

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

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Chief, Branch of Lands and Mineral Resources.

[FR Doc. E8-22347 Filed 9-23-08; 8:45 am]

BILLING CODE 3410-11-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Public Notice: Clarifying the Definition of "Substantial Restoration of Natural Quiet" at Grand Canyon National Park, AZ

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Disposition of Public Comments and Adoption of Clarification.

**SUMMARY:** On April 9, 2008, the National Park Service (NPS) published a Public Notice of agency policy in the **Federal Register** with the above title (73 FR 19246-19248), clarifying the NPS definition of substantial restoration of natural quiet at Grand Canyon National Park (GCNP) to distinguish between aircraft noise generated above and below 17,999 feet mean sea level (MSL), and requesting comments on the proposed clarification. Specifically, the NPS proposed the following clarification:

(a) Substantial restoration of natural quiet at GCNP will be achieved when the reduction of noise from aircraft operations at or below 17,999 feet MSL results in 50% or more of the park achieving restoration of the natural quiet (*i.e.*, no aircraft audible) for 75% to 100% of the day, each and every day; and

(b) The NPS defines the substantial restoration of natural quiet from all aircraft above 17,999 feet MSL to mean that there will be an overall reduction in aviation noise generated above 17,999 feet MSL above the park over time through implementation of measures in accordance with Federal Aviation Administration (FAA) commitments.

The NPS also clarified that 50% of the park is a minimum in the restoration goal.

The public comment period was open from April 9 to May 9, 2008. The NPS received and analyzed 127 comments in response to the Public Notice.

Comments were received from the National Air Transportation Association; environmental groups (*e.g.*, Sierra Club, Audubon Society, and Grand Canyon Trust); air tour operators;

and the general public. Comments beyond the scope of this clarification may be considered in the development of the Environmental Impact Statement for Special Flight Rules in the Vicinity of Grand Canyon National Park (EIS).

**DATES:** The clarification as published on April 9, 2008, is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Ken McMullen, Grand Canyon National Park, 823 N. San Francisco St., Suite B, Flagstaff, AZ 86001, Telephone (928) 779-2095.

#### SUPPLEMENTARY INFORMATION:

##### Background

In response to the comments received pursuant to the publication of the NPS Public Notice in the April 9, 2008 **Federal Register**, the NPS explains the reasons for and the expected effects of the proposed clarification below and in the *Discussion of Comments* to follow.

##### Reasons for the Clarification

The notice published on April 9, 2008 in the **Federal Register** clarifies the definition used by GCNP for achieving substantial restoration of natural quiet as mandated by the 1987 Overflights Act (Pub. L. 100-91) (Overflights Act). This clarification of the definition is necessary to address current aircraft noise impacts, to comply with the intent of recommendations provided in the 1995 Report to Congress<sup>1</sup>, and to respond to a 2002 U.S. Court of Appeals decision.<sup>2</sup> The provisions of Special Federal Aviation Regulation (SFAR) 50-2 have not resulted in substantial restoration of natural quiet at GCNP. Given the volume of high altitude commercial jet and general aviation traffic overflying the Grand Canyon above 17,999 feet MSL, the substantial restoration goal as previously defined cannot be attained.

##### Discussion of Comments

The NPS received 127 comments regarding the clarification of the definition of the "substantial restoration of natural quiet" at GCNP. Of those, 40 comments were substantive in nature while 87 were not substantive. NPS Directors Order 12, *Conservation Planning, Environmental Impact Analysis, and Decision Making*,<sup>3</sup> defines

<sup>1</sup> National Park Service. 1995. *Report of Effects of Aircraft Overflights on the National Park System*, Report to Congress, July.

<sup>2</sup> *United States Air Tour Association, et al., Petitioners v. Federal Aviation Administration, et al., Respondents; Grand Canyon Trust, et al., Intervenor*s, 353 U.S. App. D.C. 213; 298 F.3d. 997; 2002. U.S. App.

<sup>3</sup> National Park Service. 2001. *Director's Order #12 and Handbook: Conservation Planning, Environmental Impact Analysis and Decision Making*, January.

substantive comments as those that raise, debate, or question a point of fact or policy. Comments solely in favor of or against the proposed action are not considered substantive. Also, a large number of comments were received that did not address the proposed clarification regarding 17,999 feet MSL; many addressed other issues that commentors said should be addressed in the EIS. While such comments are not substantive for this clarification, they will be considered as the EIS is developed. Substantive comments about the clarification are summarized and responded to below.

1. One commentor suggested the addition of the word "such" for clarity, so that Part (a) would read: "Substantial restoration of natural quiet at GCNP is achieved when the reduction of noise from aircraft operations at or below 17,999 feet MSL results in 50% or more of the park achieving restoration of natural quiet (*i.e.*, no such aircraft audible) for 75% to 100% of the day \* \* \*"

**NPS Response:** The NPS believes that Part (a) of the clarification as stated in 73 FR 19246-19248 is sufficiently clear to address only those aircraft at or below 17,999 feet MSL. Therefore, the suggested change is not made.

2. Comments were received urging NPS to clarify that Part (b) is not a definition of the statutory term, but rather policy goals based upon FAA commitments. Two commentors stated that the FAA commitments are alluded to but not specified.

**NPS Response:** Part (b) of 73 FR 19246-19248 clarifies but does not redefine the NPS goal for substantial restoration of natural quiet from all aircraft above 17,999 feet MSL above the park. This goal is supported by FAA policy commitments to: (1) Actively pursue efforts to continue to reduce aircraft source noise throughout the aviation system. The recently introduced NextGen Aviation Reform Act strengthens the FAA's research and development capability and includes a performance objective for lower noise aircraft technology; (2) when the FAA is engaged in airspace redesign that affects a national park and there are alternative choices consistent with safety, operational, and environmental parameters, the FAA will give favorable consideration to alternative routes away from sensitive park resources; and, (3) as the FAA transitions to a more dynamic, satellite-based technology, future navigational flexibility will allow the FAA to reconsider opportunities to reduce national park overflights that are

not possible today without severe airspace impacts.<sup>4</sup>

3. Several commentors disagreed with including or excluding flights above 17,999 feet MSL in the clarification or implied that the Notice misstates and overstates the consideration of high altitude overflights in the 1995 Report to Congress. One said that clarification on high-altitude flights is needed from Congress rather than from the NPS; another stated that rerouting commercial overflights (non-sightseeing) above 17,999 feet MSL is not covered by the Overflights Act and is an otherwise impractical solution for reducing aviation noise.

*NPS Response:* Consistent with the Overflights Act and a 2002 U.S. Court of Appeals decision, the impacts of all aircraft overflights need to be analyzed. This clarification does not dismiss the impacts of any type of overflight, but it does remove flights above 17,999 feet MSL from consideration when determining the percentage of the park achieving substantial restoration of natural quiet. The Grand Canyon Working Group (GCWG) recommended that the FAA and NPS work together to address these high altitude issues in a manner consistent with the proposed clarification to allow the EIS to proceed. All aircraft noise will be considered in the EIS analysis. The primary effect of the clarification is that aircraft noise from above 17,999 feet MSL will be analyzed in the EIS as part of cumulative effects, while the aircraft noise at and below that level will be analyzed as part of the direct effects of the actions proposed in the EIS alternatives.

4. Two comments were received suggesting that Congress did not intend for the NPS or the FAA to impose regulations on high-altitude flights in order to achieve substantial restoration of natural quiet.

*NPS Response:* The Overflights Act required a study of all aircraft overflights at GCNP in part to distinguish between the noise impacts produced by various types of aircraft, including commercial aviation. The study resulted in the 1995 Report to Congress which recommended an analysis of how to reduce other adverse impacts from overflights, such as protection of the park experience and public health and safety. Because high altitude commercial aviation overflights make noise and cause impacts to park resources such as the natural soundscape and visitor experience, the

GCWG recommended that the FAA and NPS work together to address the high altitude noise separately from low-level air tour, air tour-related, military, and general aviation aircraft overflights (at and below 17,999 feet MSL). The NPS determined that addressing aircraft noise in this manner is consistent with the law, and allows the EIS to proceed. The FAA has jurisdiction over high-altitude flights and has committed to the management actions described above in the NPS Response to Comment #1. In addition, the NPS has the responsibility to manage all park resources, including the natural soundscape.

5. Ten comments were received suggesting that the minimum of 50% of the park that will achieve restoration of natural quiet was too low and should be increased. Additional comments suggest that NPS should maintain the original definition for substantial restoration of natural quiet. Several commentors appeared to be under the impression that NPS was changing the definition of substantial restoration of natural quiet.

*NPS Response:* NPS is not changing the definition, but merely clarifying it in the Notice. In addition to the clarification related to 17,999 feet MSL, the Notice also clarifies that 50% of the park is a minimum in the restoration goal. The definition of substantial restoration of natural quiet remains as defined in the 1995 NPS Report to Congress. The Notice simply clarifies how the definition will be applied in environmental analysis related to FAA rulemaking actions at GCNP.

6. One comment was received stating that the Notice did not discuss, cite or otherwise disclose the professionally prepared September 2007 analysis/critique of the MITRE Report.<sup>5</sup>

*NPS Response:* The MITRE report<sup>6</sup> was a key factor in requiring the NPS to clarify the definition to address flights above 17,999 feet MSL, as discussed at 73 FR 19246–19248. The conclusion of the report was that it was unsafe, at the time, to modify national airspace over the park or divert commercial jet traffic off of existing routes that cross over the park and the Special Flight Rules Area (SFRA). FAA made the decision to accept the MITRE report outcome, and to maintain existing national airspace structure and operation over the park

<sup>5</sup> Sierra Club. Independent Review: Study for Grand Canyon Working Group (MITRE report critique). 2007. September.

<sup>6</sup> Abrahamsen, T.R., G.F. Marani, and R. Bearer. 2006. *Impact on Restricting Flights from Grand Canyon Airspace*. The MITRE Corporation CAASD for the Federal Aviation Administration and National Park Service, Report No. F063–B06–050, presented to the Grand Canyon Working Group, September.

and the SFRA. Though the critique and the report itself arrived at different conclusions, the NPS deferred to the FAA as the jurisdictional authority and their decision to support the MITRE study conclusions, and to continue FAA's airspace policies.

7. One comment was received that a change in the definition with regard to high-altitude aircraft noise was unwarranted and imprudent given the current issues facing the aviation industry (i.e., rising fuel prices, climate change concerns).

*NPS Response:* The NPS is implementing a clarification to the existing definition. Although the larger aviation industry issues are beyond the scope of the **Federal Register** Notice, if appropriate, they will be considered in the EIS impact analysis.

#### Conclusion

The NPS is not changing the definition of substantial restoration of natural quiet, but merely clarifying the scope and intent of the original definition. This clarification is necessary for the NPS and the FAA to meet the goals of the Overflights Act, and to proceed with assessing aircraft noise impacts in the EIS.

As discussed above, the National Park Service has carefully considered and responded to the comments received. Based on this consideration, the NPS decision is to adopt the clarification of the NPS definition of substantial restoration of natural quiet at Grand Canyon National Park as published at 73 FR 19246–19248.

Dated: July 31, 2008.

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National Park Service.

[FR Doc. E8–22343 Filed 9–23–08; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–622]

### In the Matter of Certain Base Plugs; Notice of Commission Decision Not to Review an Initial Determination Granting a Joint Motion To Terminate Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination

<sup>4</sup> Elwell, D. 2007. Personal communication with D. Verhey, letter dated March 6. U.S. Department of Transportation, Federal Aviation Administration.