa National Historical Park	2,250
Great Smoky Mountains National Park	1,920
Glacier National Park	1,793
Big Cypress National Preserve	1,260
Canyonlands National Park	1,039
Zion National Park	742
Arches National Park	675
Everglades National Park	674
North Cascades National Park (includes Lake Chelan National Recreation Area)	437
Capitol Reef National Park	334
Navajo National Monument	277
Timpanogos Cave National Monument	254
Biscayne National Park	200
Natural Bridges National Monument	195
Montezuma Castle National Monument	185

Appendix V
Air Tours Authorized under Interim
Operating Authority by National Park Unit

(Continued From Previous Page)

Name of park unit	Total number of air tours authorized under interim operating authority per year
Canyon de Chelly National Monument	177
Mount Rainier National Park	173
Yellowstone National Park	148
Chaco Culture National Historical Park	147
Colonial National Historical Park	147
Olympic National Park	139
Bandelier National Monument	126
Yosemite National Park	115
Dry Tortugas National Park	100
Sunset Crater Volcano National Monument	98
Hovenweep National Monument	92
Lassen Volcanic National Park	89
Aztec Ruins National Monument	83
Cedar Breaks National Monument	79
Grand Teton National Park	74
Death Valley National Park	67
Mesa Verde National Park	63
Yucca House National Monument	63
Tuzigoot National Monument	62
Petrified Forest National Park	60
Voyageurs National Park	60
Wupatki National Monument	60
Colorado National Monument	57
Walnut Canyon National Monument	49
Petroglyph National Monument	45
El Malpais National Monument	43
El Morro National Monument	43
Fort Union National Monument	32
Pecos National Historical Park	32
Hubbell Trading Post National Historic Site	27
Gila Cliff Dwellings National Monument	26
Pipe Spring National Monument	26
Devils Tower National Monument	22
Saguaro National Park	20
San Juan Island National Historical Park	20
Carlsbad Caverns National Park	18

Appendix V
Air Tours Authorized under Interim
Operating Authority by National Park Unit

(Continued From Previous Page)

Name of park unit	Total number of air tours authorized under interim operating authority per year
Guadalupe Mountains National Park	18
Salinas Pueblo Missions National Monument	17
Great Sand Dunes National Park and Preserve	16
Mojave National Preserve	15
Capulin Volcano National Monument	13
Lake Roosevelt National Recreation Area	12
Golden Spike National Historic Site	11
Sequoia & Kings Canyon National Park	10
Dinosaur National Monument	9
Black Canyon of the Gunnison National Park	7
Casa Grande Ruins National Monument	6
Big Bend National Park	5
Coronado National Memorial	5
Fort Bowie National Historic Site	5
Fort Davis National Historic Site	5
Hohokam Pima National Monument	5
Organ Pipe Cactus National Monument	5
Rio Grande Wild & Scenic River	5
Tumacacori National Historical Park	5
City of Rocks National Reserve	0
Crater Lake National Park	0
Craters of the Moon National Monument and Preserve	0
Devils Postpile National Monument	0
Fort Laramie National Historic Site	0
Great Basin National Park	0
Hagerman Fossil Beds National Monument	0
Joshua Tree National Park	0
Wright Brothers National Memorial	0

Source: FAA.

^aAt the time of our review, FAA officials believed that many of the tours authorized at Lake Mead National Recreation Area were actually transportation-only flights en route to the Grand Canyon National Park. Such flights are exempt from the National Parks Air Tour Management Act, but operators nonetheless applied for operating authority because of their uncertainty.

Note: This information reflects applications for operating authority that were still active as of November 2005.

Comments from the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JAN 5 2006

Ms. Robin M. Nazzaro
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Nazzaro:

Thank you for providing the Department of the Interior the opportunity to review and comment on the draft U.S. Government Accountability Office report entitled: "National Parks Air Tour Management Act: More Flexibility and Better Enforcement Needed" (GAO-06-263)

Specific comments are listed in the enclosure. If you have any further questions, please contact Karen Trevino, Manager Air Tour Division, at 970-225-3563.

Sincerely,

Assistant Secretary for Fish
and Wildlife and Parks

Enclosure

Department of the Interior Comments on the GAO Draft Report entitled, "National Parks Air Tour Management Act: More Flexibility and Better Enforcement Needed" (GAO-06-263)

We provide the following comments, both general and technical in nature, which serve to better explain or characterize Department's position with respect to the findings, conclusions and recommendations made by the GAO. For ease and efficiency, these comments follow the same general outline as the report itself.

I. Background

We concur that implementation of the National Parks Air Tour Management Act (NPATMA) has been slow. As the report points out, one of the reasons for delay was due to the fact that the Federal Aviation Administration (FAA) and the National Park Service (NPS) could not reach agreement on what constitutes a significant impact. The report does not, however, explain why this is an issue which would be helpful to both the requesters of this report and the public. Implementation of the NPATMA would have proceeded more quickly if the agencies had, from the onset, more closely followed Congressional intent with respect to agency expertise and jurisdiction by allowing the NPS to analyze and determine the significance of impacts, if any, on national park resources. Just as the FAA has the responsibility for dealing with safety, the NPS is responsible for and has jurisdiction over park resources. Moreover, it is clear from the legislative history on the NPATMA that Congress intended that each agency retain their respective administrative roles, responsibilities and expertise regarding airspace management (FAA) and protecting park resources and values and visitor experiences (NPS).

We agree with the four key issues identified as critical to the success of implementing the NPATMA. We do however have comments regarding the findings and recommendations for the first 3 key issues.

II. Section Specific Comments

Finding 1) Lack of Flexibility for Determining Which Park Units Should Receive ATMPs

We agree that the NPATMA requires that an Air Tour Management Plan (ATMP) be developed at any park unit where an application for operating authority is made, and that the agencies are not authorized to exclude any park unit from the ATMP process where an application for operating authority has been made. However, while we agree that there is lack of flexibility in the Act regarding the determination of which parks ATMPs will be developed for, we do not agree with the conclusion that a legislative amendment

See comment 1.

See comment 2.

is necessary to address parks with low levels of air tour activity or to implement the Act in a more efficient and equitable manner. There are several administrative remedies currently available to the agencies that might better address low air tour activity without unnecessarily or unwittingly jeopardizing the protection of park resources and visitor enjoyment. In the alternative, we would agree with a general grant of authority which would provide the agencies discretion to make such determinations based on agency developed criteria that goes beyond simply the level of air tour activity. Although certainly a significant factor, adverse effects from air tours cannot be determined solely by the level of air tour activity. Where, when and at what altitude air tours operate are also important determinants of potentially adverse impacts. Consequently, eliminating the requirement for an ATMP at park units based solely on the level of air tour activity would defeat the main purpose for the enactment of NPATMA which was to identify where air tours might be impacting park resources in order to adequately manage or regulate them.

See comment 3.

The Department agrees that the Act could and should be implemented in a more cost effective manner and to that end is working with the FAA to identify where and how best to do that. Various programmatic approaches currently being considered by both agencies could provide the same flexibility and address the same issues that a legislative amendment could.

See comment 4.

Last, the report points out that this recommendation was based in part on a survey where many park units reported they did not think they needed an ATMP or that noise from air tours was not the primary aviation issue. It is important to note that the FAA and NPS have not had any contact with or made any efforts at implementation in most of the those parks units and therefore, whether or not an ATMP is needed is not necessarily something many park units would be in a position to assess independently without access to baseline acoustic data. A quantitative scientific approach such as that being used for the ATMP process includes an analysis of all aviation noise sources at a park and is the best means we have for determining noise impacts to park resources and visitor use and enjoyment. We are concerned that the results from an anecdotal survey might be used to improperly suggest that some parks do not need ATMPs or used to imply that low levels of air tour activity alone equates to little or no adverse effects.

See comment 5.

Finding 2) Absence of Park Service Funding for Its Share of ATMP Development Costs

We disagree with FAA's assertion that lack of NPS funding caused the ATMP schedule to be scaled back. In many conversations with FAA about this issue, the NPS and the Department were told that the primary reason for scaling back the number of ATMP's that were originally intended to be initiated was the realization that it would be imprudent and premature to start new ATMP's given the number of critical issues that required resolution between the two agencies. The FAA advised the NPS and the National Parks Overflights Advisory Group that the FAA chose to scale back the development of ATMP's in order to give the agencies time to develop a more prudent and effective approach to ATMP development, including an implementation plan that could help guide

the agencies in the development of ATMP's. This was acknowledged by both Bill Withycombe and Paul Hoffman during Congressional testimony in July 2004.

The Department acknowledges and agrees that the NPS needs to fund its agreed upon share of ATMP costs and has been working diligently to obtain such funding. It should be noted that although the NPS has not fully funded its 40% commitment under the interagency Memorandum of Understanding, the NPS has contributed greatly by providing in-house expertise in areas where the FAA lacks such expertise. Lacking such in-house expertise, the FAA uses outside contractors that are more expensive and add to the overall ATMP costs covered under the MOU.

Finding 3) Limited Ability to Verify and Enforce the Number of Air Tours

While we are gratified to see the recommendation that the FAA develop a compliance, reporting and enforcement process, we must note that the need for such a process goes well beyond enforcement as suggested in the report. The current limited ability to verify air tours has affected the ability of both agencies to deal with increases in interim operating authority and request for operating authority from new entrants, in addition to slowing down the environmental compliance process. The report mentions that the NPS would consider increases in the Interim Operating Authority under which air tour companies currently operate. However, the Act requires that the NPS make a determination that those increases would not cause a noise problem and therefore certain information would be needed from air tour operators to make those determinations – information not currently available according to the FAA. Moreover, the report does not mention that FAA has no authority to collect that data, and consequently the agencies have been unable to address requests for increases. In addition, a credible and legally defensible environmental impact analysis requires sufficient available data and determination that the environmental effects from air tour overflights is no different.. The report notes the quality of the data varies and some operators have deliberately supplied false data. Specifically, the lack of quality data and suspect data has affected the agencies' ability to accurately determine the environmental impacts of air tours at the Hawaii parks where ATMPs are being developed due to uncertainty about the actual level of air tour activity occurring.

Finding 4) FAA's Inadequate Guidance Concerning the Act's Safety Requirements

We have no response regarding this finding and recommendation as FAA has jurisdiction over aviation safety.

III. Omissions

One of the most significant causes of delay in the implementation of the NPATMA has been lack of agreement between the FAA and the NPS regarding respective roles and responsibilities based on agency expertise and jurisdiction yet the report does not specifically address this issue. The report should have a stronger focus on one of the biggest impediments to implementation of the Act.

See comment 6.

Just as the FAA determines matters of airspace safety in the ATMP process, it is our opinion that the NPS should determine the impacts of ATMPs upon the resources and values of national parks and visitor experience. The FAA's mandate lies in managing aviation safety and has sole authority to control airspace and notwithstanding ancillary expertise in general environmental matters, its role in ATMPs should be based on that. Similarly, the NPS has the responsibility of conserving scenery, natural and cultural resources, and wildlife in national parks in ways that leave them unimpaired for future generations and the agency's role should be based on that despite its ancillary agency expertise in aviation. Furthermore, just as the FAA has jurisdiction over U.S. airspace, the NPS has administrative jurisdiction over the management of national park resources.

Moreover, based on conversations with the National Park Overflight Work Group members (the predecessor to National Park Overflight Advisory Group upon whose recommendations to Congress this Act was based), this bifurcation of responsibility based on agency expertise is exactly how Congress had envisioned the statute would be jointly implemented by the two agencies. Recommendations by GAO regarding a strong articulation of this intent would have been helpful to both agencies and would go a long way toward more effective implementation of the Act in general.

III. Technical Comments

Highlight Page, What GAO Found, first sentence. Change the last word in the sentence from "developed" to "completed," to be more consistent with other language that refers to plans that are under development; however, it is correct to say that none have been completed.

Now on p. 6.

Page 7, *Limited Ability to Verify and Enforce the Number of Air Tours*, 3rd sentence. Not only are the agencies limited in their ability to enforce the Act, limited ability to verify and enforce the number of air tours has also made developing air tours more difficult.

Page 9, first paragraph after the bullets, last sentence. Insert "decision" between NEPA and document. The Act specifically refers to the decision document, e.g. the Finding of No Significant Impact or Record of Decision. These are separate documents from the NEPA document (environmental assessment or environmental impact statement).

Now on p. 40.

Page 41, 2nd paragraph, 4th sentence. Correct spelling of "unis" to "units"

Pages 1 and 4. The FAA issued implementing regulations not "the agencies"

Various - Parks do not "receive" ATMP's; as a part of the team with the FAA and NPS they actually help develop them

The following are GAO's comments on the Department of the Interior's (Interior) letter dated January 5, 2006.

GAO Comments

1. While it is true that FAA and the Park Service could not agree on what constitutes a significant impact, we did not include specifics of the disagreement because, according to agency officials and the implementation plan, the problem has been resolved. Furthermore, the agencies' slow implementation of the act has been discussed in past congressional hearings and we concluded that we could not provide any new information.
2. We agree that Congress, in amending the act, should preserve the Park Service's authority to develop an ATMP for any park unit it deems necessary. Our intent for suggesting that Congress consider amending the act was to provide the agencies with the flexibility not to develop ATMPs for park units where the Park Service deems them to be unnecessary. That flexibility currently does not exist in the act. As we discuss in the report, an ATMP may be unnecessary for a specific park unit for a variety of reasons, including (1) a low level of air tour activity, (2) an existing voluntary agreement governing air tour activities, or (3) more significant effects by other types of overflights at the park unit. We agree that whether or not an ATMP is necessary for a specific park unit could depend on a number of factors and not just solely on the level of air tour activity. Furthermore, we agree that in amending the act Congress should not arbitrarily exclude park units from the ATMP process solely on the basis of their level of air tour activity. We believe that such an exclusion would be an oversimplification of a complex issue, and we did not imply such a solution in this report.
3. We disagree that programmatic approaches taken by the agencies could provide the same flexibility as a legislative amendment. As Interior acknowledges in its comments, the act does not give the agencies the authority to exclude any park unit from the ATMP process. In the matter for congressional consideration, we offer the point that Congress may wish to give the agencies such authority.
4. We disagree with Interior's characterization of our survey results as "anecdotal." We surveyed all 112 park units that were expected to develop ATMPs as of July 2005, and we received a 100 percent response rate. Per our instructions, the survey was to be completed by Park Service officials with the most knowledge of the subject area. We

believe that our methodology was sound and that we gathered the most authoritative data currently available from Park Service officials with first-hand knowledge of the different causes of noise at their respective park units. However, since only a small number of park units have completed sound monitoring studies as part of the development of an ATMP, we acknowledge that the responses provided were generally based on the survey respondents' first-hand knowledge and years of experience rather than scientific data. Nevertheless, the survey results clearly indicate that there are a number of park units currently scheduled to develop ATMPs that may not need them. We agree with Interior's comments that the survey results should not be "used to imply that low levels of air tour activity alone equates to little or no adverse effects."

5. We agree with this comment and we have revised the discussion of this issue in the final report accordingly.
6. We agree, and note in the report, that the Park Service needs additional information in order to grant increases in air tour allocations under interim operating authority. FAA confirmed that it does have authority to collect this data from air tour operators, as it is the agency with jurisdiction over operators and could require operators to provide the necessary information if an operator wants to increase its air tours under interim operating authority. The agencies would have to evaluate the information and determine whether an environmental analysis is necessary.

GAO Contact and Staff Acknowledgments

GAO Contact

Robin M. Nazzaro, (202) 512-3841, nazzaror@gao.gov

Staff Acknowledgment

In addition to the individual named above, Jeffery D. Malcolm, Assistant Director, Josey Ballenger, Alisha Chugh, Richard Johnson, Cathy Hurley, Wyatt R. Hundrup, Judy Pagano, Carol Herrnstadt Shulman, and Monica Wolford made key contributions to this report. Also contributing to the report were Roy Judy and Steve Martin.

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