

# NATIONAL PARKS CONSERVATION ASSOCIATION

*Protecting Our National Parks for Future Generations*

February 17, 2009

National Park Service  
Attn. Regulations Program Manager  
1849 C St., NW, MS-3122  
Washington, DC 20240

## **Re: Comments On Proposed Rule to Amend Current Regulations for Designating Bicycle Use on National Park System Lands (RIN 1024-AD72)**

To Whom It May Concern:

On behalf of our more than 325,000 members, the National Parks Conservation Association (NPCA) would like to thank you for the opportunity to comment on the proposed rule to amend current regulations for designating bicycle use on National Park System lands. Our members care deeply for America's shared natural and cultural heritage that is preserved by units of the National Park System.

NPCA believes bicycling in many national park units can be an appropriate and enjoyable visitor activity. Many of our members and staff choose to bicycle in the parks and return home with long lasting family memories.

The current biking regulation was developed in 1987 and allows bicycles on park roads, parking areas, and routes designated for bicycle use. NPCA supports bicycling on park roads and parking areas in particular, because it provides a healthy, non-polluting alternative to cars. Furthermore, we strongly support bicycling as a means to reduce traffic congestion that afflicts many park units.

Under the current regulation, the National Park Service (NPS) must issue a special regulation for trails outside developed areas in particular parks. Unfortunately, implementation of the current regulation has been problematic, especially for mountain bike use on dirt trails. Of the approximately 25 national parks where mountain biking is currently taking place on dirt trails, only Golden Gate National Recreation Area in California and Saguaro National Park in Arizona have completed the necessary public process and designated specific trails for mountain bikes. NPCA believes all parks should come into compliance.

Despite the lack of accountability within the 23 parks that allow noncompliant mountain biking, we believe the regulation has in general served the NPS well in managing bicycling in the parks.



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The most significant change provided in the proposed regulation is authorizing “park superintendents to open existing trails to bicycle use within park units in accordance with appropriate park plans and compliance documents under the National Environmental Policy Act (NEPA), the National Historic Preservation Act, the NPS Organic Act, and the park’s enabling legislation, and other applicable law.” The proposal still requires the issuing of a special regulation for new trails in undeveloped areas. However, the proposal would allow superintendents to designate bicycle routes on:

1. existing trails within developed areas;
2. existing trails within undeveloped areas; and
3. new trails within developed areas.

Under the proposal, if any trail designations within these three areas were considered controversial or would significantly alter public use patterns, then the superintendent would be expected to issue a special regulation.

NPCA believes that the proposed revised regulation is problematic in a number of ways. Our primary concerns are as follows:

- Providing superintendents with the new ability to open trails to bicycles increases the risk for local stakeholder groups to unfairly influence local park decision making.
- While a special regulation issued in the Federal Register would still be necessary for uses of, or activities of a, “highly controversial nature” or that would result in “a significant alteration in the public use pattern,” it is unclear what conditions would need to be met. Guidelines are needed to both assist the public in making this claim and assist superintendents in supporting their decision.
- We believe the Federal Register should not be used as a notification tool, as this proposal would do, but rather as a public involvement tool.
- Though we support instituting a “closed until open” policy for administrative roads, we believe that superintendents should first perform an environmental review before opening roads to bicycles in undeveloped areas. A review would make the proposal consistent with a 2005 memo sent to regional directors from NPS associate director Karen Taylor Goodrich, and already in use.
- Finally, while we appreciate the language prohibiting bicycles in Wilderness areas, the proposed regulation must also state that bicycles are prohibited in areas proposed for Wilderness designation by the NPS and areas managed as “potential Wilderness.”

We offer the following comments to explain our views and hope the NPS finds them helpful in the promulgation of the final rule.

### **I. The Current Bicycle Regulation Has Been Working Well, But Needs to Be Enforced**

NPCA supports the current NPS bicycle regulation and is not convinced that the NPS has adequately explained why the new regulations are needed or necessary.



We understand that some bicyclists, especially mountain bikers, would like to have increased access to the parks. However, 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, including single-track mountain bike opportunities—but not all forms of recreation are appropriate in national parks.

Some critics of the current regulation complain that the rule making process takes too long to complete. While it is true that the process may take up to two years, it is in and of itself an inadequate justification. The NPS is charged with protecting park resources for current and future generations and must make appropriate decisions that take the opportunities and experience of future visitors into consideration. Furthermore, Saguaro National Park was able to issue a special regulation in less than one year.

There are a number of parks that already offer outstanding bicycling opportunities. For instance, the Chesapeake and Ohio Canal National Historical Park in Maryland offers biking opportunities along its 184.5 mile length and serves as one of the longest biking trails in the continental United States. Golden Gate National Recreation Area, Gateway National Recreation Area, and Delaware Water Gap National Recreation Area are three other park units where bicycling is a popular visitor activity.

However, of the approximately 25 national parks where mountain biking is currently taking place on narrow dirt trails, only Golden Gate National Recreation Area in California and Saguaro National Park in Arizona have completed the necessary public process and designated specific trails for mountain bikes. NPCA believes that all parks should come into compliance and that park managers should be held accountable for allowing uses that are not authorized.

## **II. The NPS Must Provide Clarity Regarding the Triggering of a Special Regulation and How Superintendents Will Be Held Accountable**

NPCA is concerned that the decentralization of decision making to the superintendent level would increase the risk for local stakeholder groups to unfairly influence local park decision making. In particular, we are worried that a superintendent may not properly consider 36 CFR § 1.5 (b), which deals with closures and public use limits, when they weigh the appropriateness of bicycling and the need to issue a special regulation in the Federal Register. Under 36 CFR § 1.5 (b), superintendents must promulgate a special regulation if it is necessary for uses of, or



activities of, “highly controversial nature” or would result in “a significant alteration in the public use pattern.”

The increased likelihood of local pressure on the superintendents to open park trails to bicycles will increasingly call in to question the neutrality of superintendents. Furthermore, there may be strong public disagreements created by superintendents who determine that the designation of a trail for bicycle use is noncontroversial, contrary to the views of many other park visitors. For example, due to the new presence of bicycles on a certain trail, horse packers may decide to reduce their use, or stop their use altogether, even though a superintendent has determined that there is no significant alteration in the public use pattern.

To avoid these situations, the NPS needs to identify the mix and level of use prior to proposing a trail be opened to bikes so that the impact of bike use can be assessed. It also needs to provide guidelines that would increase public awareness of the proposal including published notices in local newspapers and electronic notices to the park’s media and friends lists. Finally, there need to be clear guidelines as to what constitutes “controversial” Not only would it assist the public in stating its case regarding a proposal, but would assist superintendents in supporting their decision.

### **III. The Proposal May Create New User Conflicts and Management Challenges**

NPCA understands that the NPS and park superintendents face serious challenges in managing visitor uses and avoiding user conflicts in the parks. Many uses are incompatible with one another, and all uses have varying degrees of impacts on the visitor experience of other visitors and associated impacts on park resources. Chapter 8 of the 2006 NPS Management Policies provides the NPS and park superintendents with important guidance in managing visitor uses, and should be considered in the context of this proposal. We encourage the NPS to reanalyze this chapter before issuing a final regulation.

In particular we encourage the NPS to consider Section 8.1.1, which states:

“in exercising its discretionary authority, the Service will allow only uses that are (1) appropriate to the purpose for which the park was established, and (2) can be sustained without causing unacceptable impacts. Recreational activities and other uses that would impair a park’s resources, values, or purposes cannot be allowed.”

We also urge the NPS to examine Section 8.2, which provides important guidelines for the NPS to consider in weighing the appropriateness of designating bicycling trails. It states:

“many forms of recreation enjoyed by the public do not require a national park setting and are more appropriate to other venues. The Service will therefore provide opportunities for forms of enjoyment that are uniquely suited and appropriate to the superlative natural and cultural resources found in the parks...”



To provide for enjoyment of the parks, the National Park Service will encourage visitor activities that

- are appropriate to the purpose for which the park was established; and
- are inspirational, educational, or healthful, and otherwise appropriate to the park environment; and
- will foster an understanding of and appreciation for park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and
- can be sustained without causing unacceptable impacts to park resources or values.”

NPCA believes that bicycling on parklands in many cases meet the criteria outlined in the Management Policies and is appropriate. However, as our comments have highlighted, there are many situations where bicycling is entirely inappropriate. We encourage the NPS to consider the following concerns relating to user conflicts that could arise under the proposal.

- Visitor experience and expectations

Many park visitors travel to specific parks to learn about and experience firsthand the outstanding historical, cultural, and natural resources preserved within the park. In many instances, the unique experience and the park resources is something that can be found nowhere else in the United States, if not the world. Bicycling on roads, parking areas, and designated trails (that are in compliance) in developed areas is an activity that most park visitors accept and support. However, in some instances, bicycling may not necessarily be appropriate in parks in part because it is not dependent on a park setting and a park's unique resources. For example, the thrilling experience that many downhill mountain bikers seek is an experience that they can have on a variety of other public and private lands and is not dependent on being within the boundaries of a park unit.

- Safety

Bicycling on trails can be safe, but designating inappropriate bicycle routes could lead to increased risks to bicyclists, hikers, horseback riders and other park users. Mountain bikers traveling at high speeds increase risks to themselves and other hikers who they may not see until it is too late. Similarly, high speed mountain bikers may spook horses and other pack animals, which could lead to extremely dangerous situations. Mountain biking in parklands where grizzly bears, moose, and other large mega fauna are found could also result in extremely dangerous situations.

- Resource impacts

Bicycling can have a variety of impacts that could harm wildlife, vegetation, and overall trail conditions. Highly used bicycle trails that are poorly designed and maintained can cause erosion that could damage watersheds. Some mountain bikers do not stay on



designated trails, but instead create new social trails over fragile vegetation. Bicycling can also impact the travel patterns of sensitive and endangered species.

- Management considerations  
Any bicycle trails designated by the NPS should be well designed and maintained to avoid visitor conflicts, be safe, and minimize resource damage. The NPS should also consider the financial costs associated with increased bicycle use. The costs of managing a designated bicycle route may be significant. Any plan to designate bicycle routes should consider the capacity of park staffs to effectively manage mountain biking and perform the appropriate level of public education that may be required.

#### **IV. Transparency and Public Involvement Under NEPA Must Be Ensured**

NPCA believes mountain biking in national park units can be an acceptable visitor activity in certain circumstances, if the proper evaluation process is followed consistent with NPS Management Policies. We support an NPS process of management planning, scrutiny and investigation that is open to public discussion and input in determining, on a case- by- case basis, whether a proposed route for this activity in a specific park unit is appropriate.

We also strongly believe in full transparency on important park management decisions, including this one. Thus, using the Federal Register as a notification tool, as this proposal would do, rather than a public involvement tool, is something we disagree with.

NPCA appreciates the NPS's plan to comply with the National Environmental Policy Act (NEPA), but believe it has serious deficiencies. Under the proposal, the NPS would continue to use the Federal Register to: 1) notify the public on the opportunity to comment on an Environmental Assessment (EA) or Environmental Impact Statement (EIS); and 2) publish a notification of the superintendent's determination. However, unlike the publication of a special regulation, which is currently necessary to designate bicycle routes, a web address in the Federal Register would notify the public of how they can comment.

This extra step could deter some individuals. Furthermore, a particular environmental document or determination could be considered quite controversial, but framed in the Federal Register with a brief notice making it sound the opposite. As a result, some decisions at the park level may not receive the scrutiny they warrant and deserve. Finally, while NPCA generally supports having extensive information pertaining to park management on park websites, we do not believe it should serve as a substitute for a well crafted Federal Register notice.

#### **V. Administrative Roads in Undeveloped Areas Must Be Consistent With NEPA**

NPCA supports the proposal to institute a "closed until open" policy for administrative roads, but is concerned that current regulation may loosen NEPA compliance for administrative roads in undeveloped areas. There are a significant number of national park units with wildlands that



contain a large number of administrative roads, including fire roads, where bicycling would be inappropriate.

On April 21, 2005, associate director Karen Taylor Goodrich sent an important instructional memo to regional directors and superintendents regarding bicycling on administrative roads. In the memo, she stated

“while park roads and parking areas within developed areas (36 CFR 1.4) do not require special designation allowing bicycles, proposed bicycle use on all other routes within developed zones, and administrative roads (those closed to public motorized use) outside of developed zones will require an analysis, including public comment, and decision pursuant to NEPA.”

If the proposed language were finalized as written without changing it to reflect the guidance from the associate director, then many superintendents may simply open up administrative roads through sensitive undeveloped areas, some of which may cross through endangered species habitat. We strongly encourage the NPS to keep the “closed until open” policy intact and add additional language stating that administrative roads through undeveloped areas must be compliant with NEPA.

## **VI. Proposed or Potential Wilderness Quality Lands Must Be Identified As Off Limits**

NPCA supports the proposal’s language prohibiting the possession of a bicycle in Wilderness areas, but believes that the proposal should be expanded to include lands that are proposed for Wilderness designation by the NPS and areas managed as “potential Wilderness.” Broadening the proposed regulation with this change is consistent with Section 6.3.1 of the NPS Management Policies, which state:

The National Park Service will take no action that would diminish the wilderness eligibility of an area possessing wilderness characteristics until the legislative process of wilderness designation has been completed. Until that time, management decisions will be made in expectation of eventual wilderness designation. This policy also applies to potential wilderness, requiring it to be managed as wilderness to the extent that existing nonconforming conditions allow. The National Park Service will apply the principles of civic engagement and cooperative conservation as it determines the most appropriate means of removing the temporary, nonconforming conditions that preclude wilderness designation from potential wilderness. All management decisions affecting wilderness will further apply the concept of “minimum requirement” for the administration of the area regardless of wilderness category. The only exception is for areas that have been found eligible, but for which, after completion of a wilderness study, the Service has not proposed wilderness designation. However, those lands will still be managed to preserve their eligibility for designation.



## **VII. Conclusion**

NPCA is a strong advocate for bicycling on park roads and parking areas because it provides a healthy non-polluting alternative to cars and can help reduce traffic congestion. Furthermore, we believe that mountain biking can be an appropriate visitor activity in some park units, in some circumstances, if the proper evaluation process is followed consistent with NPS Management Policies, the National Environmental Policy Act, a park units authorizing language, and other statutes and regulations.

However, we feel that the proposed revision to the bicycling regulation must be strengthened before it is made final. It should consider the increased risk for local stakeholder groups to unfairly influence local park decision making. It should provide guidance regarding what uses of, or activities of, “highly controversial nature” or that would result in “a significant alteration in the public use pattern,” would trigger a special regulation. It should provide language stating that administrative roads are “closed until open” and that an environmental review is necessary before allowing bicycles in undeveloped areas. It should provide language prohibiting bicycles in areas proposed for Wilderness designation by the NPS and areas managed as “potential Wilderness.” Finally, the Federal Register should be used as a public involvement tool, not a notification tool.

NPCA thanks you for this opportunity to express our views.

Sincerely,

Bryan Faehner  
Associate Director for Park Uses



