

# NATIONAL PARKS CONSERVATION ASSOCIATION

*Protecting Parks for Future Generations*

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On Behalf of the  
National Parks Conservation Association

Before the Subcommittee on National Parks of the  
House Committee on Resources

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Mr. Chairman, and other distinguished Members of the Subcommittee; it is a pleasure to be back before this Subcommittee again. I recently retired from the National Park Service after a 38-year career, during which I served as, among other positions, park engineer, manager of the professional architecture and design center, associate director, and deputy director. I have actively participated, as a career professional, in the agency's interpretation and implementation of the 1916 NPS Organic Act, and all of the other laws given to the NPS to carry out, at the field, regional, and headquarters levels on a day-to-day basis for more than three decades, including development of the 1988, and 2001 editions of NPS *Management Policies*, the official manual that guides the agency's day-to-day work under these laws.

As is valid for all public laws and all public agencies, it is appropriate for this Subcommittee to exercise its oversight responsibilities to periodically assess how the National Park Service is doing in carrying out the statutory mandates that it has been given by the Congress and Presidents, and NPCA is pleased to play a role in supporting that effort on your part. We welcome your oversight, but strongly believe that the Administration has shown NO need for the broad and comprehensive changes that they propose to make in NPS *Management Policies*.

## NPS is On Target Under the Law, But Losing Ground

The fundamental re-interpretation of the Organic Act that is being proposed in the rewrite of the *Management Policies* does not make it a better document for agency manager's guidance. In fact, the proposed changes would remove the clear guidance of the 2001 edition, and replace it with muddy, unclear, and too-broad discretion left to NPS managers and Administration appointees, to judge what is and is not appropriate use of the national parks. A clear service-wide standard for day-to-day management decision-making is proposed to be replaced with a much broader range of choices.



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There is clearly NO need to amend the NPS Organic Act, or any of the other laws governing how our national parks are intended to be managed. The Organic Act has endured soundly for 90 years, and will probably be good for another 90 years, at least.

Likewise, there is NO need to re-write *Management Policies*. For those narrow subjects that the Administration has asserted were not addressed in the 2001 edition (homeland security, cell towers, succession planning, etc.) the issuance of specific *Director's Orders* is the operative process already in place to take care of it.

What is needed is for the broad constituency of interests that are engaged with the National Park Service—recreation, tourism, gateway communities, conservation, preservation, and regular “good citizens” – to step up their support for their national parks as they are, and as they are intended to be, preserved unimpaired for future generations to enjoy. Special interests must give way to the national interest if the national parks are to flourish in the future.

In 1918, Secretary of Interior Franklin Lane articulated the core management policy for the NPS, which endures today, *“First, that the national parks must be maintained in absolutely unimpaired form for the use of future generations as well as those of our time; second, that they are set apart for the use, observation, health, and pleasure of the people; and third, that the national interest must dictate all decisions affecting public or private enterprise in the parks.”*

### **The Threat of Generica**

At the White House Tourism Conference here in Washington D.C. early this fall, attended by invited state delegates and key tourism industry leaders from all 50 states, the opening day keynote speaker said that the greatest threat to American tourism is the *“Threat of Generica”* – the homogenization of natural and cultural landscapes across the Nation by commercialization. Another major speaker said that the counter force to the threat of generica is “geo-tourism” – more than eco- or sustainable-tourism, this new philosophy being adopted and embraced by the tourism industry itself, calls for sustaining the real places in America, retaining, restoring and sustaining the geographical character and integrity of a place. That is what will continue to draw tourists – and the units of the National Park System are already the very core, the essence, of this geo-tourism. The national parks can, if adequately funded and staffed, continue to lead this economic engine for America into the future.

For high quality tourism to be sustained in America, already the second or third largest economic driver in the USA, nothing is more important than preserving the unique natural and cultural places that make up the National Park System, unimpaired.

### **Appropriate Recreation**

Nearly 300 million people visited the parks last year, and we know from surveys that they “enjoyed” them. NPS concessionaires grossed over \$1 Billion in 2004; surrounding gateway



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communities and businesses grossed over another \$11 Billion attributable to national park visitors. Despite this, there are those who suggest that NPS management of the parks is TOO RESTRICTIVE, or that the parks are LOCKED UP, or lack ACCESS. Nothing could be further from the truth.

Nevertheless, some want to engage in thrill-type recreation activities, mostly in various types of motorized vehicles, in the national parks. Some (but far from all) park gateway communities complain that they could draw in more tourists if the NPS were “less restrictive” of various uses. These types of demands would kill the goose that lays the golden egg, and must be rejected.

The national parks do not have to sustain all recreation; that is why we have various other federal, state, local, and private recreation providers to share the demand, and to provide for those types of recreation that generally do not belong in the national parks, or that must be carefully limited. The 1916 NPS Organic Act, emphasizing conservation for future generations, is substantially different from the organic laws of the Bureau of Land Management, the US Forest Service, the US Fish and Wildlife Service, the Army Corps of Engineers, or any other federal agency. The NPS mission is also different from that of state park agencies, or of county or city park agencies. Together, these agencies provide for many forms of public recreation – but not all forms of recreation are appropriate in national parks.

### **Balancing Use with Preservation in Day-to-Day Management of National Parks**

Over the 90 years history of the NPS, there has been much debate over whether the NPS is achieving the proper balance between uses of the parks for today, and conserving them unimpaired for future generations. These conflicts usually erupt over day-to-day management of particular parks, and the decisions that the NPS makes as it goes through periodic management planning. It is crucial to this discussion, however, to note *that there is no credible debate over **whether** parks should be used by the American people, the debate centers on **how** the use occurs, or sometimes **when** or **where**.*

- The snowmobile controversy in Yellowstone would be far less significant if there were no impacts on wintering bison and trumpeter swans;
- The off-road vehicle debate at Cape Hatteras would be moderated if there were no impacts on breeding birds, or if more of the beaches were limited to pedestrian use;
- Shenandoah National Park staff could be less involved with opposition to adjacent power plants if emission controls under the Clean Air Act were being enforced at a higher standard, and if the scenic vistas from the park's overlooks were as clear as they were 50 years ago;
- NPS staff at Mojave National Preserve, where hunting is allowed by law, oppose the artificial wildlife watering holes, known as guzzlers, not because they oppose hunting, but because these devices dry up the natural springs at higher elevations, and concentrate wildlife unnaturally, exposing them as easier targets to both natural and human hunters;



- Professional NPS staff at Glacier Bay National Park limit the number of cruise ships allowed in the park at a time, both due to impacts on whales and other wildlife, and to maintain the quality of the visitor experience, both for cruise ship passengers and other park boaters;
- The buildings and associated utility lines for the Giant Forest Lodge in Sequoia National Park were killing the big trees, so NPS had them removed, and had its concessions partner, Delaware North, build a brand new lodge in a better location, still serving the visitors, but without impact to the giant Sequoias.

For the NPS professionals, conserving the parks *unimpaired* for future generations is synonymous with offering park visitors today a high quality experience. Scenic vistas should be clear, natural sounds should dominate over man-made noises, native wildlife should be abundant and visible for visitors, historic sites such as battlefields should look like they did when the historic events occurred, park visitor facilities should not be located so as to disturb the natural scene or the cultural landscape.

Viable alternatives to expanded use and commercial development in parks should be provided outside the parks, on other public lands, or in gateway communities. Natural and cultural resources of the units of the National Park System must be maintained and in some cases improved. Preservation is the key to continued success of the NPS in fulfilling its statutory mandate, and also to sustaining the core destinations that fuel the tourism industry.

### Interpreting the NPS Organic Act

It is the task of professional NPS managers, through the public process, to determine what is appropriate and what is not in the National Park System units. The “litmus” test for distinguishing between the permissible and the impermissible begins with the 1916 NPS Organic Act itself, and the key statutory provision that states that:

*“(The National Park Service) shall promote and regulate the use of the Federal areas known as national parks, monuments and reservations hereinafter specified...by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”*

Simply put, the NPS Mission is to provide for enjoyment of the parks in a manner that leave them unimpaired. Uses that impair the parks are illegal. Giving a precise definition to the term “impairment” is the job of the NPS career managers who are charged with implementation. In addition, federal courts have also rendered opinions that interpret the “impairment” provisions, and in every case, have agreed with the current interpretation.

Congress has clarified its intent in statutory use of the term “impairment” only once, in the 1978 amendment to the NPS General Authorities Act, which states that



*“Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares, and directs that the promotion*

*and regulation of the various areas of the National Park System, as defined in section 2 of this Act, shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916 to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.”*

Current NPS policy is to interpret the 1916 “non-impairment” standard, and the 1978 “non-derogation” standard as having the same meaning and intent. That little has changed since the NPS was established and given the task of managing the national parks can be seen in the similarities between the first NPS policy statement interpreting the Organic Act, which stated that:

*“Every activity of the Service is subordinate to the duties imposed upon it to faithfully preserve the parks for posterity in essentially their natural state,”*

and the language from the 1978 Senate Committee Report on the General Authorities Act amendment that stated that:

*“The Secretary has the absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system.”*

In the concluding paragraph to “The National Park Service Act of 1916: A Contradictory Mandate?” the late Dr. Robin Winks, Yale History Dean and former Chairman of both the National Park System Advisory Board and NPCA Board of Trustees, clearly articulates his conclusion that there is no contradiction in the clear intent of Congress in the 1916 Act, and that resource preservation trumps access and use when the two conflict in the determination of the professional managers of the parks.

*“Arguably the intent of Congress with respect to any single act cannot be perfectly divined or proven. The intent of Congress across a number of related acts, and as adumbrated by other acts that bear upon the related group, may more nearly be understood. The paper has attempted to judge that intent. It has argued that the language contained in the preamble to the National Park Service Act of 1916 is not, in fact, contradictory; and that Congress did not regard it as contradictory.... Further, it is argued that subsequent legislation, and*



*numerous interpretations of related legislation by the courts... sustain the view that there was and is not inherent contradiction in the preamble to the Act of 1916. The national Park Service was enjoined by that act, and the mission placed upon the Service was reinforced by subsequent acts, to conserve the scenic, natural, and historic resources, and the wild life found in conjunction with those resources, in the units of the National Park System in such a way as to leave them unimpaired; this mission had and has precedence over providing means of access, if those means impair the resources, however much access may add to the enjoyment of future generations."*

(Attached to this testimony is a copy of Dr. Winks' paper, "The National Park Service Act of 1916: A Contradictory Mandate?", submitted for the Hearing Record.) [www.nature.nps.gov/Winks/](http://www.nature.nps.gov/Winks/)

Day-to day management of a national park is complex, as is determining whether a particular type or amount of use would cause impairment, and thus not be allowed to occur in the park. The sound judgment of the career NPS park professional is the best means we have to make this determination, coupled with a public process that allows the American people to understand the complications and competing interests. Putting the national interest, and the long-term benefit to the park's resources, ahead of the immediate accommodation of use has always been and should continue to be, the primary factor indicating the right decision for park managers to make.

### **The Administration Has NOT Made a Case for Proposed Revisions to *Management Policies*, Chapter I, The Foundation**

#### **Overview**

From the first NPS *Management Policies*, issued in 1918, up until the most recent edition, issued in 2001, the process of policy development has followed a fairly common routine, with the periodic (every 10 years or so) review of existing NPS policies being initiated by the professional rank and file employees of the NPS, due to recent changes in law, federal court decisions interpreting law, or exposure to new scientific information.

*Management Policies* are designed primarily to give clear direction to the professional managers of the NPS so that there is consistent adherence to policy service-wide, and so that each manager has a clear and comprehensive basis for understanding what he/she is to consider when making management decisions. On the other hand, regulations are promulgated to enable enforcement of laws and policies on park users. These two tools, policies and regulations, must be consistent and clear, if NPS managers are to be able to do their jobs.

Because the focus of this hearing is the implementation of the Organic Act, we will focus our comments on a comparison of *Chapter 1: The Foundation* from the 2001 edition of *Management Policies* to the changes proposed in the current draft of *Chapter 1* that are out for public comment. We have been conducting a thorough review of the entire proposal and are developing a detailed analysis, but *Chapter 1* is central to the Park Service's interpretation of how to implement the Organic Act.



The interpretation of the NPS Organic Act that is contained in the proposed new version of NPS *Management Policies* is misguided. It misinterprets the intent of Congress, it ignores numerous federal court decisions, and it greatly weakens the professional judgment of the NPS career managers that have worked under the various NPS laws for over 90 years. Our analysis of key sections of Chapter 1 follows:

## **The Foundation**

Chapter One of the 2001 edition of *Management Policies* is entitled The Foundation and is intended to give additional clarity to the clear purpose of the National Park Service as stated in the 1916 NPS Organic Act.

The 2001 edition of *Management Policies* gave a very detailed and clear articulation of how to interpret the 1916 Organic Act's basis mandate. In contrast, the new draft significantly muddies the waters, and has the effect of letting each manager judge for him/herself whether a particular use or form of enjoyment is appropriate or not, and will or won't cause impairment, without the clear guidance that the 2001 edition of *Management Policies* provide.

The fundamental purpose of NPS, as set by the 1916 Act, is to promote and regulate uses that do not impair parks, and to prohibit all others. Yes, the NPS mission is about use and enjoyment, but these are types, amounts, and even timing of uses that are first judged to be compatible with conserving park resources unimpaired.

By all accounts, including NPS-commissioned visitor surveys, the hundreds of millions of people who visit the parks annually enjoy these parks. But, due to NPS management, certain uses that certain people might also enjoy in the parks are prohibited. It seems that these new proposed changes to *Management Policies* are intended to make it more difficult for NPS to prohibit some types of uses. The changes lower the standard by which appropriate uses are judged, by adding a variety of qualifiers, modifiers, and vague, fuzzy guidelines to what were previously much more clear guidelines for judging appropriateness.

### **1.4.3 The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values**

The 2001 edition of *Management Policies* clearly defines the 1916 Organic Act's "fundamental" purpose of the NPS as two-fold:

- 1) to affirmatively conserve park resources and values all the time, even where there is no particular threat or risk at the moment; this is a mandate for proactive, not just reactive park natural and cultural resource management. When Congress added the mandate for reliance on scientific research to guide park management in the 1998 Thomas Bill (P. L. 105-391), Congress was essentially directing the NPS to assure that its actions would



- continue to conserve park resources and values, based on the findings of park-based applied research,<sup>1</sup> not just in response to user-caused impairments.
- 2) To provide for enjoyment, but only enjoyment that occurs in a manner or means that leaves the park's resources and values unimpaired.

The 2001 Edition further states, "NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values." Avoiding adverse impacts is necessitated by both the first element of the single purpose, as well as the second element.

The proposed draft significantly revises the interpretation of the Organic Act by treating its mandate as a balancing act between conservation of resources and values and visitor enjoyment. *"The Park Service recognizes that activities in which park visitors engage can cause impacts to park resources and values, and the Service must balance the sometimes competing obligations of conservation and enjoyment in managing the parks."*

This interpretation of the Organic Act's fundamental purpose for the NPS is not accurate. While there is clearly a difference between impacts and impairments – NPS may permit certain impacts to park resources and values so long as they are not impairments – the professional judgment that is called for to distinguish between impacts and impairments is clearly different than one that seeks to balance use with conserving...unimpaired.

By eliminating the separate Organic Act requirement to conserve park resources and values, the proposed draft relaxes the standards by which a park manager would judge the condition of park resources and values. The draft replaces the phrase "adverse impacts" used in the 2001 edition with the term "unacceptable impacts," which is weaker than its predecessor. For example, the new draft eliminates from the list of protected attributes unreasonable interference with "the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, and commemorative locations within the park."

In fact, the park manager does not have "broad discretion" as it is defined in the proposed draft. While federal courts have shown deference to the federal decision-maker in questions about defining impairment, these same courts have universally upheld the paramount mandate of the Organic Act to conserve park resources and values unimpaired, even to the extent of reducing or eliminating a particular form of use.

The proposed draft adds two new subsections, on "1.4.3.1 Appropriate Use," and "1.4.3.2 Unacceptable Impacts," both of which seek to emphasize that balance is required under the Organic Act. Both subsections are comprised of lists of items that would be acceptable or unacceptable uses,

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<sup>1</sup> Section 202 of P.L. 105-391 states that "The Secretary is authorized and directed to assure that management of units of the National Park System is enhanced by the availability and utilization of a broad program of the highest quality science and information." Section 206 states, in part, "The Secretary shall take such measures as are necessary to assure the full and proper utilization of the results of scientific study for park management decisions."





but this approach is only valid if you assume that the NPS park manager's only obligation is to balance use with resource conservation.

Another new subsection "1.4.3.3 Park Purposes and Legislatively Authorized Uses" in the proposed draft properly distinguishes between mandated uses and authorized uses, but fails to note that authorized uses are discretionary with the NPS manager and may be prohibited if the manager judges the impacts of such use to be unacceptable.

Curiously, this section fails to note the important fact that individual park enabling statutes sometimes have the effect of modifying the applicability of the Organic Act to a specific park or aspect of management of that park. This was a hallmark feature of the 1988 edition of *Management Policies* which was carried forward into the 2001 edition. The proposed draft seems much more intent on allowing maximum manager discretion than in adhering carefully to the intent of Congress.

## **1.7 Management Excellence**

This section of the proposed draft is greatly expanded from the 2001 edition of *Management Policies*, some of it appropriate, and some of it curiously inappropriate, and most of it better placed elsewhere in the follow-on Chapters of the document.

### **1.7.2 Accessibility for Persons with Disabilities**

This subsection, while important overall to NPS facility design, belongs in portions of Chapter 8 Use of the Parks, and Chapter 9 Park Facilities, rather than in the Foundation Chapter, which should remain focused on interpretation of the Organic Act. This subsection will also likely be subject to significant re-writing in the near future, when the federal Access Board promulgates its long-awaited regulations and guidelines on access to recreation facilities, and to outdoor developed areas.

### **1.7.4.4 Facilities Management, 1.7.4.5 Business-like Concession Program, 1.7.4.6 Budget Performance and Accountability Programs, 1.7.5 Human Capital, 1.7.5.1 Career development, Training and Management, 1.7.5.2 Succession Planning, 1.7.5.3 Workforce Planning, 1.7.5.4 Employee Safety and Health, and 1.7.5.5 Workforce Diversity**

These are all new subsections of the proposed draft, and do not belong in Chapter 1, some do not belong in *Management Policies* at all, but certainly are misplaced, and seem only to serve to dilute the focus of Chapter 1 away from what was heretofore its main purpose, to explain and interpret the fundamental law of the NPS, the 1916 Organic Act.



## 1.9 Partnerships

While the Partnership section is generally good and parallels the 2001 edition, a significant addition has been proposed which could impact the integrity of the National Park System if it were to be implemented as stated.

The problematic language relates to consensus-based management. On their face, efforts to promote productive dialogue are reasonable and important. However, Park Service managers have the responsibility to prevent impairment—a goal not always central to or shared by the parties with whom a consensus would be sought. While productive dialogue is to be encouraged, there are times when prevention of impairment dictates that a specific decision be made. In such instances, creating an expectation that “consensus” should be sought would be counterproductive and disingenuous, and would more likely lead to hard feelings than to genuine understanding.

Thank you for the opportunity to testify here today, and I would be happy to answer any questions.



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