

STATEMENT OF MARGARET GILLIGAN, DEPUTY ASSOCIATE ADMINISTRATOR  
FOR REGULATIONS AND CERTIFICATION BEFORE THE SENATE COMMERCE  
COMMITTEE ON THE STATUS OF IMPLEMENTING THE NATIONAL PARKS  
OVERFLIGHTS ACT, OCTOBER 3, 2002.

Chairman Hollings, Senator McCain, Members of the Committee:

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

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

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

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

restrictions that prohibited aircraft operations below the canyon's rim and established fixed routes for aircraft to follow in order to reduce mid-air collisions and improve overall safety.

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

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

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

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

In 1999, NPS announced it was refining its methodology for assessing the noise impacts related to substantial restoration of natural quiet. NPS decided, after it had gathered additional data, that different thresholds of impact should be applied in different parts of the park: Zone One, approximately one-third of the park, would continue to apply an aircraft audible, or noticeability, standard – three decibels above the ambient sound level; and Zone Two, which is mostly the backcountry areas of the park, would have a "detectability" standard applied

because visitors in these more remote areas are likely to be more active listeners who would be disturbed by aircraft noise. NPS data indicated that an active listener could detect aircraft noise at eight to eleven decibels below ambient noise levels. Consequently, NPS decided that the threshold for impact in Zone Two should be eight decibels below ambient noise levels.

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

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

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

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

Until FAA and NPS survey the available data and FAA obtains guidance from NPS, FAA can

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

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