

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 30 Number 8, April 27, 2012

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House, Senate are going to transportation bill confab

The House and Senate are on track to begin a conference committee next month on contrasting surface transportation bills with huge implications for outdoor programs.

But just because the two houses go to conference is no guarantee that Republicans and Democrats will agree on a final bill. Indeed the smart money continues to argue that, because this is an election year, Congress will eventually simply extend the existing surface transportation law.

The differences between the House and Senate bills are stark. First and foremost a Senate-passed bill (S 1813) of March 14 is an expensive, two-year measure loaded with allocations to park and rec programs. The House bill (HR 4348) is a stripped-down, three-month extension of existing law.

However, the House Transportation Committee has approved a fleshed-out, five-year surface transportation bill (HR 7) and that will undoubtedly be included in the conference negotiations. It in turn contains few allocations to park and rec programs.

The conference was set up when the House April 18 approved the short-term extension bill that would keep existing programs in effect through the end of September. A previous extension bill provides spending through May. On April 25 the House agreed to go to conference and on April 24 the Senate did the same.

Meanwhile, House and Senate appropriators are beginning to address fiscal year 2013 surface transportation bills. The Senate Appropriations Committee approved its bill April 19 with a spending ceiling of \$53.4

billion, or almost \$4 billion less than the fiscal 2012 appropriation of \$57.3 billion. The House subcommittee on Transportation has not scheduled a mark-up yet, but House 302(b) allocation is \$51.6 billion, or \$1.8 billion less than the Senate allocation.

Most surface transportation money is guaranteed by the existing law - the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). It authorized spending through fiscal year 2009, which ended on Sept. 30, 2009. SAFETEA has been kept alive since then through numerous temporary extensions. However, the appropriations bill actually spends the money.

In a major side issue to the Senate surface transportation bill the measure includes \$700 million per year for the next two years for the Land and Water Conservation Fund. The money would be guaranteed in that it would come from the BP Deepwater Horizon oil spill compensation fund. (*See separate article page 8.*)

Here's where the Senate stands compared to the House Transportation Committee bill on specific programs:

ENHANCEMENTS: The House committee bill would remove the existing \$900 million per year set-aside for transportation enhancements, but would allow the program to compete with other program for money from state highway transportation offices. The Senate bill would maintain guaranteed spending for the program at or about \$900 million for fiscal 2013 and 2014.

Said the Rails-to-Trails Conservancy in a bulletin to its members, "The bill will ensure greater local access to funds and a fair shot at approval for the most beneficial projects, and it preserves decision-making structures that enable public participation and well-balanced trail systems."

RECREATIONAL TRAILS: The House committee and the Senate committee are in rough agreement on setting aside \$85 million per year for the Recreational Trails Program.

The office of Sen. Amy Klobuchar (D-Minn.), the lead advocate for the program in the Senate, said the senator "has secured the continuation of the Recreational Trails Program as part of a larger Surface Transportation bill."

SCENIC BYWAYS: The House committee bill would eliminate the program. The House committee would also eliminate funding for the America's Byways Resource Center. That may not matter because the Obama administration is already closing the center down. The Senate bill would allow the scenic byways program to compete for money from either a Transportation Mobility Program or from transportation enhancements.

FEDERAL LANDS ROADS: The House committee bill would set aside \$535 million per year for federal land roads, 38 percent of which would go to National Park Service roads (or \$203 million), 32 percent to Forest Service roads (\$171 million) and 4.5 percent to the Fish and Wildlife Service.

The Senate bill would also keep federal and Indian land roads alive with an annual allocation of \$1 billion. Of that \$260 million would be allocated to national park and national wildlife refuge roads.

NATIONAL PARKS OVERFLIGHTS: No comparable House provision. The Senate bill would limit environmental restrictions in an upcoming Grand Canyon National Park air tour management plan. The park tells us the final plan should be completed this spring or summer.

The bill says, "None of the environmental thresholds, analyses, impact determinations, or conditions prepared or used by the Secretary to develop recommendations regarding the substantial restoration of natural quiet and experience for the Grand Canyon National Park required under section 3(b)(1) of Public Law 100-91 shall have broader application or be given deference with respect to the Administrator's compliance with the National Environmental Policy Act for proposed aviation actions and decisions."

Public Law 100-91 is the National

Parks Overflight Act of 1987, which required the air tour plan. Sen. John McCain (R-Ariz.) and Senate Majority Leader Harry Reid (D-Nev.) prepared the Senate provision.

Appropriators renew wars; spending allocations assigned

The Senate and the House are once again on a crash course over fiscal year 2013 domestic spending.

The Senate and House Appropriations Committees made it official in the last fortnight when they adopted different spending caps for appropriations subcommittees in fiscal 2013. As usual, the Democratic Senate assigned significantly higher caps than the Republican House.

For an Interior and Related Agencies subcommittee the Senate assigned a cap of \$29.662 billion, or \$1.7 billion more than the House number of \$28 billion.

The committees followed the same pattern for an Energy and Water bill (Senate, \$33.4 billion; House, \$32.1 billion), Transportation bill (Senate, \$53.4 billion; House, \$51.6 billion) and for an Agriculture bill (Senate \$20.8 billion; House \$19.4 billion).

The setting of the 302(b) allocations opens the way for mark-up of individual appropriations bills. On April 18 the House Appropriations subcommittee on Energy and Water approved its bill, on April 24 the Senate Appropriations subcommittee on Energy and Water approved its bill and on April 19 the Senate Appropriations Committee approved a Transportation bill. *(See details below.)*

The Senate committee has not scheduled mark-ups yet for an Interior bill and the House committee has not scheduled mark-ups for Interior, Agriculture and Transportation.

The committees are calling for different overall spending levels because they interpret differently a grand budget agreement between Congress

and the Obama administration of last summer (PL 112-25 of Aug. 2, 2011). It capped all federal spending at \$1.047 trillion.

The Senate is sticking with the agreement but House Republicans want greater savings. Their fiscal 2013 budget resolution (H Con Res 112), approved on the floor March 29, would provide \$19 billion less, or \$1.028 trillion. In addition the House would not reduce defense spending proportionately, taking a bigger bite out of domestic spending.

In an important break with House Republicans, ranking Senate Appropriations Committee minority member Thad Cochran (Miss.) endorsed last summer's spending agreement. While faulting the Senate's failure to produce a fiscal 2013 budget based on last summer's agreement, he said, "The Budget Control Act *did*, however, provide 10 years of discretionary spending caps – in law – for a budgetary savings of nearly \$1 trillion. Those caps are the only significant and concrete piece of deficit reduction included under the Budget Control Act, or for that matter in any recent law." (His emphasis.)

Last summer's budget agreement also established a Joint Select Committee on Deficit Reduction that was supposed to chop \$1.5 trillion from the budget over the next 10 years. The 12-member Congressional panel failed to reach agreement, triggering across-the-board reductions in January 2013. Of course Congress could always change that requirement.

The National Parks Conservation Association (NPCA) warned that the House version of a Congressional budget (H Con Res 112) could sharply reduce spending on the national parks. Said NPCA Senior Vice President of Government Affairs Craig Obey, "If the annual non-defense funding reductions in the Ryan budget were applied equally across those programs in FY 13, park budgets would be reduced by 5 percent effective October of this year."

Here's the status of the big four outdoor appropriations bills:

Interior: No mark ups scheduled yet in either body. Because of fights over energy development and EPA spending, this bill is expected to be one of the last to move. The House 302(b) allocation is \$28 billion and the Senate allocation is \$29.662 billion. The fiscal 2012 appropriation is \$29.2 billion.

Transportation: The Senate Appropriations Committee approved its bill April 19 with an appropriation of \$53.4 billion, or almost \$4 billion less than the fiscal 2012 appropriation of \$57.3 billion. The House subcommittee on Transportation has not scheduled a mark-up yet. The House 302(b) allocation is \$51.6 billion.

Energy and Water: The House subcommittee on Energy and Water approved \$32.1 billion April 18, or just about the same as the fiscal 2012 appropriation. The \$32.1 billion is \$1.3 billion less than the Senate 302(b) allocation of \$33.4 billion. The Senate Appropriations subcommittee approved its version of a bill April 24.

Agriculture: No mark-ups have been scheduled in either the House or Senate committees. The Senate spending cap is \$20.8 billion, or \$1.4 billion more than a House cap of \$19.4 billion.

Fort Ord becomes newest national monument; BLM gets

President Obama designated the 17th national monument to be managed by the Bureau of Land Management (BLM) April 20, a Fort Ord National Monument in California. He used as authority the Antiquities Act of 1906, a law much reviled by western Republicans.

More than 7,000 acres have already been transferred to BLM from the 28,000-acre post that was closed in 1994, and another 7,450 acres will be transferred after the Army cleans it up. The rest of the Fort Ord property is to be used for schools, an airport and private development (3,500 acres).

BLM Director Bob Abbey said, "All in all more than 100,000 people come to

explore Fort Ord each year and what it has to offer. The national monument we will proudly oversee will not only preserve one of the crown jewels of the California Coast, but will (honor the soldiers who served there.)"

In the proclamation establishing the monument the President withdrew all the land from all commercial development, subject to valid existing rights.

Obama touted the site, "One of the few remaining expanses of large, contiguous open space in the increasingly developed Monterey Bay area, this area is a rolling landscape long treasured for recreation, scientific research, outdoor education, and historical significance."

The use of the Antiquities Act to protect federal land has of course produced a rolling dispute between western Republicans and the Obama administration. In the most recent episode in the dispute the Republican-controlled House April 17 approved legislation that would require approval of a state before a national monument designation could take effect. (*See related article page 10.*)

The amendment was attached to a broader bill to ensure hunters and fishermen have access to public lands. Separately, individual House and Senate members have introduced close to a dozen bills that would limit the President's authority under the act.

Secretary of Interior Ken Salazar sent out mixed signals on the administration's overall monument designation plans April 20. Speaking at a press conference to announce the Fort Ord designation, he hinted at an ambitious plan and he hinted at a limited plan.

On the one hand he promoted an ambitious land protection agenda. "Our approach with the America's Great Outdoors has been to work with local communities based with the conservation community to identify the most important conservation projects throughout the country," he said. "We have hundreds

of those projects that we have already identified."

Among those places he said are "the Crown of the Continent (in the northern Rockies), the Flint Hills of Kansas, the Dakota Grasslands, and the Everglades."

In the next breath Salazar said no new national monuments were in the offing. "In that context, does (the President) have plans for additional use of the Antiquities Act?" he asked. "We at this point have no plans to move forward with any additional sites in the near term."

The Fort Ord designation also touches on another controversy - the contraction of the California State Parks system because of budget problems. The fiscal 2011-12 California state budget mandates the closure of 70 of the state's 278 parks by July 1. That will save \$11 million.

In addition, Gov. Jerry Brown (D) has proposed a fiscal 2012-13 budget that could eliminate 20 percent of ranger positions in the state park system and all lifeguard positions. That would save another \$22 million.

But the establishment of the Fort Ord National Monument is not the worry of the California state government. It's now in the hands of BLM and the Interior Department.

Abbey said the monument will be managed as part of the agency's 26 million-acre National Landscape Conservation System. It includes 17 monuments, wilderness areas and other conservation areas in its 17 million acres.

The Fort Ord Reuse Authority has, since Congress established it in 1994, been preparing the transfer of pieces of the fort to BLM, to California state parks, to colleges and universities, and to other uses. More information is available at <http://www.fora.org/>.

Sen. Barbara Boxer (D-Calif.) backed the designation. "The President's action will ensure that

Californians and visitors from around the world will enjoy the rich history and natural beauty of these lands for generations to come," she said. "This new National Monument will honor all the veterans who served at Fort Ord and the sacrifices they made for our country."

House approves hunting bill that divides conservatives

The House April 17 approved a multi-part bill (HR 4089) that, among other things, would declare all public lands open to hunting and fishing unless they were closed. That includes some units of the National Park System.

In addition HR 4089 would declare hunting and fishing as "necessary" for the management of wilderness and potential wilderness areas, thus shielding consumptive activities in those areas from environmentalist lawsuits.

House leaders also wrapped in the measure three other bills that would (1) open national monuments to recreational shooting, (2) authorize the import of dead polar bears and (3) exempt hunting and fishing gear from the Toxic Substances Control Act. Rep. Jeff Miller (R-Fla.) is the lead sponsor.

Finally, on the floor April 17 the House accepted by a vote of 223-to-198 an amendment that would require state approval before a President could designate national monuments. Rep. Virginia Foxx (R-N.C.) introduced the monument amendment (*see related article page 10.*)

The underlying bill, approved by a vote of 274-to-146, split sportsmen and environmentalists. Hunters and fishermen backed it. Said Theodore Roosevelt Conservation Partnership President Whit Fosburgh, "The Sportsmen's Heritage Act of 2012 encourages access for hunting and angling, thus preserving the sporting heritage that is central to our national identity. American sportsmen offer our thanks to Congress, which demonstrated its interest in promoting sportsmen's values by passing this legislation, . . ."

But The National Parks Conservation Association objected to a provision of the bill that would open National Park System units to hunting and gun use, although it would ban the use in national parks and national monuments.

Said NPCA Senior Vice President of Government Affairs Craig Obey, "The U.S. House of Representatives yesterday passed legislation that would open much of our National Park System to hunting and recreational shooting. Not only does this bill ignore the millions of families who visit, value, and love experiencing and learning about our heritage in our National Park System, but its odd treatment of many National Park Service areas is highly arbitrary and wholly inappropriate."

But when Rep. Rush Holt (D-N.J.) offered an amendment on the House floor to bar hunting in all parks, unless specifically required by Congress, Rep. Doc Hastings (R-Wash.) said the amendment would block such activities as battle reenactments and target practice.

Said Hastings, "In addition to national parks that allow traditional forms of hunting, the National Park Service has a historic weapons program that would be silenced, contrary to what my good friend and the author of this amendment, Mr. Holt, says." The amendment was defeated by a vote of 152-to-260.

Environmentalists also argued that the bill could allow consumptive uses in wilderness areas incidental to hunting and fishing. Those uses could include oil and gas development, timber harvests and hard rock mining, according to amendment sponsor Rep. Martin Heinrich (D-N.M.)

Politically, the bill language may open up for criticism groups such as TRCP because they support the provision that might allow oil and gas development in wilderness while they have long criticized oil and gas development in the Rocky Mountains.

Said Heinrich, "This means that activities otherwise not allowed in a

wilderness area, like motor vehicle use, would now have to be permitted if it could be used to facilitate everyday activities like hunting, fishing, and recreational shooting." His amendment to strip the language was defeated 176-to-244.

It should be noted that the committee report accompanying HR 4089 says that the wilderness provisions "are not intended to authorize or facilitate commodity development, use, or extraction, or motor recreational access or use."

The bill now goes to the Senate Energy Committee whose chairman Sen. Jeff Bingaman (D-N.M.) may have a different take on the subject. However, the committee has not begun to look at the measure yet.

Sen. Lisa Murkowski (R-Alaska) has introduced a counterpart hunting and fishing bill (S 2066) that would just declare public lands open to hunting and fishing until closed. She has one Democratic cosponsor, Joe Manchin III (W.Va.) That bill could come up for consideration because it "currently is in the mix for a hearing," said a committee spokesman.

The motivation for the House hunting legislation derives in large part from a controversy last year over proposed target shooting restrictions on Bureau of Land Management (BLM) land. Secretary of Interior Ken Salazar on Nov. 23, 2011, put an end to such initiatives with a directive to BLM barring any new policy on recreational shooting.

BLM had more than one target hunting initiative in the works. The main one consisted of a draft policy that, although it was not been made public, was presented to a Wildlife and Hunting Heritage Conservation Council at its Nov. 15 and 16, 2011, meeting.

The draft didn't explicitly propose the elimination of any tracts from target shooting. But it did suggest BLM planners consider eliminating areas.

Separately, BLM proposed in August 2010 a ban on target shooting on 400,000 acres of Arizona's Sonoran Desert National Monument

Reyes oyster farmers file complaint against NPS data

A critic of draft EIS on an oyster farm in Point Reyes National Seashore April 24 filed a scientific misconduct complaint against the Park Service.

"They (the Park Service) cooked the books and we've caught them red-handed," David Weiman, a representative of the owners of the oyster operation, told *FPR*.

The complaint, filed by an independent scientist, contends that a draft EIS that NPS will use to back up a decision on extending the permit currently held by the Drakes Bay Oyster Company is biased.

The target is a noise analysis in the EIS. "Instead of taking sound impacts out there they imported them from a 1995 New Jersey State Police study and presented them as if they represented Drake's Bay," said Weiman.

In a formal complaint to Department of Interior Acting Inspector General Mary Kendall, a scientist who is speaking out on behalf of Drakes Bay Oyster Cooperative said, "Data and metrics were distorted, invented, falsely represented, overestimated, underestimated, and exaggerated, and the real data concealed, all with the result of showing that DBOC boats and equipment could be heard for miles, when in reality they could not."

The scientist, Dr. Corey Goodman, is a professor and biotech entrepreneur. He taught biology at Stanford University and University of California Berkeley for 25 years. He now serves on the faculty of U.C. San Francisco. He told *FPR* that he has received no compensation from the oyster company. He said he performed his analysis at the behest of a member of the Marin County Board of Supervisors.

Goodman said he has great respect for the scientific work NPS does, most of the time. "I've read lots of EIS decisions from the Park Service and the Fort Collins (office). In general the National Park Service documents do a very good job. What stands out in the oyster farm EIS is what looks like an obsession with a predetermined agenda. It looks like a black cloud over the Park Service."

The misuse of data is also the brunt of a March 29 complaint from Sen. Dianne Feinstein (D-Calif.) in a letter to Secretary of Interior Ken Salazar. As we reported in the last issue of *FPR*, Feinstein said, "Using 17-year-old data from New Jersey jet skis as documentation of noise from oyster boat engines in the estuary is incomprehensible. It is my belief that the case against Drakes Bay Oyster Company is deceptive and potentially fraudulent."

Feinstein's letter was sent 10 days after the Interior Department released the results of a peer review of the Park Service draft EIS, dated Sept. 26, 2011. The peer review by five scientists, put together by Atkins North America, an independent consulting firm specializing in such reviews, appeared to back the NPS science.

"The soundscape reviewer (Dr. Christopher Clark of Cornell University) found the scientific interpretations and analyses in the DEIS to be reasonable and adherent to standard techniques and metrics," said the peer report.

Speaking of peers, the environmental group Public Employees for Environmental Responsibility (PEER) blasted Feinstein for misusing scientific data herself. Said PEER, citing an analysis by the Environmental Action Committee of West Marin, "The Park Service understated the actual sound level impacts by using published data on noise from a boat that most closely represents the company's boats and then cutting that noise level in half."

The great Point Reyes oyster controversy erupted last September after the Park Service completed the draft EIS

on the permissibility of extending a 40 year-old special use permit that allows the Drakes Bay Oyster Company to take oysters from the seashore.

Although the draft EIS did not pick a preferred alternative, Feinstein criticized the Park Service for excluding evidence that she says proves the operation is harmless. Feinstein and the permittee believe that the Park Service wants the area designated as wilderness.

The Drakes Bay Oyster Company has operated an oyster farm and cannery within Point Reyes for more than 60 years, providing 30 jobs to the local economy. The company's permit to operate within the park is scheduled to expire on Nov. 30, 2012.

In 2009 Feinstein, at the time chairman of the Senate subcommittee on Interior Appropriations, inserted in a fiscal year 2010 appropriations law (PL 111-88 of Oct. 30, 2009) a rider giving NPS discretion to renew the existing permit for 10 years. While the provision is discretionary, Feinstein has made it clear the permit should be issued for another 10 years. And NPS is undoubtedly hesitant to anger the influential appropriator.

LWCF along for the ride in House-Senate highway confab

If and when the House and Senate go to conference on a highway bill - and that could happen soon - the Land and Water Conservation Fund (LWCF) will be front-and-center.

First and foremost a Senate-passed, two-year transportation bill would provide \$700 million each year for the next two years to LWCF as part of a BP Deepwater Horizon oil spill restoration program, called appropriately RESTORE.

The House last week approved a short-term transportation bill (HR 4348) that includes the BP restoration program. However, the House did NOT include LWCF money in its version of the RESTORE program.

Nevertheless, the House passage of the short-term extension opens the way for a conference between the Senate and the House's three-month extension. The House bill would keep surface transportation programs in money through September. The House took an initial step toward a conference April 25, officially asking the Senate to meet.

Senate Environment and Public Works Committee leaders are ready. Said chair Barbara Boxer (D-Calif.) April 20, "The RESTORE Act was included in the Senate's surface transportation bill, MAP-21, which is going to conference, and we have a good opportunity to get this vitally important legislation to the President's desk."

Said ranking Republican James Inhofe (R-Okla.), "I am pleased that the House has passed its short-term highway bill extension, as it means that the Senate and the House can proceed to conference on a long-term highway bill."

Other than traditional resistance to LWCF spending by House Republicans, the transportation conference faces major, major hurdles. For one thing the transportation portions of the legislation and the funding of those portions are very different in the two bills. For another the House included in the short-term extension a provision to authorize the Keystone Pipeline.

Spending on LWCF has been a burr under the saddle of western Republicans for more than 40 years. They say the nation can't afford more federal lands. The Republicans usually recommend no new acquisitions in annual spending bills. But Democrats and conservationists counter with recommendations for continued funding. Congress in most years ends up approving some money but not as much as Democrats and conservationists want.

Fiscal year 2012 provides a prime example. The Obama administration recommended \$465 million for both federal and state sides of LWCF, the Republican-controlled House approved \$46.7 million, and a draft Senate bill called for \$187.3 million. Congress agreed on \$186.7 million.

Again this year the administration recommended far greater appropriations for LWCF than House Republicans will be willing to accept. The fiscal 2013 budget asks for a \$258 million total for federal land acquisition, compared to the \$46.7 million the House Appropriations Committee approved last summer.

For the state side of LWCF the administration recommended \$60 million, compared to the zero money the House committee approved last year.

But the Senate March 14 gave LWCF a major boost when it added the \$700 million per year for two years to surface transportation bill (S 1813). The money would not need to be appropriated because it would come from BP's reparations funding. The vote on the amendment (SA 1822) was 76-to-23. The main purpose of the amendment is the restoration of the Gulf Coast, not the revival of LWCF.

Sponsors of SA 1822 include Sens. Bill Nelson (D-Fla.), Mary Landrieu (D-La.), Jeanne Shaheen (D-N.H.) and Richard Shelby (R-Ala.)

Clarification: In the last issue of *FPR* we quoted extensively a critic of federal land acquisition programs, Chuck Cushman, president of the American Land Rights Association. He took issue with our transcription of his remarks.

The following represents his opinion, "Although the LWCF provision in the Highway bill supposedly protects unwilling sellers with the new money, everyone knows that when Federal agencies get a big block of money there is no such thing as an unwilling seller. That's because the government always can find away to pressure and force the landowner to sell. And even though condemnation cannot be used with the new LWCF money, the Park Service and other agencies can use old money to threaten eminent domain (condemnation). The bottom line is that condemnation is threatened by the Park Service and other agencies in every conversation with a landowner. The key to stopping these abuses is to cut off the money."

Bill to block NPS Hatteras ORV plan gets House hearing

When it announced a hearing for today (April 27) on legislation to overturn a Park Service plan for managing Cape Hatteras National Seashore, Republicans on a House subcommittee indicated they had already made up their minds.

In short the Republican majority on the subcommittee plain doesn't like the plan. It said on scheduling the hearing, "Access to Cape Hatteras National Recreational Area has been severely limited by Park Service management and environmental lawsuits under the guise of species protection. Not only have vehicles been restricted from areas traditionally available, but in some areas pedestrian access was eliminated as well."

The hearing is being held to consider a bill (HR 4094) that would restore a Bush-era management strategy for Cape Hatteras that would provide substantial access to the seashore for off-road vehicles (ORVs). The Bush strategy was executed on June 13, 2007.

That contrasts with a Park Service rule of January 23 that would keep 28 miles of the seashore open to ORV use but designate 26 miles of vehicle-free areas (VFAs).

Rep. Walter Jones (D-N.C.), author of HR 4094, has been a lead critic of the NPS rule. "This is an urgent situation," he said shortly before the hearing. "The access restrictions mandated by the National Park Service's final rule are significantly impacting the Hatteras Island economy and are totally unnecessary to protect wildlife. This is about jobs, it's about taxpayers' right to access the recreational areas they own, and it's about restoring balance and common sense to Park Service management."

After four years of controversy the Park Service bit the bullet January 23 and issued the final rule on ORV use in Cape Hatteras National Seashore.

The Park Service said in a 218-page record of decision that the rule will protect turtles and other species while allowing ORV use to continue.

Sums up the record of decision, "In addition to providing species protection both during the breeding and nonbreeding seasons, the selected action will also provide more flexibility and a range of experiences for visitor use and will enhance access to both VFAs and designated ORV routes by establishing new parking areas, pedestrian trails, interdunal routes, and ORV ramps."

The final rule replaces an April 2008 consent decree that settled an environmentalist lawsuit against the 2007 Bush strategy. The decree had governed ORV use in the seashore until now.

The 67-mile seashore received more than 2.2 million visitors in 2009, which is eight times the visitation of 1955. Much of that visitation is driven by ORV use, sometimes to the detriment of wildlife.

In addition to Rep. Jones's bill ORV users filed a lawsuit February 9 against the Park Service plan. However, the plaintiffs may face an uphill battle because the judge assigned the case, Emmet G. Sullivan in Washington, D.C., has ruled against powered recreation uses in national parks in other cases. For instance, Sullivan twice blocked Bush administration rules authorizing significant snowmobile use in Yellowstone National Park.

Still, the Cape Hatteras Access Preservation Alliance (CHAPA) went ahead and filed its lawsuit, arguing principally that the Park Service ignored public input in the final rule. And the plaintiffs objected to a final EIS backing the plan of Nov. 15, 2010.

In the lawsuit CHAPA faults the EIS this way: "NPS failed to allow meaningful consideration of action alternatives by making a variety of key elements common to all of the action alternatives, violating NEPA's requirement that an alternatives analysis consider a range of different

options for each of these elements in its alternatives."

But environmental groups that brought an original lawsuit more than five years ago that led to the plan said NPS has struck a good balance. "The Park Service's rules represent a compromise between responsible beach driving and necessary protections for wildlife and pedestrians that was years in the making," said Jason Rylander, senior attorney for Defenders of Wildlife. "We're committed to defending that balance to ensure Cape Hatteras continues to be enjoyed by all."

Judge Sullivan granted intervenor status in the lawsuit March 13 to Defenders, the National Audubon Society, the National Parks Conservation Association, and the Southern Environmental Law Center. The suit is cited as *Cape Hatteras Access Preservation Alliance v. Salazar Case: 1:12-cv-00219 of February 9.*

House approves bill requiring state monument approval

The House narrowly approved April 17 legislation (HR 4089) that would require state approval of a national monument designation before the designation could become valid.

The provision - offered as an amendment to a federal land hunting and fishing bill - would place a restraint on the Antiquities Act of 1906. That law has been used by 16 presidents to designate 130 national monuments, including the Grand Canyon and the Grand Tetons.

But Rep, Rob Bishop (R-Utah) said recent Democratic Presidents, such as Bill Clinton, have abused the power. Bishop objects in particular to Clinton's designation of a Grand Staircase Escalante National Monument in Utah in 1996. "The unfortunate thing is Presidents since (Teddy Roosevelt's) time have used this monument designation power for political purposes in areas quite bigger than (originally envisioned,)" said Bishop.

He said that Congress in writing the Antiquities Act anticipated Presidents would use the law to protect hundreds of acres, whereas Grand Staircase contains 1.9 million acres.

Rep. Martin Heinrich (D-N.M.) defended the Antiquities Act. He said the amendment "would prevent archaeological, cultural, and historical sites from receiving the urgent protections they need."

The provision, approved in a 223-to-198 vote, now goes to the Senate Energy Committee. There some Democrats have introduced elements of the hunting provisions included in HR 4089. Whether the committee under chairman Jeff Bingaman (D-N.M.) will accept the monuments language remains to be seen.

Coincidentally, the House approved the monuments amendment offered by Rep. Virginia Foxx (R-N.C.) just three days before President Clinton designated a new Fort Ord National Monument in California. It is to be managed by the Bureau of Land Management. (See separate article page 4.)

The Foxx amendment is straightforward. It says, "No national monument designated by presidential proclamation shall be valid until the Governor and the legislature of each State within the boundaries of the proposed national monument have approved of such designation." Foxx has introduced a similar, stand-alone bill (HR 302).

Rep. Raúl Grijalva (D-Ariz.) argued against the amendment and said that national monuments are useful "economic engines." He said, "Headwaters Economics studied 17 large national monuments in 11 western states and found positive impacts to the local economies and employment."

National Parks and Conservation Association Senior Vice President of Government Affairs Craig Obey objected to the House vote. "After more than a century of that tradition made possible by the Antiquities Act, which has led to the protection of such iconic gems

as the Grand Canyon, Acadia and Olympic National Parks, the House voted to make sure it's more difficult to protect such wonderful places," he said.

The monuments controversy erupted in earnest in February 2010 when House Natural Resources Committee Republicans obtained a Bureau of Land Management (BLM) memo that said the Interior Department "is considering" the designation of 14 national monuments and the acquisition of billions of dollars of land, all for BLM.

The 14 possible BLM monuments are located in Arizona (1), California (4), Colorado (1), Montana (1), Nevada (1), New Mexico (2), Oregon (1), Utah (2) and Washington (1). The Interior document says 1,618,140 acres would be involved, including 397,210 acres of state and private land. Acquisition of the land would cost more than \$2 billion.

The monuments memo may have had its greatest impact by slowing an overt Obama administration campaign to designate treasured landscapes around the country.

In related history the House barely rejected Feb. 19, 2011, legislation that would have prevented the designation by President Obama of any national monuments in fiscal year 2011. By a vote of 209-to-213 the House rejected an amendment to an omnibus fiscal 2011 spending bill that would have shut off money for the Antiquities Act of 1906.

Notes

Mojave cross dispute may be over.

The Justice Department has agreed to a land exchange that will permit the display of a cross in Mojave National Preserve. Under the terms of the agreement approved by a federal judge April 23, the stewards of the cross will receive one acre within the park for the display of the emblem commemorating veterans of World War I. In exchange the stewards, Henry and Wanda Sandoz, will transfer five acres to the Park Service within the preserve. The agreement won't be executed until appraisals and survey of the properties

are completed. The Sunrise Rock has been the subject of litigation in federal courts since 1999, even reaching the Supreme Court. On April 27, 2010, the Supreme Court ruled that Congress acted within its powers in 2004 in approving a land exchange. But the Supreme Court didn't hold that the cross was constitutional. It simply referred the matter back to the district court. The agreement April 23 was approved by U.S. District Court Judge Robert J. Timlin in the U.S. District Court for the Central District of California.

New farm bill begins to move. The Senate Agriculture Committee started marking up a five-year farm bill April 25 that would reduce conservation spending by \$6 billion over the next 10 years. The National Association of Conservation Districts (NACD) endorsed the Senate action, even if it means less funding for conservation programs. "We fully recognize the need to get our nation's financial house in order, and we understand that means cuts to Farm Bill programs," said NACD President Gene Schmidt. "We're extremely pleased that committee leadership has come up with a strong, balanced plan that fairly recognizes the critical value of locally-led conservation at the landscape scale." The draft bill, prepared by committee chairman Debbie Stabenow (D-Mich.), would consolidate 23 conservation programs into 13. Eliminated would be conservation enhancements, wetlands reserve, grassland reserve and wildland habitat incentive programs, among others. Congress develops a Farm Bill every five years. The last was enacted in 2008 and expires at the end of this year. The House Agriculture Committee has completed field hearings. And it held national-level hearings this past week.

Conservation easements lobbied. Members of land trusts from around the country came to Washington, D.C., April 18 to lobby Capitol Hill in favor of legislation (HR 1964) that would authorize landowners to take a large tax deduction for dedicating their properties to conservation easements. More than 300 House members have cosponsored the legislation. The bill would revive an old law that expired

at the end of 2011. Rep. Jim Gerlach (R-Pa.) is the chief sponsor. "It's important to come to Washington and explain how voluntary land conservation helps to allow people to keep working the land the way they have been for decades," said Glen Chown, executive director of Grand Traverse Regional Land Conservancy in Michigan. "People support our organization because we protect the land that gives meaning to our community." According to the sponsors the legislation would (1) allow farmers and ranchers to deduct 100 percent of their gross income from federal income tax for donating a conservation easement, (2) allow all landowners who donate easements to deduct 50 percent of their gross income from federal taxes and (3) allow the landowners to take the deductions for 16 years. The sponsors say the legislation would give landowners time to work out easement donations with land trusts and other groups. Sen. Max Baucus (D-Mont.) and 14 other senators have introduced a counterpart Senate bill (S 339). No action has been taken on the legislation in the House or Senate. But supporters are hopeful that the legislation will be attached to some must-pass tax bill this year.

New rec area in California.

California may be closing parks left and right but on April 12 it picked up a new piece of land when the California Coastal Commission approved the addition to the system of coastal land in Santa Cruz County. The state would receive about 400 acres of coastal property. At the same time the commission, which regulates development along the coast, approved the transfer of 5,700 acres of the property called Coast Dairies to the Bureau of Land Management (BLM). Most of that BLM land is inland from Highway 1. Altogether 6,800 acres would be protected, mostly for recreation uses. The Trust for Public Land acquired the land in 1998 and will transfer most of it to BLM and the state. Said a staff report that the commission considered, "In the interim, BLM indicates that it would open up certain key areas to public access in the very short term, and then would proceed to develop a management plan for the property that would define the way in which it would

be used and protected over the long-term." The staff report said, "In sum, the transfers facilitated by the land division will mean that the entire 6,800-acre Coast Dairies property is retained for open space, agricultural (where appropriate), and public recreational access uses in perpetuity." California with its enormous deficit and huge state park system may be facing widespread closures. The fiscal year 2011-12 California state budget mandates the closure of 70 of the state's 278 parks by July 1. That will save \$11 million.

Outdoor participation jumps. The Outdoor Foundation reported April 24 that outdoor recreation participation increased in 2011, with three million more people taking part in outdoor activities than the year before, or 141 million Americans. Significantly, the foundation said the total number of outdoor outings increased even more proportionately with an increase of 1.5 billion to 11.6 billion. "This report shows that Americans are getting up and getting outside - a great trend for the outdoor community and the country," said Christine Fanning, executive director of The Outdoor Foundation. "We are encouraged by the growing population of active young people, which reflects recent efforts to re-engage and re-inspire America's youth to get outdoors." The report is available at <http://www.outdoorfoundation.org>.

NPS publishes LSI guide. The Park Service April 18 published a guide to computing leasehold surrender interest (LSI) of a concessions operation. NPS says the guide is a how-to document that informs a concessioner of ways to compute the value of capital improvements to an operation. It is not a policy document. The guide is at <http://concessions.nps.gov/index.htm>.

Two-plus Great Waters added. The Great Waters Coalition last week named two new entries to its list of great waters in the country - Apalachicola-Chattahoochee-Flint (ACF) River Basin and the St. Johns River in Florida. The coalition also expanded another entry - New York/New Jersey Harbor - to include the Hudson River. The Great

Waters Coalition works to protect the nation's big water bodies, ranging from the Great Lakes to the Everglades. The coalition describes the new entries this way: "The ACF River System spans over 19,600 square miles and flows from the Blue Ridge Mountains, through Atlanta, and south to rural landscapes throughout Georgia, Alabama, and Florida before emptying into the Gulf of Mexico. The St. Johns River is an American Heritage River, recognized for its historical significance and was the site of one of America's first settlements at Fort Caroline, established 50 years before Jamestown." The Great Waters list already includes Albemarle-Pamlico Sound, Chesapeake Bay, Coastal Louisiana, Colorado River, Delaware River Basin, Everglades, Galveston Bay, Great Lakes, Gulf of Maine, Lake Champlain, Long Island Sound, Mississippi River, Missouri River, Narragansett Bay, Ohio River Basin, Puget Sound, Rio Grande and San Francisco Bay.

FWS begins duck-hunting process. The Fish and Wildlife Service (FWS) began developing annual hunting rules for migratory game April 17 with a notice outlining the schedule for writing rules for early and late seasons. The notice doesn't indicate whether the service anticipates increases, decreases or the same bag limits and season lengths. Said FWS in the notice, "Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. No changes from the final 2011-12 frameworks established on August 30 and September 21, 2011 are being proposed at this time." More information is available at <http://www.fws.gov/migratorybirds>.

TRCP lauds Wyden, Wittman. At its annual awards banquet April 19 the Theodore Roosevelt Conservation Partnership gave its highest award - the James D. Range Conservation Award - to Sen. Ron Wyden (D-Ore.) and Rep. Rob Wittman (R-Va.) Among other things Wyden chairs the Senate subcommittee on Public Lands and Forests. Wittman is a senior member of the House subcommittee

on Fisheries, Wildlife, Oceans and Insular Affairs. Range, a Washington, D.C. attorney, played a central role in bringing together centrist conservation groups in the Theodore Roosevelt Conservation Partnership. The partnership is now a major player in the Capitol on behalf of sportsmen.

Boxscore of Legislation

Appropriations Fiscal 2013 (Interior).

No bill yet. Administration submitted its request February 13. Would sustain current spending for both conservation and land management.

Appropriations Fiscal 2013 (Other).

No bills yet for Energy and Water, Transportation and Agriculture. House sub marked up Energy and Water April 18 followed by Senate sub April 24. Senate committee approved transportation April 19. No mark-ups schedule yet on Agriculture.

Congressional Budget Fiscal 2013.

House Budget Committee approved March 21. No Senate action. House would reduce natural resources spending significantly.

Appropriations Fiscal 2012 (Interior, Etc.)

HR 2584 (Simpson). President signed into law Dec. 23, 2011, as PL 112-74. Would roughly maintain most outdoor programs and agency budgets at fiscal 2011 levels.

Surface Transportation.

HR 7 (Boehner), S 1813 (Boxer). House committee approved February 13. Senate approved March 14. The House would reduce funding for park and rec programs, but the Senate not as much. The Senate included \$700 million per year for LWCF for two years.

LWCF (Guaranteed Funding)

S 1265 (Bingaman). Bingaman introduced June 23, 2011. Would guarantee full funding of LWCF each year.

LWCF (Fed Lands Access)

S 901 (Tester). Tester introduced May 5, 2011. Would allocate 1.5 percent of LWCF for access to fed lands for rec.

Urban Parks

HR 709 (Sires). Sires introduced Feb. 15, 2011. Would provide \$450 million per year to rehabilitate urban parks.

Roadless Areas: No

HR 1581 (McCarthy), S 1087 (Barrasso). McCarthy introduced April 15, 2011. Barrasso introduced May 26, 2011. Would reverse Clinton roadless rule, block Salazar 'wild lands' policy, release FS and BLM roadless areas.

Roadless Areas: Yes

HR 3465 (Inslee), S 1891 (Cantwell). Inslee introduced Dec. 19, 2011. Cantwell introduced Nov. 17, 2011. Would codify Clinton roadless rule.

Hunting and Fishing Access

HR 4089 (Jeff Miller), S 2066 (Murkowski). Murkowski introduced February 2. House approved HR 4089 April 17. House bill would not only keep public lands open to hunting, as well as require state approval of national monuments.

National Monuments

HR 302 (Foxx), S 407 (Crapo), numerous other House bills. House hearing Sept. 13, 2011. Foxx would require state approval of any national monument under Antiquities Act. Herger, Crapo would require Hill approval within two years.

California Desert Monument

S 138 (Feinstein). Feinstein introduced Jan. 25, 2011. Would designate a Mojave National Monument and protect 1.6 million acres of desert.

NPS Air Tour Policy

HR 658 (Mica), S 223 (Rockefeller). President Obama signed into law February 14 as PL 112-95. Revises NPS air tour policy, authorizes agreements without overall plan.

Glacier Park Protection

S 233 (Baucus). Senate hearing May 25, 2011. Would withdraw from mining 300,000 acres of national forest.

Delaware National Park

HR 624 (Carney), S 323 (Carper). Senate Committee approved January 13. Would designate a first national park in the first State of Delaware.