

ED CASE
1ST DISTRICT, HAWAII

2210 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
TELEPHONE: 202-225-2726
FAX: 202-225-0688

1003 BISHOP STREET, SUITE 1110
HONOLULU, HI 96813
TELEPHONE: 808-650-6688
FAX: 808-533-0133

WEBSITE: CASE.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES:
MILITARY CONSTRUCTION, VETERANS AFFAIRS
AND RELATED AGENCIES

COMMERCE, JUSTICE, SCIENCE AND RELATED
AGENCIES

LEGISLATIVE BRANCH

COMMITTEE ON NATURAL
RESOURCES
SUBCOMMITTEES:
NATIONAL PARKS, FORESTS AND PUBLIC LANDS

WATER, OCEANS AND WILDLIFE

INDIGENOUS PEOPLES OF THE UNITED STATES

August 31, 2021

To: Kevin Welsh
Executive Director, Office of Environment and Energy
Federal Aviation Administration

Cc: Shawn Bengel, Acting Director
National Park Service

From: U.S. Representative Ed Case (Hawaii, First District)

Subject: Response to Notice and Request for Comments on Proposed Air Tour Management Plans ("ATMP") at Mount Rainier National Park, Death Valley National Park, Everglades National Park, and Olympic National Park (Document No. 2021-16182; Document Citation 86 FR 40897) ("Notice")

I write to provide comments in response to the Notice in which I (a) express several areas of great concern with respect to the proposed ATMPs for Mount Rainier National Park, Death Valley National Park, Everglades National Park and Olympic National Park, (b) request that these concerns be fully addressed and incorporated before these specific ATMPs are implemented, and (c) urge that these concerns also be fully addressed in any further draft ATMPs for any other national parks.

A. Overview

As you know, Congress passed the National Park Air Tour Management Act of 2000 ("Act") to minimize, mitigate and prevent the adverse effects of aircraft flights over public and tribal lands. Prior to passage of the Act, commercial air tour operations over our national parks and other sensitive lands had increased rapidly, with many areas documenting or estimating accelerating increases over the previous decade. The Act was enacted to prevent the resulting destruction in the natural habitat and visitor experience which was and remains core to the mission of our national parks, one of our country's most widely beloved and supported treasures.

In the fully twenty years it has taken to commence any serious effort to comply with the Act, the untenable impacts of commercial air tour operations have worsened materially. This comes just as

our natural habitats are increasingly threatened from human and environmental factors and the public need for the peace and refuge and natural experience of our national parks has become even more critical.

Commercial air tour overflights of our national parks and other sensitive lands offer no appreciable competing public benefit and in fact are inherently contradictory. Our national parks were never intended and are not today intended for profit extraction at the expense of preservation of the natural habitat and visitor experience. Even if some contribution to our national parks in terms of visitor understanding and experience could be argued from such operations, the volume and benefit of any such contribution is miniscule as compared to the far greater negative impact on the on-ground experience from such operations.

For all of these reasons, I urge that, in the implementation of the Act including these and any further ATMPs, every possible interpretation, decision and effort be directed at the maximum limitation of commercial air tour overflights. This should not be a matter of accommodating competing uses, but of severely limiting and mitigating one use which is inherently contradictory to and destructive of another, far more important, one.

B. Comments Common To All Proposed ATMPs

In the following comments, I reference sections in the proposed Olympic National Park ATMP. These sections with some specific modifications are common to all four proposed ATMPs, and my comments here apply to the corresponding sections of the other ATMPs as well.

-Footnote 1. All existing exemptions to the ATMP requirement should be withdrawn by the National Park Service Director. No further voluntary agreements should be adopted which have the effect of providing fewer restrictions on commercial air tour overflights than an otherwise-applicable ATMP.

-Section 2.0(1). With respect to the phrase “or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft”, the FAA has used similar language elsewhere to allow for aircraft operation at less than 5,000 feet (or other purported minimum altitude requirement) above actual ground level, under visual flight rules or otherwise, (1) where cloud cover is lower than the otherwise minimum altitude, or (2) where terrain is uneven as in ridges and valleys and the aircraft is flying over the higher terrain. These exceptions gut the rule and allow for much if not most of flight operations to occur at less than stated minimum altitude, right down to very low altitudes, with resultant significantly amplified ground disturbances. This and all other minimum altitude requirements should eliminate the exception and replace it with requirements that (a) flights will operate at all times at the stated minimum altitude over any part of the terrain, and (b) flights will not operate or, if in operation, will discontinue operations where cloud cover or other conditions are expected to require them to deviate below the stated altitude.

-Section 3.1. The maximum 64 annual commercial air tours appears to arise from a calculation of the three year average of total air tours reported in 2017, 2018 and 2019, not usage on enactment of the Act.

This is not consistent with the Act’s legislative history, which provided that: “In determining the number of authorizations to issue to provide commercial air tour operations over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current

level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.” (106th Congress, H.R. 717, H.Rept. 106-273). The authorized number of air tours should be no more than the lesser of actual usage in 2000 or the recited more recent three year window average.

-Section 3.2, first sentence (authorized route). What is the specific basis for this specific route? Is it to maximize the scenic opportunities of the commercial air passengers (and profit of the operator) or is it to minimize actual ground disruptions to the natural habitat and visitor experience? It should be the latter and if not the approved route should be modified to that effect.

-Section 3.2, third sentence (“At the Park ...”). First, the stated minimum AGL altitude of 2,000 to 3,000 feet is wholly insufficient to prevent disruption on the ground; it should be at least the 5,000 feet recited in Section 2.0(1) above and with the qualifications on no deviations as discussed there. Second, there is no reason to adopt varying altitude requirements for various parts of the park, as all parts of the park should be valued and protected.

-Section 3.2, last sentence (“Except in an emergency or to avoid unsafe conditions”) Same comment as to Section 2.0(1) above.

-Section 3.3. Noise-reducing technology current exists in next generation commercial air tour aircraft. Any authorized new or replacement aircraft should be required to utilize the maximum such noise-reducing technology and models, not simply not exceed the prior noise levels, and this should be an express requirement for any FAA/NPS concurrence.

-Section 3.4. The stated allowable hours of operation during the day are way too broad to adequately minimize disruption to the natural habitat and visitor experience. First, there should be a far narrower window of no more than two hours 11am to 1pm to constrain the actual time of operation. Second, any such limitation should not be linked purely to sunrise and sunset, which vary greatly by park and season, but should be stated as the more restrictive, as in “may operate from the later of four hours after sunrise or 11am to the earlier of four hours before sunset or 1pm”. Further, equally if not more impactful to natural habitat and visitor experience preservation is the volume of flights in any given day. A requirement should be added that no more than two of the authorized flights annually may be operated in any one day.

-Section 3.6. The required reporting should be fully accessible to the public. There is no proprietary claim by any operator to information on operations.

-Section 3.7B. The meeting should be fully open to the public for participation.

-Section 3.8. There should be no enhanced operation incentive for quieter aircraft, as they will still have a negative impact during hours of operation (see Section 3.4 above). The quiet technology incentive should instead apply solely to the ability to replace aircraft (see Section 3.3 above). There is no definition provided as to “quiet technology aircraft”. One should be added that quantifies specifically the maximum noise standards that qualify as such, and the standard should be a significant reduction of at least 50% to qualify for ability to replace.

-Section 4.0, third paragraph, first sentence (“existing air tours reported”). See Section 3.1 above.

-Section 4.0, fourth paragraph. The justification for the 2,000-3,000 foot minimum AGL altitude is not sufficient. First, the measure against the actual physical injury threshold for animal life does not account for disruption of natural habitat and does not address at all the disruption to the visitor experience. Second, the noise from helicopters/rotary aircraft which are the bulk of commercial air tour operations are far louder and far more disruptive than fixed wing aircraft, both in general cruise mode and especially in altitude adjustment mode, and so are far more impactful at any altitude, in fact approaching if not exceeding the cited 92 dB injury level.

-Section 4.0, fifth paragraph. See comments above, especially to Sections 3.2 (first sentence) and 3.4.

-Section 4.0, sixth paragraph. See comments to Section 3.6 above.

-Section 5.0, first sentence. There should be a date certain by which the operator must modify the OpSpecs to comply with the ATMP or cease any operations. It should not be a major undertaking to adjust to OpSpecs, and so that deadline should be a matter of a few months maximum.

-Section 5.1. All aircraft should additionally be required to install ADS-B (Automatic Dependent Surveillance-Broadcast) Out technology and to operate from the beginning to the end of any flight under the ATMP in full transmit mode. It is critical to adequate enforcement of and public confidence in the ATMP that all such operations be fully public and subject to public review and complaint in real time by specific identification of the aircraft, operator, time, altitude and location. It is not possible to easily identify such information for specific review and comment without realtime-transmitting of such information. Operators have sometimes taken the position that such information is private and the FAA has unfortunately concurred and not required full transmit mode. This is not acceptable; there is no expectation of privacy by any operator in such operations.

-Sections 6.0 and 7.0. There is no provision setting forth requirements for any operator sale of its business or transfer of its temporary license to overfly the park under this ATMP. One should be added that at a minimum requires quiet technology; see Section 3.8 above. Additionally, reasonable operator licensing, certification, insurance and bond requirements should be included as a condition of authorized operations under the ATMP to ensure maximum safety and compliance.

-Section 8.0. "Adaptive management" should not be authorized in the event it would increase the number of commercial air tours allocated or decrease minimum altitude or other mitigation requirements or otherwise increase noise emission or other negative impacts on the natural habitat and visitor experience. Additionally, any proposed modifications under "adaptive management" should be fully noticed to the public for advance comment.

-Section 9.0, first paragraph ("if the FAA ... determines that the ATMP is adversely affecting aviation safety and the national aviation system ..."). This unilateral right of the FAA to amend the ATMP should be stricken. First, it would give the FAA virtually limitless authority to amend the ATMP as it could fit a whole range of actions that would inflict greater harm on the park under that scope. Second, the FAA does not broadly consider ground disruption, whether to national parks or otherwise, as within its statutory direction to "maximize the safe and efficient use of the nation's air space", and it should not have discretion to weaken the specific intent of the Act toward that end.

-Section 9.0, third paragraph. See Section 8.0 comments above. There should be no right at all to amend the ATMP to increase the total number of annual air tours.

C. Comments Specific To Specific ATMPs

-Everglades, Death Valley and Mt. Rainier ATMPs, Sections 3.2 and 4.0, fourth sentences. The minimum altitude restrictions are arbitrary, contradictory and insufficient. See B., Section 3.2 (third sentence) and 4.0 (fourth paragraph) above. The uniform minimum altitude under all ATMPs should be 5,000 feet AGL and subject to the further conditions as set forth in B., Section 2.0(1) above.

D. General Comments/Conclusion

By court order, these are the first proposed four of 24 mandated ATMPs at our most precious and endangered national parks nationwide. These first four national parks are also among the least impacted (relatively) by commercial air tour overflights, at least so far. Many of the remaining national parks are far more impacted, and may well require far more extensive protections and conditions of permissible operation than any attempted cookie-cutter application of the final ATMPs for these initial four parks to fully realize the purposes of the Act and comply with court orders.

I urge your full consideration and adoption into these ATMPs of my comments and changes. Please contact me through Kainan Miranda at (202) 225-2726 or Kainan.Miranda@mail.house.gov with any questions.

Thank you.



Ed Case
Member of Congress – Hawai‘i, First District