To provide for the management of the airspace over units of the National Park System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1997

Mr. AKAKA (for himself, Mr. FRIST, and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the management of the airspace over units of the National Park System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Parks Airspace Management Act of 1997”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Commercial air tour flights over units of the National Park System (referred to in this Act as “units”) may have adverse effects on the units.
(2) The flights may degrade the experiences of visitors to the affected areas and may have adverse effects on wildlife and cultural resources in those areas.

(3) A significant number of complaints about commercial air tour flights over certain areas under the jurisdiction of the National Park Service have been registered.

(4) Although resource preservation is the primary responsibility of the National Park Service, the agency continues to struggle to develop a policy that would achieve an acceptable balance between flights over units by commercial air tour operators and the protection of resources in the units and the experiences of visitors to the units.

(5) Although the mission of the Federal Aviation Administration is to develop and maintain a safe and efficient system of air transportation while considering the impact of aircraft noise, the agency continues to have difficulty adequately controlling commercial air tour flights over units.

(6) Significant and continuing concerns exist regarding the safety of commercial air tour flights over some units, including concerns for the safety of
occupants of the flights, visitors to those units, Federal employees at those units, and the general public.

(7) The concern of the Congress over the effects of low-level flights on units led to the enactment, on August 18, 1987, of the Act entitled “An Act to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national park system units” (Public Law 100–91; 101 Stat. 674; 16 U.S.C. 1a–1 note).

(8) The Act referred to in paragraph (7) requires the Director of the National Park Service to identify problems associated with flights by aircraft in the airspace over units.

(9) Pursuant to the Act referred to in paragraph (7), on September 12, 1994, the Director submitted a report to Congress entitled “Report On Effects Of Aircraft Overflights On The National Park System”.

(10) The National Park Service report concluded that, because the details of national park overflights problems are park-specific, no single altitude can be identified for the entire National Park System.
(11) The National Park Service report presented a number of recommendations for resolution of the problem of national park overflights, including—

(A) the development of airspace and park use resolution processes;

(B) the development of a single operational rule to regulate air tour operations;

(C) seeking continued improvements in safety and interagency planning related to airspace management; and

(D) the development of a Federal Aviation Administration rule to facilitate preservation of natural quiet.

(12) The policy of the National Park Service recognizes the importance of natural quiet as a resource to be conserved and protected in certain units.

(13) The National Park Service—

(A) defines natural quiet as “the natural ambient sound conditions found in certain units of the National Park Service”; and

(B) recognizes that visitors to certain units may reasonably expect quiet during their visits to those units established with the specific goal
of providing visitors with an opportunity for soli-
itude.

(14) The number of flights by aircraft over
units has increased rapidly since the date of enact-
ment of the Act referred to in paragraph (7) and,
due to the high degree of satisfaction expressed by
air tour passengers, as well as the economic impact
of air tour operations on the tourist industry, the
number of flights will likely continue to increase.

(15) A progression of aesthetic and safety con-
cerns about low altitude flights have been associated
with growth in commercial air tour traffic.

(16) As the number of flights over units contin-
ues to increase, the likelihood exists that there will
be a concomitant increase in the number of conflicts
regarding management of the airspace over the
units.

(17) A need exists for a Federal policy to ad-
dress the conflicts and problems associated with
flights by commercial air tour aircraft in the air-
space over units.

(18) A statutory process should be established
to require the Secretary of Transportation and the
Secretary of the Interior, acting through the Director, to work together to mitigate the impact of commercial air tour operations on units, or specific areas within units that are adversely affected by commercial air tour operations.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Federal Aviation Administration.

(2) **AGREEMENT.**—The term “agreement” means an agreement entered into by a commercial air tour operator, the Director, and the Administrator under section 4(h) that provides for the application of relevant provisions of an airspace management plan for the unit concerned to the commercial air tour operator.

(3) **AIR TOUR AIRCRAFT.**—The term “air tour aircraft” means an aircraft (including a fixed-wing aircraft or a rotorcraft) that makes air tour flights.

(4) **AIR TOUR FLIGHT.**—The term “air tour flight” means a passenger flight conducted by air tour aircraft for the purpose of permitting a passenger to the flight to view an area over which the flight occurs.
(5) Commercial air tour aircraft.—The term “commercial air tour aircraft” means any air tour aircraft used by a commercial air tour operator in providing air tour flights for hire to the public.

(6) Commercial air tour operator.—The term “commercial air tour operator” means a company, corporation, partnership, individual, or other entity that provides air tour flights for hire to the public.

(7) Council.—The term “Council” means the National Park Overflight Advisory Council established under section 9.

(8) Director.—The term “Director” means the Director of the National Park Service.

(9) Flight-free park.—The term “flight-free park” means a unit over which commercial air tour operations are prohibited.

(10) Unit.—The term “unit” means a unit of the National Park System.

SEC. 4. NATIONAL PARK AIRSPACE MANAGEMENT PLANS.

(a) In general.—The Director and the Administrator shall, in accordance with this section, develop and establish a plan for the management of the airspace above each unit that is affected by commercial air tour flights
to the extent that the Director considers the unit to be
a unit requiring an airspace management plan.

(b) PURPOSE OF PLANS.—The purpose of each plan
developed under subsection (a) is to minimize the adverse
effects of commercial air tour flights on the resources of
a unit.

(c) DEVELOPMENT OF AIRSPACE MANAGEMENT
PLANS.—

(1) TREATMENT OF RELEVANT EXPERTISE.—In
developing plans under subsection (a)—

(A) the Administrator shall defer to the
Director in matters relating to the identification
and protection of park resources; and

(B) the Director shall defer to the Admin-
istrator in matters relating to the safe and effi-
cient management of airspace.

(2) NEGOTIATED RULEMAKING.—In developing
a plan for a unit, the Director and the Adminis-
trator shall consider utilizing negotiated rulemaking
procedures as specified under subchapter III of
chapter 5 of title 5, United States Code, if the Di-
rector and the Administrator determine that the uti-
lization of those procedures is in the public interest.

(d) COMMENT ON PLANS.—In developing a plan for
a unit, the Director and the Administrator shall—
(1) ensure that there is sufficient opportunity for public comment by air tour operators, environmental organizations, and other concerned parties; and

(2) give due consideration to the comments and recommendations of the Council and the Federal Interagency Airspace/Natural Resource Coordination Group, or any successor organization to that entity.

(e) Resolution of Plan Inadequacies.—If the Director and the Administrator disagree with respect to any portion of a proposed plan under subsection (a)—

(1) the Director and the Administrator shall refer the proposed plan to the Secretary of the Interior and the Secretary of Transportation; and

(2) the Secretary of the Interior and the Secretary of Transportation shall jointly resolve the disagreement.

(f) Assessment of Effects of Overflights.—The Director and the Administrator may jointly conduct studies to ascertain the effects of low-level flights of commercial air tour aircraft over units that the Director and the Administrator consider necessary for the development of plans under subsection (a).

(g) Periodic Review.—
(1) IN GENERAL.—Not less frequently than every 5 years after the date of establishment of a plan under subsection (a), the Director and the Administrator shall review the plan.

(2) PURPOSE OF REVIEW.—The purpose of the review shall be to ensure that the plan continues to meet the purposes for the plan.

(3) REVISION.—The Director and the Administrator may revise a plan if they jointly determine, based on that review, that the revision is advisable.

(h) FLIGHTS OVER UNITS COVERED BY PLANS.—

(1) AGREEMENT.—A commercial air tour operator may not conduct commercial air tour flights in the airspace over a unit covered by an airspace management plan developed under subsection (a) unless the commercial air tour operator enters into an agreement with the Director and the Administrator that authorizes such flights.

(2) CONTENTS.—An agreement under paragraph (1) shall—

(A) provide for the application of relevant provisions of the airspace management plan for the unit concerned to the commercial air tour operator; and
(B) to the maximum extent practicable, provide for the conduct of air tour flights by the air tour operator in a manner that minimizes the adverse effects of the air tour flights on the environment of the unit.

SEC. 5. FLIGHT-FREE PARKS.

For units that, as of January 1, 1997, experienced no overflights by commercial air tour operators, the Director, in consultation with the Administrator, shall—

(1) prescribe criteria to identify units where air tour flights by commercial air tour aircraft would be incompatible with or injurious to the purposes and values for which the units were established;

(2) identify any units that meet those criteria; and

(3) designate those units as “flight-free park” units.

SEC. 6. SINGLE OPERATIONAL RULE FOR COMMERCIAL AIR TOUR OPERATIONS.

(a) In General.—Except as provided in subsection (b), the Administrator, after notice and hearing on the record, shall issue a regulation governing the operation of all air tour aircraft flights by commercial air tour operators over units.

(b) Separate Operational Rules.—
(1) **IN GENERAL.**—The Administrator may issue regulations that prescribe separate operational rules governing the conduct of flights by fixed-wing aircraft and by rotorcraft if the Administrator determines under subsection (a) that separate rules are warranted.

(2) **DEVELOPMENT OF OPERATIONAL RULE.**—

In developing an operational rule under paragraph (1), the Administrator shall—

(A) consider whether differences in the characteristics and effects on the environment of fixed-wing aircraft and rotorcraft warrant the development of separate operational rules with respect to that craft;

(B) provide a mechanism for the Director to recommend individual units or geographically proximate groups of units to be designated as aerial sightseeing areas, as defined by section 92.01 of the Federal Aviation Administration Handbook, dated January 1992; and

(C) provide a mechanism for the Director to obtain immediate assistance from the Administrator in resolving issues relating to the use of airspace above units with respect to which the issues are of a critical, time-sensitive nature.
(c) Effect on Agreements.—Nothing in this section is intended to preclude the Administrator, the Director, and a commercial air tour operator from entering into, under section 4(h), an agreement on the conduct of air tour flights by the air tour operator over a particular unit under different terms and conditions from those imposed by an operational rule issued under this subsection.

SEC. 7. AIRCRAFT SAFETY.

(a) Development of a Single Standard for Certifying Commercial Air Tour Operators.—

(1) Commencement of rulemaking.—The Administrator shall initiate formal rulemaking proceedings (which shall include a hearing on the record) for the purpose of revising the regulations contained in part 135 of title 14, Code of Federal Regulations (relating to air taxi operators and commercial operators), to prescribe a new subpart to specifically cover all commercial air tour operators (as that term shall be defined by the Administrator under the subpart) that conduct commercial air tour flights over units.

(2) Covered matters.—The regulations issued under subsection (a) shall address safety and environmental issues with respect to commercial air tour flights over units. In issuing the regulations,
the Administrator shall attempt to minimize the fi-
nancial and administrative burdens imposed on com-
mercial air tour operators.

(b) AIRCRAFT MARKINGS.—

(1) REQUIREMENT.—Each operator of commer-
cial air tour aircraft shall display on each air tour
aircraft of the operator the identification marks de-
scribed in paragraph (2).

(2) IDENTIFICATION MARKS.—The identification
marks for the aircraft of a commercial air tour
operator shall—

(A) be unique to the operator;

(B) be not less than 36 inches in length
(or a size consistent with the natural configura-
tion of the aircraft fuselage);

(C) appear on both sides of the air tour
aircraft of the air tour operator and on the un-
derside of the aircraft; and

(D) be applied to the air tour aircraft of
the air tour operator in a highly visible color
that contrasts sharply with the original base
color paint scheme of the aircraft.

(e) AERONAUTICAL CHARTS.—The Administrator
shall ensure that the boundaries of each unit and the pro-
visions of the airspace management plan, operational rule,
or Special Federal Aviation Regulation (SFAR), if any, with respect to each unit are accurately displayed on aeronautical charts.

(d) Flight Monitoring Systems.—

(1) In general.—The Administrator shall carry out a study of the feasibility and advisability of requiring that commercial air tour aircraft operating in the airspace over units have onboard an automatic flight tracking system capable of monitoring the altitude and ground position of the commercial air tour aircraft.

(2) Determination by Administrator.—If the Administrator determines under the study required under paragraph (1) that the use of flight tracking systems in commercial air tour aircraft is feasible and advisable, the Administrator and the Director shall jointly develop a plan for implementing a program to monitor the altitude and position of commercial air tour aircraft over units.

(e) National Data Base for Commercial Air Tour Operators.—The Administrator shall—

(1) establish and maintain a data base concerning all commercial air tour aircraft operated by commercial air tour operators that shall be designed to provide data that shall be used in making—
(A) determinations of—

(i) the scope of commercial air tour flights; and

(ii) accident rates for commercial air tour flights; and

(B) assessments of the safety of commercial air tour flights; and

(2) on the basis of the information in the data base established under paragraph (1), ensure that each flight standards district office of the Administration that serves a district in which commercial air tour operators conduct commercial air tour flights is adequately staffed to carry out the purposes of this Act.

SEC. 8. EXCEPTIONS.

(a) Flight Emergencies.—This Act does not apply to any aircraft—

(1) experiencing an in-flight emergency;

(2) participating in search and rescue, firefighting or police emergency operations;

(3) carrying out park administration or maintenance operations; or

(4) complying with air traffic control instructions.
(b) FLIGHTS BY MILITARY AIRCRAFT.—This Act does not apply to flights by military aircraft, except that the Secretary of Defense is encouraged to work jointly with the Secretary of Transportation and the Secretary of the Interior in pursuing means to mitigate the impact of military flights over units.

c) FLIGHTS FOR COMMERCIAL AERIAL PHOTOGRAPHY.—The Director and the Administrator shall jointly develop restrictions and fee schedules for aircraft or rotorcraft engaged in commercial aerial photography over units at altitudes that the Director and the Administrator determine will impact adversely the resources and values of affected units.

SEC. 9. NATIONAL PARK OVERFLIGHT ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is established a commission to be known as the “National Park Overflight Advisory Council”.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall be comprised of the following members:

(A) Members from each of the following groups, appointed jointly by the Director and the Administrator:
(i) Environmental or conservation organizations, citizens’ groups, and other groups with similar interests.

(ii) The commercial air tour industry and organizations with similar interests.

(B) Representatives of departments or agencies of the Federal Government.

(C) Such other persons as the Administrator and the Director consider appropriate.

(c) DUTIES.—The Council shall—

(1) determine the effects of commercial air tour flights in the airspace over the units on the environment of the units;

(2) determine the economic effects of restrictions or prohibitions on the flights;

(3) solicit and receive comments from interested individuals and groups on the flights;

(4) develop recommendations for means of reducing the adverse effects of the flights on the units;

(5) explore financial and other incentives that could encourage manufacturers to advance the state-of-the-art in quiet aircraft and rotorcraft technology and encourage commercial air tour operators to implement the technology in flights over units;
(6) provide comments and recommendations to the Director and the Administrator under section 4;

(7) provide advice or recommendations to the Director, the Administrator, and other appropriate individuals and groups on matters relating to flights over units; and

(8) carry out such other activities as the Director and the Administrator jointly consider appropriate.

(d) MEETINGS.—The Council shall first meet not later than 180 days after the date of enactment of this Act, and shall meet thereafter at the call of a majority of the members of the Council.

(e) ADMINISTRATION.—

(1) COMPENSATION OF NON-FEDERAL MEMBERS.—Members of the Council who are not officers or employees of the Federal Government shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703(b) of title 5, United States Code, to the extent funds are available for that purpose.
(2) Compensation of Federal Members.—

Members of the Council who are officers or employees of the Federal Government shall serve without compensation for their work on the Council other than that compensation received in their regular public employment, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, to the extent funds are available for that purpose.

(f) Reports.—Not later than 1 year after the initial meeting of the Council, and annually thereafter, the Council shall submit to Congress, the Administrator, and the Director a report that—

(1) describes the activities of the Council under this section during the preceding year; and

(2) sets forth the findings and recommendations of the Council on matters related to the mitigation of the effects on units of flights of commercial air tour operators over units.

(g) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 10. EXEMPTION FOR STATE OF ALASKA.

Nothing in this Act shall affect—
(1) the management of units in the State of Alaska; or
(2) any aircraft operations over or within units in the State of Alaska.