

Statement of Mark A Schlaefli
President
Rushmore Helicopters, Black Hills Aerial Adventures, Badger Helicopters

US House Committee on Natural Resources Subcommittee on Oversight and Investigations

“Limiting Access and Damaging Gateway Economics: Examining the National Parks Air Tour Management Program”

December 5, 2023

Thank you for the opportunity to provide testimony on Air Tour Management Plans (ATMP).

I am the President and Owner of Rushmore Helicopters, Black Hills Aerial Adventures and Badlands Helicopters. Along with a business partner, I also own and operate four additional helicopter operations that primarily operate in South Dakota, Wyoming and Montana. My companies provide a full spectrum of helicopter aviation services, with a primary focus on aerial tourism.

Aviation was a second career for me, and I started flying in 2007. I sought opportunity and was given a wide spectrum of experience working for tour and utility operators. I worked my way up as a line pilot, training director, chief pilot and director of operations. In 2021 I fulfilled a long-time dream of owning and operating my own companies with the purchase of four interconnected operations along with a partner. We have added two operations since 2021, and currently operate a fleet of 9 aircraft and employ 30 amazing individuals.

Aerial tours represent the single lowest impact form of visitation for our man made and natural wonders, providing a unique window from which we share vibrant cultural and historical landscapes with the world. Like ground-based tours, air tours are a vital part of the visitor experience to our parks, ensuring the lands set aside for all can be accessed by all.

We are local. We are a small business, and we take great pride in the community that we live and operate in. We work closely with the communities in which we operate and seek out ways to be better neighbors. We routinely work with communities and stakeholders to protect the areas in which we live. We are responsive, often changing operations in order to address community concerns. We constantly seek ways to raise the bar on safety and community compatibility.

Background on Air Tour Regulation

As the committee is aware, Congress passed the National Parks Air Tour Management Act of 2000 (NPATMA) to regulate commercial air tour operations over the National Park System and to guide the Federal Aviation Administration (FAA) and the National Park Service (NPS) on the agencies roles with air tours over the national parks. The Act did not alter the FAA’s sole

authority over and control of the National Airspace System (NAS). The NPS is to work closely with the FAA to help protect the natural and cultural resources of the national parks. NPATMA requires the FAA and the NPS to develop ATMPs for the national parks.

NPATMA granted existing air tour operators interim operating authority (IOA) by the FAA to conduct air tours until an ATMP could be developed. IOA represents a cap on the number of overflights allowed to that operator in a year and does not specify the routes or operating conditions. While it does not specify routes and altitudes, operators have worked closely with individual park units to craft sustainable parameters which have resulted in the routes and altitudes flown today.

Section 40128(a) prohibits overflights of National Parks, unless there is an agreement in place with FAA, an ATMP, or a voluntary agreement. The original statute required ATMPs for any national park or tribal land for which an ATMP is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park. The original statute did not give the FAA or the NPS flexibility regarding voluntary agreements and it did not include a 50-flight exemption. In 2012, as part of FAA Reauthorization, Congress, recognizing that the FAA and the NPS were having procedural difficulties with issuing ATMPs in a timely manner, added the flexibility of establishing voluntary agreements with air tour operators as an alternative to an ATMP and exempted National Parks with 50 or fewer overflights per year. This amendment was meant to assist the FAA and the NPS in streamlining the ATMP process.

The Mt. Rushmore National Memorial, while not a “National Park” is included as the definition of “National Park” because the statute is broad enough to include “any unit of the National Park System.” (49 U.S.C. 40128(g)(5)).

In 2019 a coalition of Hawaii residents and the group Public Employees for Environmental Responsibility, representing current and former public employees, sued the FAA and NPS for failure to complete the ATMP process. On May 1, 2020, the US Court of Appeals for the District of Columbia ordered the FAA and NPS to adopt ATMPs or voluntary agreements for 23 named NPS areas. It gave the agencies 24 months to comply.

When faced with the prospect of a court order compelling the ATMPs at some parks, the FAA and NPS have taken action in a rushed manner that did not provide the opportunity for contemporary data to be evaluated or for direct involvement by critical stakeholders. The issue for me, as an operator, is that I received no notice that the FAA and NPS were going to try to speed through the 23 parks and include Mount Rushmore, a memorial, as part of this lawsuit.

Economic Consideration

When I took ownership of my companies, the previous owners’ Interim Operating Authority (IOA) transferred over to me in the purchase. This IOA was issued to my companies based on the volume of tours that were being conducted and to allow for growth. The IOA allows me to take visitors inside the boundaries of Mount Rushmore National Memorial and Badlands

National Park. Our routes are very specific, and we avoid overflight of sensitive areas at altitudes that minimize impacts.

According to the NPS documents, on average, from 2017-2019, 3,914 commercial air tours occurred in Mount Rushmore National Memorial every year and 1,425 commercial air tours occurred in Badlands National Park every year. My company represents over 99% of those flights. In 2020, 2021 and 2022, those numbers were significantly higher. Contemporary data was available for analysis, and the agencies selected older data favorable to their desired outcome.

In ATMP's, it is mentioned how the current air tour operations result in unacceptable impacts to the Park under NPS Management policies 2006 1.4.7.1. However, no conclusive support for this was included. Since there is no conclusive documentation for this claim, intensive research should have been required before making a decision under NPS Management policies 2006 4.1.1, which states:

“Similarly, planning for park operations, development, and management activities that might affect natural resources will be guided by high-quality, scientifically acceptable information, data, and impact assessment. Where existing information is inadequate, the collection of new information and data may be required before decision-making. Long-term research or monitoring may also be necessary to correctly understand the effects of management actions on natural resources whose function and significance are not clearly understood”

The ATMP cites the management policies which require “high-quality, scientifically acceptable information, data, and impact assessment” before implementing plans. The ATMP indicates “possible” adverse effects to support the decision and is not reflective of the required “high quality scientific” requirement. Given the lack of high-quality, scientifically acceptable information, data, and impact assessment, reliance on these policies is misplaced and highly prejudicial. It is our assertion that the process is significantly flawed and discriminates against my companies and the flying public.

We as a company support the concept of an ATMP. Safe, responsible operators should be directly involved with stakeholders to operate in ways that benefit the public, the park units and keep operators accountable. There is a responsible manner in which air tour companies can conduct business and work hand in hand with the park units to achieve a beneficial relationship.

The ATMP for Mount Rushmore National Memorial and Badlands National Park **eliminates** all IOA and eliminates any aerial tour flights within the boundaries of Mount Rushmore or the Badlands. This represents over 9,000 flights that were issued to me and authorized by the FAA. This IOA is how the companies were built and eliminating it with the stroke of a pen will likely end my companies which have over 30 years of experience operating air tours in the ATMP areas. The loss of IOA and associated flights represents a 5.4-million-dollar reduction of revenue

to our companies, effectively ending our ability to operate. Air Tour Management Plans were never intended to be Air Tour Elimination Plans.

I strenuously oppose these ATMPs and believe that the NPS and the FAA did not in good faith perform the required due diligence to determine the true impacts to operators, the public, and the park units resources. Engagement with stakeholders could have resulted in a Voluntary Agreement that protects resources while supporting air commerce.

The NPS failed to reach out to the operators to determine the economic impacts from implementing a management plan that completely eliminates overflights. The removal of my companies represents a \$55 million part of the local economy over ten years and threatens to destroy local institutions that have been in operation since the 1960's.

In addition to the overall impact to my companies and my employees, local economies and suppliers are also affected in a significant way. The town of Keystone, South Dakota sits at the bottom of the hill on the way to Mt. Rushmore. My helicopter operations are immediately adjacent to downtown Keystone, and many travel to Keystone for the purpose of utilizing our service. Those travelers tend to stay in Keystone and spend money supporting the local economy. Therefore, Rushmore Helicopters helps to generate revenue for other companies, which would be affected in a significant way.

Environmental /Safety Considerations

Beyond economic considerations, I believe the agencies did not account for the true environmental impact that elimination of overflights would cause. Eliminating air tour overflights does nothing to address other non-tour aviation activity which have no restrictions within park boundaries. These other activities represent continued requirement for infrastructure and support, where air tours remove those impacts.

It is important to note that air tour operations are very conscientious of sensitive areas and have adjusted over the years to try and reduce impacts. Up until the announcement of the ATMP, my companies hosted NPS staff for an annual educational seminar for our staff, explaining the importance of the memorial, and a brief history. We also used this time to discuss issues and check in on how we are performing. We were directly told annually that everything was working well, and NPS appreciated our efforts to minimize impacts.

We have on more than one occasion provided air support free of charge for Badlands, whether it be a search for hikers or a lost pet. For Mt. Rushmore and the surrounding wilderness, we are often the first set of eyes on fires that start in the forest. We have not received a single complaint from either Mt. Rushmore or Badlands in the time that we have owned the companies and have a solid track record with addressing concerns. We have changed entire offerings based on community input as a part of our dedication to compatibility.

It is our assertion that safety has been fully ignored by the FAA in this process. In all of the documentation that was crafted to justify the ATMP, safety was not mentioned. During the one public meeting that took place over zoom, questions directed at the FAA and NPS regarding risk assessments and safety were not adequately answered. We believe this is a monumental failure on the part of the FAA and ignores their stated mission, vision and values.

Air tours are ultra-low impact and require no ground-based infrastructure at the park, which allows visitors accessibility without the need for roads, trails, signs, bathrooms, garbage cans, or other services. We leave nothing behind and take only memories. Often maligned under the guise of “noise”, air tours represent an incredible and understated benefit to the environment.

With the elimination of overflights, we are reducing opportunities to access our parks in a way that leaves little to no environmental footprint or disturbance. Natural sound is a renewable resource. Through route adjustments and altitude restrictions, sound is minimal. Air tour operators, through stewardship and thoughtful practices work to help preserve our nations parks. This access restriction is prejudicial and discriminatory.

There are currently no restrictions or mitigation efforts for loud vehicles operating in the park, some of which make significantly more noise than a passing helicopter. The Town of Keystone conducted a study on this very issue a few years ago, and not surprisingly the results showed that helicopters were not the leading cause of sound.

Looking to the near future, the vertical aviation industry is moving forward with the exciting new technologies of advanced air mobility (AAM). The vehicles typically associated with AAM include electric vertical takeoff and landing (eVTOL), electric short takeoff and landing (eSTOL), and hybrid-electric aircraft. These aircraft have the potential to be quiet, safe, sustainable and more affordable as the industry scales, providing societal, environmental, and economic benefits to our communities.

AAM operations are poised to begin as soon as 2024, with new aircraft achieving certification under conventional pathways, being piloted traditionally, and operating within established air traffic management rules.

The elimination of air tours to the aircraft of today closes the door to these vehicles that are on the cusp of introduction. Through the ATMPs the agencies are turning away from opportunities, progress and technologies that will benefit the parks.

The aviation workforce is experiencing significant shortages, and they are only projected to continue. The FAA puts a significant amount of effort into workforce development and clearly recognizes the need for a healthy system to create the aviators of tomorrow. Our companies are directly involved in this process, by providing opportunities for pilots to gain experience. Our staff is taught the safety protocols and decision making required to be a successful aviator. As ATMPs shutter my companies and other air tour companies, it has a significant negative impact on the rest of the aviation sector. Air tour companies are an important source of

workforce opportunities that once reduced or removed, presents challenges to the aviation industry, already hurting for pilots and mechanics.

Access Concerns

As we move past the pandemic years, many National Parks saw their resources strained by the large number of visitors as the public began to travel again. Air tours are a vital option for many visitors, providing once-in-a-lifetime memories. Visitors taking advantage of air tours benefit in tangible ways, that benefit both visitors and parks. Air tours provide access to all while reducing infrastructure and impacts to parks.

As the NPS and the FAA have released the ATMPs it is very clear that the agencies have an agenda to eliminate the air tour industry. While this may sound like a dramatic statement, in the case of my companies this exactly what is happening. My IOA was chosen for elimination, not reduction. Many of the early ATMP's proposed reductions based on 2017 – 2019 numbers. Mine are eliminated. Elimination harms **all** of the stakeholders. The ATMP is discriminatory against visitors who choose to experience the national parks from the air.

The national parks should be available for all visitors to see. Eliminating flights over the park unfairly limits the elderly, very young, disabled, and others to experience the park. Limiting flights over the parks is discriminating to those who might not have the time, resources, or physical ability to see the park any other way. Freedom to choose a visitation method should be preserved.

Every day we fly, my companies provide opportunities for the aforementioned to enjoy our parks. I can tell you from personal experience, it is life changing for those people. I have personally flown many guests with disabilities to include the legally blind to quadriplegic veterans. For many this is a bucket list item and their only opportunity for an equal visitation experience. This service matters.

Process Concerns

The draft ATMP for Mt Rushmore National Memorial and for Badlands National Park was developed and proposed without proper involvement of key stakeholders as required by NPATMA. The FAA and NPS have repeatedly made public statements to indicate that stakeholder involvement was conducted, and coordination occurred with the local operators. I would know if there had been coordination with the local operators because I am the local operator. There was none. The level of misinformation and deflection of the questions was eye opening.

Safety has been ignored in the development of these ATMPs. There was outreach to the local Flight Standards District Offices (FSDO) but input from the FSDO was directly ignored and not considered. The helicopter expert in the FSDO was barred from participating in the conversations. Why would you not involve the one person in the office with the expertise to

provide sound input and recommendations? I believe this is just a small example of the “check the box” attitude the NPS is using to force these plans into place. I believe this has also manifest itself in the manner in which the NPS has conducted environmental analysis. The analysis was all prepared in house without objective evaluation.

I believe the sound models used to develop the ATMPs are inaccurate. For example, the routes and altitudes used in the Environmental Assessment (EA) do not reflect what has been happening at Mt. Rushmore for the past three years since I have taken ownership. The town of Keystone conducted a third-party noise study to determine helicopter impact and found that motorcycles were the chief producer of noise. The analysis conducted in the EA inadequately evaluates sound from outside sources whether they be aviation or non-aviation.

To be more specific on what I believe was a rush to develop the ATMP without first updating data, I'd like to focus on a few examples from the Mount Rushmore ATMP. The EA uses operational data from 2017-2019 because of “continued abnormalities associated with the COVID-19 pandemic and the unavailability of reporting data for 2021 or 2022 during most of the planning effort.” It also uses noise data collected in 2003, 2007 and 2012, all more than ten years ago. However, the NPS does have data on the number of national memorial visitors in 2020 (2,074,986), 2021 (2,525,868), and 2022 (2,440,449). It is now 2023, and current data would be more relevant to the current operations and noise impacts since about 300,000-400,000 more people are visiting Mount Rushmore per year than in 2012. Despite this, the NPS moved forward with developing the ATMP instead of updating the data which it relied upon.

In section 2.2.1 of the EA, it states that one of the reasons why the draft ATMP restricts air tour operations in Mount Rushmore is that: “The interdisciplinary team also concluded that the existing levels of air tours diminishes Wilderness character due to its effects on natural soundscapes in adjacent Wilderness managed by the USFS.”. The agency never made clear if it consulted with the United States Forest Service, and if so, they have not shared the comments received.

However, a larger problem exists. The ATMP is specifically looking at the Mount Rushmore Memorial. It is unclear what statutory or regulatory basis the agency used for incorporating areas outside Mount Rushmore in its analysis. To complicate matters, the elimination of park overflights could potentially result in a significant increase of overflights of the wilderness they are claiming to be concerned about. I have to remind myself that Mt. Rushmore was made by the destruction of natural resources. If the NPS was concerned about wilderness character they would do well to stop lighting the memorial and conducting other activities that are completely unnatural such as the fireworks displays.

In developing the alternatives for the draft ATMP for Mount Rushmore, an agency team considered “the noise impacts of existing routes and operations, the Memorial’s cultural and natural resources, the Memorial’s existing and natural acoustic environment, visitor experience, visual resources, and the Wilderness character of the adjacent Black Elk Wilderness, as well as potential protective measures that could be included in an ATMP.” The National Memorial’s

existing and natural acoustic environment also includes a tremendous amount of vehicle traffic. The parking garage is the centerpiece of park infrastructure.

Section 3.1.2 of the Draft Environmental Assessment states that “the acoustic impacts of Alternative 2 cannot be modeled because, although some speculation about air tour routes can be made, it is unknown where air tours would fly when outside the ATMP planning area or over the ATMP planning area at or above 5,000 ft. AGL”. The EA also states that Alternatives 3 and 4 provide beneficial effects. It is left to wonder why the agency would propose such a draconian approach of eliminating all air tours when other alternatives provide beneficial effects and the deleterious effects of Alternative 2 cannot actually be modeled.

In section 3.6.2 of the Mount Rushmore EA, it notes indirect and cumulative effects. The EA comments on noise from aircraft used for wildlife monitoring, firefighting, etc. as well as “other noise from building maintenance and construction activities occasionally disrupts visitors, but these activities are temporary and short-term in nature”. Air tours are temporary and short term in nature.

The agencies chose a path with the ATMP to eliminate air tours in Mount Rushmore and Badlands. In the same document outlining the elimination of my business, the agencies note that other aircraft noise, maintenance and construction noise disrupts visitors.

Visitors to the National Memorial are temporary and short-term in nature. Sound from air tour flights is also short-term and temporary. Why have noise from building maintenance and construction activities, which could be at a higher level than an air tour, be deemed permissible, even if it is short term, when it will be disruptive to the visitor that day? The majority of visitors to Badlands National Park are also short term, with many choosing to drive through and stop at a few viewpoints before exiting.

Conclusion

As outdoorsmen and conservation minded owners we believe it is essential to preserve our National Parks yet enable visitation opportunities for all to enjoy. All units of the national park system are not equal. Glacier National Park is not the same as Cabrillo National Monument. Yellowstone National Park is not the same as Mount Rushmore National Memorial. A one size fits all solution driven by ideology is not how we should be deciding how the public may choose to visit.

While I strenuously oppose the manner in which these ATMPs have been developed, commercial air tour operators would wholeheartedly welcome collaborative engagement with the FAA, NPS, and all interested parties to engineer solutions to benefit the park and the public. The FAA and the NPS through this action have increased risks, discriminated against multiple classes of visitors and increased impacts to the surrounding wilderness. We are faced with the elimination of my business and life savings as a result of the ATMP. This should not be allowed to happen.