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# CRUMBLING CROWN JEWELS: ADDRESSING THE IMPACT OF RECREATIONAL OVERUSE IN AMERICA'S NATIONAL PARKS

Ellen Spicer\*

National Parks<sup>1</sup> are the “crown jewels” of America. However, in recent years they have become subjected to rampant overcrowding and overuse, so much so that they are being loved to death. The 1916 National Park Service (“NPS”) Organic Act<sup>2</sup> calls for the conservation<sup>3</sup> of “the scenery and the natural and historic objects and the wild life . . . and to provide for the enjoyment of the same in such manner and by such means as will leave [park sites] *unimpaired* for the enjoyment of future generations.”<sup>4</sup> Due to increased visitation, one of the mandates of the NPS is being trampled. Some parks have taken steps to mitigate the impacts and even limited park access,<sup>5</sup> but more action is needed to ensure parks are protected for future generations.

During the last decade,<sup>6</sup> fueled partially by the NPS’s Centennial “Find Your Park” campaign in 2015 and 2016,<sup>7</sup> park visitation has drastically increased.<sup>8</sup> Parks were again inundated with visitors in 2020 as a result of Americans being “stuck” at home for months during the COVID-19 pandemic.<sup>9</sup> Consequently, finding a balance between conservation of park resources and visitor use is a tension that must continuously be assessed, especially in light of the rapidly-changing climate.<sup>10</sup>

NPS Management Policies have declared a non-impairment principle,<sup>11</sup> which courts have upheld, endorsing conservation as the “predominant facet.”<sup>12</sup> Park decisionmakers are required to prepare non-impairment determinations for final agency actions<sup>13</sup> to ensure activity “will not lead to an impairment of park resources or values” including “the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them . . . .”<sup>14</sup> The catch is that visitation, which is key to the mission, is causing impairment.<sup>15</sup> Managers must take steps to address overcrowding and its adverse effects.

There are several potential actions that NPS decisionmakers could take to address the overuse problem. First, though there are 423 park sites, most of the visitation happens at just six percent of parks.<sup>16</sup> It is clear that with the right resources the NPS can reach large numbers of people and incentivize them to change their behavior through marketing, as was exemplified by its successful Centennial “Find Your Park” campaign that encouraged new visitation. While it may require congressional appropriation to fund another such campaign, the NPS should recreate the enthusiasm behind the centennial campaign and focus on (1) educating park visitors on how to visit—i.e., Leave No Trace<sup>17</sup> and respectful visitation ethics<sup>18</sup>—and (2) highlight parks that have the capacity to receive more of the visitation burden. Implementing a “hidden

gems” campaign would need to be carefully crafted as not to incidentally cause an influx to already popular parks, but instead drive visitors to visit less-frequented parks. This system-wide approach has the potential to reshape how parkgoers think about, and plan visits to parks in the future.

Second, and more directly tied to protecting park resources, parks need to implement visitation restrictions.<sup>19</sup> Options include park reservation systems (i.e., timed entry), increasing shuttle bus services, and implementing permit systems for popular trails. These are solutions that can be taken at the individual park level. Many of them will require managers to consider conservation benefits over “enjoyment,” exposing managers to potential public outcry. To permanently implement these types of actions will require months, if not years, of planning, but the more managers make these hard decisions in favor of “non-impairment,” the easier such decisions will become because there will be precedent and procedures in place for making them.

Time and place-based restrictions are not completely novel. Muir Woods National Monument was the first park site to implement a timed reservation system to address visitation problems in January 2018.<sup>20</sup> Further, many parks in response to the pandemic implemented reservations, and many are keeping them for the 2022 season in response to unpleasant conditions<sup>21</sup> left by the masses of visitors.<sup>22</sup> Additionally, electrifying park-provided transportation will help further mitigate the impacts of visitation.<sup>23</sup> To compel park managers to implement these types of restrictions, the NPS could implement new policy guidance, or promulgate rules requiring the implementation of impairment-limiting visitation practices.

A third option could be to change entry pricing schemes. Increasing park entry fees is never popular.<sup>24</sup> This proposal is not to increase the price of admission and make access prohibitive to disadvantaged groups,<sup>25</sup> but rather to lower prices during the “shoulder” and “off” seasons to distribute visitors throughout the year.<sup>26</sup> This type of solution would likely need to go through notice-and-comment, and need to be studied to determine if it would help with the overuse problem or if it would just spread it out or even cause it to worsen.

These solutions are a few of the potential ways to address overcrowding and its impacts. There is no one-size-fits-all answer, and it will likely take a comprehensive approach, combining these types of solutions—promoting hidden gems, time and manner restrictions, and alternative pricing schemes—to keep parks from being loved to death.



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## ENDNOTES

- <sup>1</sup> The NPS manages 423 sites across the county, from the large and well-known parks of Yellowstone and the Grand Canyon to the tiny like African Burial Ground National Monument in New York City. Jennifer Errick, *Small Wonders: The 12 Teeniest National Park Sites*, NAT'L PARKS CONSERVATION ASS'N (Aug. 31, 2015), <https://www.npca.org/articles/471-small-wonders-the-12-teeniest-national-park-sites>.
- <sup>2</sup> 16 U.S.C. § 1.
- <sup>3</sup> The modern park mission, updated in 2000, calls for preservation rather than conservation, as it is a more apt term for the true mission of the NPS. *NPS Entering the 21st Century*, NAT'L PARK SERV., <https://www.nps.gov/articles/npshistory-entering-21st-century.htm> (last visited Nov. 28, 2021).
- <sup>4</sup> 16 U.S.C. § 1 (emphasis added). The mission is often considered to have a dual mandate, but non-impairment is the key to both enjoyment and conservation.
- <sup>5</sup> Greg Iacurci, *National Parks are Booming. That May Ruin Your Next Trip*, CBS NEWS (Aug. 22, 2021, 8:00 AM), <https://www.cbc.com/2021/08/22/national-parks-are-booming-that-may-ruin-your-next-trip.html> (discussing reservation systems implemented by national parks in 2021).
- <sup>6</sup> From 2009 to 2019 national park visitation increased thirteen percent overall. Elisabeth Kwak-Hefferan, *8 Ways to Ease Overcrowding at Our National Parks*, 5280 (Sept. 2020) <https://www.5280.com/2020/09/8-ways-to-ease-overcrowding-at-our-national-parks/>.
- <sup>7</sup> Jenny Rowland-Shea, *Parks for All*, CTR. FOR AM. PROGRESS (Aug. 16, 2016), <https://www.americanprogress.org/article/parks-for-all/> (noting there were 307 million visitors in 2015, which was a peak at the time); see also Katie Jackson, *Why You Should Care About the 'Find Your Park' Campaign*, OUTSIDE (Apr. 30, 2015), <https://www.outsideonline.com/adventure-travel/advice/why-you-should-care-about-find-your-park-campaign/> (describing aspects of the "Find Your Park" campaign including social media campaigns and corporate sponsorships).
- <sup>8</sup> A testament to the two-year-long campaign, the National Park Service saw its visitation soar in 2016 and 2017 to 330,971,689 and 330,882,751 respectively. See *Visitation Numbers*, NAT'L PARK SERV. (last visited Mar. 28, 2022), <https://www.nps.gov/aboutus/visitation-numbers.htm>.
- <sup>9</sup> Several parks saw record breaking visitation in the spring and summer months of 2020. *How Crowded Are America's National Parks? See for Yourself*, NY TIMES (July 8, 2021), <https://www.nytimes.com/2021/07/08/travel/crowded-national-parks.html> (photo essay).
- <sup>10</sup> See Alex Horton, *Climate Change Is Destroying Our National Parks at an Alarming Rate, Study Finds*, WASH. POST (Sept. 25, 2018), <https://www.washingtonpost.com/energy-environment/2018/09/25/climate-change-is-destroying-our-national-parks-an-alarming-rate-study-finds/> (citing Patrick Gonzalez, Fuyao Wang, Michael Notaro, Daniel J. Vimont, & John W. Williams, *Disproportionate Magnitude of Climate Change in United States National Parks*, ENV'T RSCH. LETTERS, Sept. 2018) (noting that "climate change has adversely and uniquely affected" most national parks). Climate change further compounds the problem of increased visitation, backlogged maintenance, understaffing, underfunding, and diminishing bipartisan support plague national parks.
- <sup>11</sup> U.S. DEP'T OF INTERIOR, NAT'L PARK SERV., MANAGEMENT POLICIES 2006, at 11 pt. 1.4.5 (2006) [hereinafter MANAGEMENT POLICIES] ("The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.").
- <sup>12</sup> *S. Utah Wilderness All. v. Nat'l Park Serv.*, 387 F. Supp. 2d 1178, 1191 (D. Utah 2005) ("[O]ver twenty years of federal court decisions confirm[] that conservation is the predominant facet of the Organic Act.").
- <sup>13</sup> Any final agency action that requires an analysis of environmental impacts pursuant to National Environmental Policy Act (NEPA), 42 U.S.C. § 4332 (requiring detailed statement about environment impact for agency actions significantly affecting the human environment), also requires a non-impairment determination by the responsible official. MANAGEMENT POLICIES at 12 pt. 1.4.7. Final agency actions are those after a Finding of No Significant Impact or Record of Decision is made in the NEPA process. NAT'L PARK SERV., GUIDANCE FOR NON-IMPAIRMENT DETERMINATIONS AND THE NPS NEPA PROCESS at 1 (Sept. 2011) [hereinafter NON-IMPAIRMENT GUIDANCE].
- <sup>14</sup> NON-IMPAIRMENT GUIDANCE at 1–2 (citing Management Policies 2006). Determinations are made in the "professional judgment" of the NPS decision-maker. *Id.* at 3.
- <sup>15</sup> Kurt Repanshek, *Will Coronavirus Spur Changes To How We Visit National Parks?*, NAT'L PARKS TRAVELER (May 3, 2020), <https://www.nationalparkstraveler.org/2020/05/will-coronavirus-spur-changes-how-we-visit-national-parks> (noting impacts from visitors as "road shoulders turning into parking areas . . . running over vegetation, trail erosion becoming extensive, social trails . . . restrooms dirty . . . wastewater systems overtaxed, litter, stress . . . pressure to build a larger human footprint in the parks . . .").
- <sup>16</sup> In 2020, fifty percent of all recreational visits to national parks in the systems happened at the twenty-three most-visited sites. In 2021, the top eight most visited parks received twenty-five percent of all visitors. *Visitation Numbers*, *supra* note 8.
- <sup>17</sup> *The 7 Principles*, LEAVE NO TRACE, <https://lnt.org/why/7-principles/> (last visited Mar. 4, 2022).
- <sup>18</sup> See, e.g., *Visit with Respect*, BEARS EARS EDUC. CTR., <https://bearsarsmonument.org/visit-with-respect/> (last visited Mar. 4, 2022) (example of visit with respect ethics geared toward visiting Bears Ears National Monument, which is administered by the Bureau of Land Management). During the pandemic many people visited national parks for the first time, which created a need to ensure adequate visitor education on resource protection and respectful visitation concepts.
- <sup>19</sup> Some parks are already requiring reservations in 2022. See Ashley Nash, *Which National Parks Require Reservations? Here's a Breakdown*, DESERETNEWS (Mar. 1, 2022, 1:45 PM), <https://www.deseret.com/utah/2022/3/1/22956388/national-park-reservation-requirements-summer-2022>.
- <sup>20</sup> Paul Rogers, *Muir Woods to Become First in National Park System to Require Year-Round Vehicle Reservations*, MERCURY NEWS (Nov. 16, 2017, 5:16 PM), <https://www.mercurynews.com/2017/11/16/muir-woods-to-become-first-in-national-park-system-to-require-year-round-vehicle-reservations/>.
- <sup>21</sup> See generally Andrew Chow, *National Parks Are Getting Trashed During COVID-19, Endangering Surrounding Communities*, TIME (July 22, 2020, 3:19 PM), <https://time.com/5869788/national-parks-covid-19/> (describing crowds, human waste, traffic, and racism).
- <sup>22</sup> Reservation systems have proven successful, and parks including Glacier, Rocky Mountain, and Arches National Parks are implementing some form of timed entry via reservation systems in 2022. Emily Pennington, *These National Parks Will Require Reservations in 2022*, OUTSIDE (Jan. 27, 2022), <https://www.outsideonline.com/adventure-travel/national-parks/national-park-reservations-2022/>.
- <sup>23</sup> Secretaries Haaland (DOI) and Buttigieg (DOT) signed a Memorandum of Understanding to implement "green-friendly" travel in parks which is supported by the infrastructure bill that was passed. *Feds Ink Green Transportation Agreement for National Parks*, E&E NEWS (Nov. 17, 2021), <https://www.eenews.net/articles/feds-ink-green-transportation-agreement-for-national-parks/>.
- <sup>24</sup> For example, in 2018 then Secretary Zinke was forced to back off plans to implement massive fee increases after robust public comment and backlash. Timothy Cama, *Zinke Backs Off Plan for Big National Park Fee Increases*, THE HILL (Apr. 12, 2018, 3:37 PM), <https://thehill.com/policy/energy-environment/382906-zinke-backs-off-plan-for-big-national-park-fee-increases>.
- <sup>25</sup> Parks have long implicitly and explicitly excluded marginalized and lower-income groups, so any actions taken must be carefully crafted towards inclusivity. See generally David Scott & KangJae Jerry Lee, *People of Color and Their Constraints to National Park Visitation*, 35 GEORGE WRIGHT FORUM 73, 75 (2018) (discussing factors such as socioeconomic constraints, racism, and lack of leisure time); Emma Gosalvez, *Nature Gap: Why Outdoor Spaces Lack Diversity and Inclusion*, COLL. OF NAT. RES. NEWS (Dec. 14, 2020), <https://cnr.ncsu.edu/news/2020/12/nature-gap-why-outdoor-spaces-lack-diversity-and-inclusion/>.
- <sup>26</sup> See Kwak-Hefferan, *supra* note 6.