

ISSUE PAPER

All NPS-Administered National Scenic Trails Should Be “Units” of the National Park System

LEGISLATIVE UPDATE: On March 30, 2009, the President signed the Omnibus Public Land Management Act of 2009, Public Law 111-11. Section 5301 provides authority for the Federal Government to acquire lands from “willing sellers” for the Ice Age, North Country, and Potomac Heritage National Scenic Trails. This effectively eliminates the “no land acquisition authority” objection to “unit” status for the Ice Age and North Country National Scenic Trails addressed in MYTH-FACT #8 on page 38 of this paper. However, as pointed out in that section of this paper, all of the objections and obstacles addressed in that section are mere myths, anyway. The current (1970 General Authorities Act) legal definition of the National Park System and its “units” is not based upon either National Park Service ownership of lands or the authority to acquire such lands.

Introduction

Congress has authorized a total of 8 National Scenic Trails (NSTs) and 18 National Historic Trails (NHTs) under the authorities of the National Trails System Act of 1968 (16 U.S.C. 1241 *et seq.*, hereinafter referred to as “the Act”). Of these, 5 NSTs and 16 NHTs are administered by the National Park Service (NPS) [two of the 16 NHTs are co-administered with the Bureau of Land Management]. The Service has not designated any of the NHTs it administers as “units” of the National Park System.

Somewhat inconsistently, the Service has designated three of the five NSTs it administers as “units” of the National Park System (see Appendix A). The Appalachian NST, authorized as a NST in the original 1968 legislation, appears to have been immediately recognized and counted as a “unit.” As early as 1972, it was listed as a unit in the National Park System Index. This was 6 years prior to Congress authorizing funds for land acquisition for the trail, beginning in 1978.

The purpose of this paper is to review the history of this issue and propose that these earlier decisions—that the Ice Age and North Country NSTs are not “units” of the National Park System—be re-examined in light of the inconsistencies they reflect, as well as the changed circumstances in administration of those trails in the past 25 years. The overwhelming similarities of all five NSTs should lead to the conclusion that all NSTs administered by the NPS should be “units” of the National Park System.

Essential background information on this issue is contained in the section entitled “Legislative Background.” The “History of the Discussion within NPS” section is a fairly exhaustive chronicle of the ebb and flow of the debate over this issue within the Service for the past 25 years. Not everyone will want to read this section, but those who take the time to do so will see how thoroughly and seriously this matter has been examined and debated, yet without any satisfactory resolution or comprehensive trails policy to show for it. For those who wish to go directly to the discussion of the rationale for making all NSTs “units” of the System, skip to the

final two sections, “The Case for Unit Status for All NSTs” and “Myths vs. Facts.” For those who desire a still briefer presentation of this matter, we offer the following “Executive Summary.”

Executive Summary

Forty-one (41) years after the NPS first became responsible for a NST, 29 years after the Ice Age and North Country NSTs were added to the National Trails System, and 25 years after the debate began over the operational and management policies for these trails, including their status within the National Park System, the NPS still has not issued any policy directives concerning the national trails it administers or satisfactorily resolved the question of their status. Through an administrative decision (not legislation), the NPS designated the Natchez Trace and Potomac Heritage NSTs as “units” of the National Park System when they were authorized by Congress in 1983. This is confirmed in a 1985 memorandum signed by the Director. However, the Ice Age and North Country NSTs, both authorized in 1980, were not given that status. There are no clear or consistent reasons, legal or policy-wise, for this difference.

There is a body of NPS documents from the early 1980s, originating both in WASO and the Regions, that refers to NSTs and NHTs as “trail units of the National Park System,” but there were those who viewed the trails’ place in the National Park System with a high degree of skepticism. As these views gained ascendancy, the Midwest Region repeatedly appealed to WASO to resolve the uncertainty and make what its leadership believed was the only logical decision, i.e. declare the trails to be “units.” However, a 1984 letter signed by Secretary Bill Clark and a 1985 letter signed by Acting Assistant Secretary for Fish and Wildlife and Parks P. Daniel Smith said the trails were not units, could not be units, and could not receive any annual funding without additional special authorization from Congress. The rationale in the letters to support such assertions was flawed and without solid foundation.

The issue did not go away. In 1986, the Midwest Region hosted a meeting of NPS staff from WASO and the Regions administering national trails to discuss this matter and several related policy questions. WASO staff presided over the meeting. The result was a July 1986 issue paper taken to the next Regional Directors’ meeting recommending “unit” status for the trails and other policy decisions affecting national trails. The Regional Directors embraced the idea of “unit” status, but asked consideration of two additional questions related to trail marking and the applicability of NPS regulations to national trails. Those answers were delivered at the next Regional Directors’ meeting, were deemed satisfactory, and WASO staff was directed to integrate the trails into regular NPS operations.

It never happened. Those who were directed to take those steps were not held accountable. Eventually, the Division of Recreation Resources welcomed these “orphans” into its realm and the WASO lead for national trail issues has remained with the Division (and its successors) ever since. In the 1990s, WASO staff responsible for national trail issues drafted a special policy directive and later a Director’s Order (DO 45-1) to document policy relating to NPS administration of NSTs and NHTs. A final favorable review in May 2000 left the order ready for Director Stanton’s signature. It included a clear affirmative statement that all NSTs and NHTs administered by the NPS are “units” of the National Park System.

However, Deputy Director Galvin, who was hugely skeptical of the appropriateness of including the trails in the National Park System, suggested that the “authorizing committees” in Congress should be briefed before the order was signed because it would have the effect of creating 13 new “units” of the System. It was a reasonable-sounding suggestion, but perhaps also well-calculated, anticipating significant “push-back” from conservative committee staff. The briefings were conducted, the push-back occurred, the order was not signed, and the Administration changed shortly thereafter.

Since 2000, several revised editions of DO 45-1 have been circulated among trail managers and Regional Directors responsible for NSTs and NHTs. One version declared the trails to be “units.” Another stated that they would be treated “as if they were units.” The most recent versions have made no mention of the “unit” status issue at all. None of them have ever been signed.

Despite the reluctance of NPS leadership to declare national trails as “units,” there is no consistent legal or policy reason why the two NSTs administered by the Midwest Region are not units and the rest are. Evaluated against the criteria outlined in a June 9, 1989, NPS memorandum concerning “units” and “affiliated areas,” the Ice Age and North Country NSTs rate quite well.

Establishment of each of these NSTs involves the creation of facilities—a trail tread, signing, and related structures, such as bridges, boardwalks, campsites, toilets, interpretive wayside exhibits, etc. The NPS accomplishes this work through partnerships, and these partnerships look the same across all five NSTs we administer. These are linear parks that we administer, regardless of the proportion that NPS may own.

Administratively, the Ice Age and North Country NSTs have a field office headquarters, base operating budgets, permanent FTE, and a manager who carries the functional title of “Superintendent.” These trails report to goals in the Performance Management Data System and utilize the Operations Formulation System and Project Management Information System to request funding.

Nevertheless, the disparate treatment among NSTs continues every time the Service issues a publication, press release, or public statement that includes a reference to how many “units” are in the National Park System. That number always includes the Appalachian, Natchez Trace, and Potomac Heritage NSTs and always excludes the Ice Age and North Country NSTs.

The North Country and Ice Age NSTs are repeatedly cut off from participation in and access to NPS funds, programs, and special occasions that are available to the Appalachian, Natchez Trace, and Potomac Heritage NSTs. Recent examples of this are:

- The North Country and Ice Age NSTs are not eligible to receive consideration for Centennial Challenge project funding.

- The North Country NST (our nation’s longest NST) and the Ice Age NST (the grandest representation of global climate change administered by NPS) were not invited to provide a 2007 Christmas holiday ornament for the White House.
- The 2008 Director’s Report includes NPS “statistics” on the back cover. The 391 national park areas are mentioned, even the 40 national heritage areas which are not units. The Ice Age and North Country NSTs are not represented anywhere among the statistics.

Since 1982, there have been many instances where funding and program access, or recognition for their contributions to the NPS mission, have been flatly denied to the non-unit NSTs. Some of these are:

- The Harpers Ferry Center (HFC) has refused to include the informational folders for these non-unit NSTs in their program. The folders are written and designed by the “park” staffs and printed using park base funding.
- HFC maintains that only the Appalachian, Natchez Trace, and Potomac Heritage NSTs can be shown on the National Park System brochure.
- In 1997, a revised Volunteers-in-Parks program brochure was issued by the NPS. The three “unit” trails—Appalachian, Natchez Trace, and Potomac Heritage NSTs—were listed in the brochure, but not the Ice Age or North Country NSTs (or any of the NHTs). Following protests from the Regions, this was corrected in the 1999 revision. The Volunteers-in-Parks (VIP) programs at the North Country and Ice Age NSTs are each larger than the programs at 350 of the traditional park “units.”

Over the years, there have been many reasons offered for why the Ice Age and North Country NSTs (and all of the NHTs) “cannot” be recognized as units of the National Park System. The following list includes some of the key ones that have been reiterated over the years, along with a brief statement of the facts. Each of these is discussed and answered more fully in the “Myths vs. Facts” section of this paper.

- The laws that define the National Park System in 16 USC 1 exclude such areas. [Patently false. Those who attempt to make this claim are forced to resort to using definitions and criteria that were removed from the law in 1970 by the General Authorities Act.]
- Congress did not designate them as units. [This is true of all five NSTs administered by NPS, not just of the Ice Age and North Country NSTs. The legislation establishing the vast majority of the areas administered by NPS does not address “unit” status. “Unit” status is an administrative decision by the NPS.]
- Making these trails “units” of the National Park System would create jurisdictional and management conflicts where they traverse other Federal lands, such as National Forests. [False. Section 7(a) of the Act addresses and precludes such conflicts. If this were a real issue and problem, it would have already arisen along the Appalachian NST.]
- Making these trails units of the National Park System would have the effect of imposing Federal regulations (36 CFR) on the use of private lands that make up parts of the trail routes. [False. But for a very few exceptions, NPS regulations only apply to NPS-owned lands and not any other lands that are within a “unit.”]
- The North Country and Ice Age NSTs are not “units” because the NPS does not own any land along them “in the name of” the trail.” [There is no validity to using this as a

discriminating factor. Even though it once was true that the NPS owns no land along the Ice Age NST, it is no longer true. The NPS purchased a 157-acre “interpretive site” along the trail in 2002. This is a land base larger than the authorized acreage of 101 units of the National Park System.

- Although the Appalachian NST is a “unit” of the National Park System, it is a special case with different authorities under the National Trails System Act. It is not a comparable example to the other NSTs becoming “units” of the National Park System. [The Appalachian NST and all other NSTs have the same legal status under the National Trails System Act.]
- The NPS does not have land acquisition authority for these two trails. [True, but this is also true of the Potomac Heritage NST, which is a unit.]
- NPS ownership along these trails does not meet a certain (undefined) threshold. [No basis for this criterion in law or policy.]
- The amount of publicly-owned lands along these trails does not meet a certain (undefined) threshold. [No basis for this criterion in law or policy.]

Given the fact that designation of a Congressionally-authorized area administered by the NPS as a “unit” of the National Park System is a matter of administrative discretion, the leadership of the Midwest Region believes that this disparity should be resolved by immediately designating the Ice Age and North Country NSTs as “units.” The Midwest Region leadership makes this request with full awareness that these two trails do not fit the traditional “unit” model and, consequently, logical and reasonable accommodations will have to be made in applying Service systems, policies, programs, and procedures to them, but this is no different than the case for the three “unit” NSTs and a growing number of recently-authorized partnership park units added to the System.

Legislative Background

In 1968, Congress passed and the President signed the National Trails System Act (16 U.S.C. 1241 *et seq.*, hereinafter, referred to as “the Act”). The Act established two NSTs—the Appalachian NST administered by the Secretary of the Interior through the NPS and the Pacific Crest NST administered by the Secretary of Agriculture through the Forest Service. The Act laid out a process to study and subsequently authorize additional NSTs in other areas of our nation.

No NSTs were authorized as additions to the system over the next 10 years. During that period, the former Bureau of Outdoor Recreation was conducting feasibility studies of 14 trail routes enumerated in the Act to determine their potential for authorization as NSTs.

In 1978, Congress amended the Act, creating the new category of NHTs and adding five new trails. Four of the trails added that year were NHTs: the Oregon, Mormon Pioneer, Lewis and Clark, and Iditarod. All were designated for administration by the Secretary of the Interior. The Secretary assigned the first three to the NPS and the Iditarod to the Bureau of Land Management.

Over the course of the next 6 years (1978-1984), the status of these trails within the National Park System was undecided, as detailed in the next section of this paper (see “History of the Discussion within the NPS”). Eventually, however, the NPS decided not to make the three NHTs assigned to it “units” of the National Park System, unlike the Appalachian NST. Perhaps

the rationale was based, in part, on the fact that the concept for NHTs does not necessarily include establishment of a continuous recreational trail on the ground, as is inherent for NSTs. Rather, the concept for NHTs is to protect any remnants of the historic route (wagon ruts, inscriptions, graves of travelers, prominent landmarks, historic buildings, etc.) and to provide for public use and enjoyment primarily through historical interpretation at significant sites along the historic route.

Corresponding to these different objectives for NHTs, land acquisition authorities for NHTs were made more restrictive than for NSTs. For NHTs, “direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites.” (16 U.S.C. 1246(g)) However, even this limited authority was essentially nullified by the language added as section 10(c) of the Act by the 1978 amendments: “...no funds may be expended by Federal agencies for the acquisition of lands or interests in lands outside the exterior boundaries of existing Federal areas for ... the Oregon National Historic Trail, the Mormon Pioneer National Historic Trail, the Lewis and Clark National Historic Trail, and the Iditarod National Historic Trail ...” (16 USC 1249(c)) These two restrictions—limiting general acquisition authority to certain segments and sites, and prohibiting Federal Agencies from spending funds to acquire lands even in those locations—probably had the largest influence in NPS’ eventual decision to not make the NHTs “units” of the National Park System.

The fifth trail authorized in the 1978 amendments was a NST—the Continental Divide Trail, assigned for administration to the Secretary of Agriculture and delegated to the Forest Service. A very strange feature of its authorization is the fact that, bundled together with the first four NHTs, the Continental Divide NST was saddled with most of the features and restrictions of NHTs discussed above. The law even specified that the comprehensive management plan for the Continental Divide NST should follow the NHT planning requirements, rather than those for NSTs (the main difference is that NHT plans are not required to include an acquisition plan for the trail corridor). In nearly every way, the Continental Divide NST was treated in the Act as if it were NHT.

The very next trail added by Congress to the National Trails System was the North Country NST in early 1980. The amendment to the Act assigned administrative responsibility to the Secretary of the Interior, who in turn delegated it to the NPS. Two of the NHT-like features tacked onto the Continental Divide NST were also included in the North Country NST’s authorization—the comprehensive plan was to follow the NHT requirements and Federal Agencies were prohibited from spending funds to acquire lands for the trail outside existing Federal areas. Based on these two differences compared to the Appalachian NST authorities, the NPS eventually decided to treat the North Country NST as if it were a NHT also and not give it “unit” status.

Later that year, Congress authorized the Overmountain Victory NHT. In authorizing this trail, Congress did not include the prohibition on Federal Agencies spending funds to acquire lands for the trail. Even eminent domain could be used by the NPS to acquire lands. Nevertheless, the NPS eventually decided that the Overmountain Victory NHT was not a “unit” of the National Park System.

A month later, Congress authorized the Ice Age NST and it was assigned to the NPS for administration. The language in the amendment included only one of the NHT-like restrictions—the prohibition on Federal Agencies spending funds to acquire lands for the trail outside existing Federal areas. Even with only this one difference from the Appalachian NST authorities, the NPS again eventually decided it was not a “unit.”

In 1983, Congress authorized two more NSTs that were assigned for administration to the NPS—the Potomac Heritage and Natchez Trace Trails. The Potomac Heritage NST carried the same restriction on spending funds to acquire lands, as the North Country and Ice Age NSTs, and was saddled with additional language from the NHT category, but the NPS in this case decided to designate it a “unit” of the National Park System. The Natchez Trace NST has the same land acquisition authorities as the Appalachian NST; it was made a “unit” of the National Park System.

Since 1983, all additional trails authorized by Congress and assigned to the NPS have been NHTs. None of these have been designated “units” by the NPS. So there has been consistent treatment of NHTs by the NPS, but inconsistent treatment of NSTs.

All of the authorities that the Federal administering agency has for a NST or NHT are found in section 7 of the Act. There are no differences in the authorities for any of the NSTs in section 7 except for the Continental Divide NST administered by the FS; all of the NPS-administered NSTs have the same authorities. The only differences among the NPS-administered NSTs are found in section 5 (regarding comprehensive planning requirements) and section 10 (regarding authorization of appropriations and restrictions on their use for land acquisition).

The 1983 amendments to the Act also included two other features that have implications for the status of national trails in relationship to the National Park System. One (section 7(h)) extended Volunteers-in-Parks status to volunteers working on NSTs and NHTs administered by the NPS, and to landowners who allow the trails to cross their lands. The other (section 7(i)) authorized the Secretary of the Interior to utilize the authorities he has for administering “units” of the National Park System in administering NSTs and NHTs. However, the NPS made no change in the “unit” status of its trails despite these extended authorities that pertain to park “units.”

History of the Discussion within NPS

When the 1978 amendments to the Act led to the assignment of the Oregon, Mormon Pioneer, and Lewis and Clark NHTs to the NPS for administration, the Service was faced with an entirely new concept in terms of resource management and provision of recreation opportunities. Their authorizations included official maps of the routes of the trails, but there were no boundaries like typical parks. They also traversed three Regions. There were immediate questions about how the comprehensive management plans (CMP) should be prepared for these trails and which region(s) should have responsibility for the trails. Representatives from the three Regions met at the Denver Service Center to deliberate on how to proceed. Each of the three regions agreed to take responsibility for one of the trails. The Pacific Northwest Region took the Oregon NHT, the Rocky Mountain Region took the Mormon Pioneer NHT, and the Midwest Region took the Lewis and Clark NHT. Working with the Washington Office (WASO), each region established

and convened meetings of the trail advisory councils mandated by section 5(d) of the Act, although there was no specific funding for this purpose.

In 1981 and 1982, the CMPs for these three NHTs were completed. Each plan took a different approach to the treatment of its trail, based in part on the unique history and resources associated with each trail. There were continuing responsibilities for the NPS identified in each plan, such as certifying non-federal sites and segments as official parts of the NHT; producing and furnishing the official trail emblems and signs for marking certified sites, segments, and auto tour routes; providing coordination, guidance, and technical assistance to cooperating public and private interests; etc. Each of the three regions recognized the need for staff and budgetary resources to carry out these duties, but efforts to get funding for the trails in the Fiscal Year 1982, 1983, and 1984 appropriations proved futile. The WASO park planning staff espoused the philosophy that since Congress had prohibited Federal Agencies from spending funds to acquire any lands along these trails outside existing Federal areas, the NPS responsibilities for these trails were fully discharged with the completion and distribution of the CMPs. Thus, no funding was needed on a continuing basis. Even without specific funding, each of the regions assigned a staff member to be the “coordinator” for the trail, as a collateral duty, and scraped together funds for an annual meeting of the trails’ advisory councils.

This perspective of WASO was evidently shared at a 1982 meeting of the Lewis and Clark NHT Advisory Council in response to a question because a member of the council wrote to the Secretary inquiring about this matter. The Midwest Region was asked to provide a briefing on the matter for Ric Davidge, Special Assistant to the Assistant Secretary, Fish and Wildlife and Parks. Regional Director (RD) Jim Dunning’s transmittal memorandum reflected the region’s view on the “unit” status issue, before it had become an issue, in its subject: “Congressionally Established River and Trail Units of the National Park System.” The essence of the memorandum was contained in these two paragraphs:

In the Midwest Region we are responsible for administering, through coordination with numerous other managing agencies and organizations, the Lewis and Clark National Historic Trail, North Country and Ice Age National Scenic Trails, and the Missouri National Recreational River. These four areas are congressionally designated units of the National Park System for which management plans have been prepared. Further, each area has an active advisory council, established and appointed by the Secretary, which has met at least once during the past year.

We have not received base funding in FY 82 nor in FY 83 to administer these areas and evidently none is forthcoming in FY 84. Russ [Dickenson], I am concerned about the consequences of not getting these areas online. If our congressionally mandated responsibility is not funded and we do not use other ONPS funds to do the job, the momentum and support of numerous private and non-Federal authorities generated during the management planning process will be lost.

The November 12, 1982, memo prepared by WASO staff, transmitting RD Dunning’s memo and attached briefing to Mr. Davidge, is entitled, “Congressionally Established River and Trail Units of the National Park System—Midwest Region.” Someone in WASO at that time evidently saw no impropriety in referring to NSTs and NHTs as “units” of the National Park System.

The briefing paper attached to RD Dunning's memo outlined the operational responsibilities of the NPS for the national trails:

- Orchestrating the efforts of many agencies at all levels of government and promoting private sector volunteerism.
- Assisting in the formulation and execution of memorandums of understanding and cooperative agreements among various managing entities integral to the planning, development, and maintenance of trail segments.
- Preparing for publication pamphlets showing the general routes of the trails in order to generate involvement by non-Federal interests in developing and managing the trails.
- Providing official markers for the non-Federal segments of the trails.
- Providing technical assistance regarding trail planning, construction, land protection methods, interpretation, and volunteer involvement.
- Initiating negotiations among non-Federal trail interests to create a private sector system for coordinating volunteer efforts to construct and maintain trails.
- Monitoring, reviewing, certifying, and publishing in the "Federal Register" segments of the trail as they become developed and available for public use.

The briefing paper identified a need for annual base funding to cover the following basic expenses for administering these trails and carrying out the work outlined above:

- Professional and clerical staff.
- Travel for administration/coordination work.
- One meeting of the Secretary's Advisory Council.
- Printing and reproduction work needed for brochures and general public information.
- Maps, supplies, and materials.

As referenced in the Midwest Region's memo, additional trails had been authorized. The North Country NST, which traversed four NPS regions (at that time), was assigned to the Midwest Region due to the fact that the vast majority of its miles and four of its seven states (at that time) lay in that region. The Ice Age NST, lying completely within the State of Wisconsin, was logically assigned to the Midwest Region also.

The plans for the North Country and Ice Age NSTs, completed in 1982 and 1983, respectively, were modeled on the CMP for the Appalachian NST, being the first additional NSTs for which the NPS was responsible. The plans were general and focused on setting guidelines for the numerous partners that would need to become involved in securing lands for the trail, establishing the trail, and managing the trail, since direct Federal action to do so was limited by the restriction on spending funds to acquire lands. Because of this restriction, WASO staff responsible for park planning again expressed their belief that the NPS responsibility was fully discharged with distribution of the CMPs.

Lack of operational funding to carry out administrative responsibilities for the trails meant the Midwest Region (and the other regions administering such trails) faced the challenge of trying to keep the respective trail advisory councils active by convening at least one annual meeting of each council without any funds to pay the members' travel expenses. On March 13, 1983, RD Dunning wrote to the Director expressing his concerns about this situation. He stated, in part:

A situation which may be potentially embarrassing to Secretary Watt is developing in connection with the appointment of persons to serve on advisory councils for congressionally established National Scenic and National Historic Trails. Although this Office has a legal responsibility to administer three such trails, the absence of funding for this function in the current budget and the Department's deletion of what the Service had requested for it in the FY 84 budget makes it impossible for us to carry out these responsibilities without impacting other Regional responsibilities.

The Secretary recently appointed two additional people to those councils. Under our present fiscal constraints it will be nearly impossible to conduct future meetings or other advisory council activity without sufficient funding to administer the trails. These people rightly expect that they have been appointed to something meaningful through which they can continue to support administration policies. The danger, as we see it, is they will perceive they are members of nonfunctioning councils.

Russ, we either need to find a way to provide sufficient funding for National Scenic and National Historic Trail administrative responsibilities or we need to clearly communicate to the Secretary's Office that appointments are being made to nonfunctioning councils.

The majority of advisory council members were genuinely interested in the trail for which they had become advisors. They wanted to know what the NPS was going to do to stimulate the development of partnerships around these trails and what resources could be made available to support these partners.

The Midwest Region faced these questions more acutely than any other region for now it had responsibility for three national trails—the only region with more than one trail and the only region with responsibility for trails in both categories—scenic and historic. As the Midwest Region staff and directorate considered how to move forward with their responsibilities for these three trails, as outlined in its 1982 briefing for Mr. Davidge and in the CMPs for the trails, the financial, staffing, and operational requirements looked very similar to the requirements for “traditional” park “units.” If within the NPS organizational and budgetary structures the trails were treated as “units” of the National Park System, this would quite logically and naturally bring about the needed staff and funding, as well as integration into NPS Operations relating to support for volunteers, interpretation and education, natural and cultural resource management, etc.

By late 1983, it was becoming clear that a WASO decision to not make the trails as “units” (or the lack of a decision to make them “units”), coupled with park planning staff's perspective that our responsibilities were discharged with distribution of the completed CMPs, were operating to block Midwest Region requests for operational funding for the Ice Age, North Country, and Lewis and Clark Trails. On November 18, 1983, the new Midwest RD, Chuck Odegaard, followed up RD Dunning's memo with the first of several memorandums to the NPS Director advocating “unit” status for all NPS-administered NSTs and NHTs. The memorandum was entitled, “Funding for Administration of Congressionally Established National Scenic and National Historic Trails.” He observed, “It seems incongruent that the Service [Fiscal Year 1984] budget [request] contains funds for studying possible additions to the National Trails System but no funds to administer those already established by Congress.” The belief that the

trails should be administered as part of the National Park System was evident in the following statements:

Our responsibilities in administering these trails as part of the National Park System include: providing technical assistance to cooperating public and private entities regarding trail planning, construction, land protection methods, interpretation, and volunteer involvement; assisting in the formulation and execution of Memorandums of Agreement with and among the various cooperating interests integral to the planning, development, and maintenance of trail segments; maintaining records of the official routes of the trails; and providing official markers for the non-Federal segments of the trails.

We believe there should be an equal level of management commitment within the Service to coordinating the long term development and management of all national scenic and national historic trails assigned to the Service for administration. There is no difference in the legal status, for instance, of the North Country and Ice Age National Scenic Trails and the Appalachian National Scenic Trail (NST) except that broader land acquisition authorities and appropriations have been provided for the latter. The North Country and Ice Age National Scenic Trails are at the stage of development that the Appalachian NST was perhaps 40 or 50 years ago. Both have enthusiastic public and private sector constituencies which are actively establishing and managing segments of these trails. The Service by an adequate commitment to carrying out its administrative responsibilities for these trails, can greatly accelerate their development and thereby provide increased close to home trail opportunities with the attendant benefits of energy conservation and relief of increasing user pressure on more popular trails like the Appalachian NST. Carrying out these responsibilities fulfills the stated purposes of the National Trails System Act which commits the Federal Government to fostering the development of additional long distance trails modeled after the Appalachian NST.

In late 1983, Mr. Gregory Franzwa, then-president of the Oregon-California Trails Association (OCTA), asked Dr. John Latschar, a member and secretary of OCTA's Board of Directors, for his recommendations about how the NPS might best proceed with its responsibilities for establishing and managing the three authorized (to date) NHTs in the West—Oregon, Mormon Pioneer, and Lewis and Clark. On January 10, 1984, Dr. Latschar, who was a NPS historian at the Denver Service Center (DSC) and who had participated in developing the Oregon NHT CMP, responded in his role as OCTA secretary to Mr. Franzwa with a proposal that an operational office be established in the DSC with funding and reporting authority directly tied to WASO, as was the case for the Appalachian Trail Project Office. He believed the challenge of working across regional boundaries would be easier with this arrangement than if responsibility remained in Regional Offices. He also expressed his belief that this would be the only way to bring consistency to the administration of these trails. (State officials in Wyoming were dismayed when the Pacific Northwest Regional Office, as administrator of the Oregon NHT, and the Rocky Mountain Regional Office, as administrator of the Mormon Pioneer NHT, had expressed differing positions on potential impacts to the two trails—which were the same piece of ground—from a highway project. The Nebraska Governor's office also expressed consternation and concern with having to deal with three different NPS Regional Offices administering the three NHTs traversing the state.) Dr. Latschar's proposal called for a staff of four and an annual budget of \$168,213 (1984 dollars).

On January 19, 1984, Mr. Franzwa sent a letter to NPS Director Russ Dickenson describing or enclosing Dr. Latschar's proposal for NPS administration of the three western NHTs. On March 23, Director Dickenson replied stating that he had asked his staff to review the proposal and to develop other options for consideration.

Subsequently, on April 10, 1984, the Associate Director, Planning and Development, transmitted the proposal to the Regional Directors and the Appalachian Trail Project Manager asking for their feedback on the proposal as well as "suggestions for alternate approaches to effect improved coordination of establishment and management of all trails in the National Trails System, for which the Service has administrative and management responsibility." At least six Regions responded.

Midwest RD Chuck Odegaard applauded the fact "that serious consideration is being given to how the Service can most appropriately and effectively carry out its congressionally mandated responsibility for administering National Scenic and National Historic Trails." In his May 1, 1984 response, he stated, in part:

We believe that any approach to administering the long-distance national trails will only be workable if it recognizes these trails as units of the National Park System. They are not "affiliated areas" because they are not and cannot be completely administered by or through others. Even when memorandums of understanding have been established with all involved states and major private organizations, the Service still continues to have the responsibilities of coordinating the efforts of these many cooperators, maintaining official records of what portions of trail exist and where, procuring and distributing trail markers to non-Federal cooperators, entering into VIP agreements with trail clubs and landowners (a new authority granted last year by Public Law 98-11), serving as staff to the legally established advisory councils, etc. A budget and staff for administering these trails will be needed within the Service on a continuing basis. (emphasis in the original)

Given this foundation—that the trails are units of the National Park System and that a staff and budget are needed on a continuing basis—we believe the most desirable and logical approach would be to establish, within each Region Office responsible for one or more national trails, an identifiable staff and budget that would function as an Administrative Office for a Field Unit; i.e., a "Trail Unit Office." The staff would consist of a site, park, or trail "Manager" and, depending on the number of trails assigned to the Region and their complexity, possibly one or more additional staff members. The location of the Office within the Regional Office organization would be left to the discretion of the Regional Director, but consideration should be given to the fact that the "Trail Manager" in many senses functions as a "Superintendent" of a Field Unit(s).

The author of this paper has copies of the responses of five other regions—Western, Pacific Northwest, Southwest, Rocky Mountain, and Mid-Atlantic. Most of these Regions focused on the proposal of Dr. Latschar for creating an operational unit that was not part of a regional structure, and their criticism of that idea was pointed. Some regions expressed surprise that WASO would even float such a proposal for comment, especially at a time of austerity and the recent "realignment" (12% downsizing) of Regional Offices. Some of them made suggestions about how the management of the trails could be accomplished and how consistency among regions could be effected, but only the Midwest Region, which had recently completed CMPs for two new NSTs (not addressed in Dr. Latschar's proposal), foresaw the need for the

organizational structures and commitments of resources that the NPS has in place for its national trails today.

On September 25, 1984, John C. Chapin, a member of the North Country NST Advisory Council, wrote a letter to Secretary of the Interior Bill Clark. Having recently returned from a meeting of the Advisory Council, he wrote:

I want to report to you that I was impressed. The caliber of the members of the Council, the value of the Trail project, and the staff work by the Park Service were all superior.

The purpose of this letter is to ask for your personal attention to one fundamental problem: the Trail has no line item funding. For an undertaking of this magnitude this is a crippling defect.

Since I previously served as Special Assistant to a Cabinet Officer in the Nixon Administration, I am well aware of budget problems (and also how mail to the Secretary is handled!)

However, I would hope that you would consider asking your Asst. Secretary who is responsible for the Park Service to see if a modest sum could be allocated to the Trail, so we could move the valuable concept closer to implementation? (sic)

In this connection he may wish to talk with his Regional Director who is responsible, Charles Odegaard. He was present at our meeting, and, after my own experience of scores of dealings with Regional Directors, I can assure you he was unusually well informed, supportive, and a special credit to your Department.

I will appreciate a reply directly from you, as a Secretarial Appointee, and I trust that this Trail will be able to get at least some financial support—which it certainly deserves.

Secretary Clark's response was written by NPS park planning staffer Jeff Chidlaw, who was the author of the persisting philosophy about NPS' responsibilities for these trails being fully discharged with completion and distribution of the CMP, since Congress had restricted Federal land acquisition for them; thus, no funding is needed on a continuing basis. The reply to Mr. Chapin stated:

The problem which you identify, lack of annual funding for implementation and management of the North Country National Scenic Trail, is characteristic for most of the extensive national scenic and national historic trails in the National Trails System. This is particularly true where there is a diversity of landownership along the trail routes, which can include Federal, State, and local government lands as well as private lands. In part, this mix of landownership derives from the National Trails System Act, which encourages cooperative participation by a variety of entities and interests in trail development and management.

Those trails where administrative responsibility has been delegated to the National Park Service, such as the North Country National Scenic Trail, follow this pattern. Due to this cooperative and shared participation in direct management, National Park Service-administered national historic and national scenic trails are not considered units of the National Park System but rather "affiliated areas." This distinction excludes listing of these trails as line items in the budget for funding under the budget element for operation of the National Park System. Periodic funding

for administration and operation of these trails would require specific authorization for such appropriation by Congress.”

Of course, the institution of line item base funding for the trails in the Operation of the National Park System account with no additional “specific authorization” has proven Mr. Chidlaw’s assertion to be false. Nevertheless, the Secretary had now put his stamp on the statement that trails are not considered to be units of the National Park System.

Oddly, about this time the Service decided the Potomac Heritage NST would be considered a unit of the System even though it meets all of the descriptors Mr. Chidlaw used in his letter for the Secretary: a diversity of landownership along the trail route, cooperative participation by a variety of entities and interests in trail development and management, cooperative and shared participation in direct management.

Ten days after the Secretary’s letter to Mr. Chapin, on November 27, 1984, the Associate Director, Planning and Development, issued a memorandum to Regional Directors calling for a much-needed meeting of regional representatives as an ad hoc group to assess the effectiveness and consistency of existing management of national trails and to develop recommendations for improvement of the same. The meeting was scheduled for December 11-14, 1984, in Washington, D.C. The memorandum also stated that until the work of the ad hoc group is completed, regions should hold up taking any management actions related to the trails.

Four days before the meeting, on December 7, 1984, the Associate Director issued a followup memorandum stating that the “memorandum of November 27, 1984, which called the meeting is hereby cancelled. Postponement will allow time for appropriate briefing of the incoming Director [William Penn Mott] as to the status of the trail program and the management issues involved.” However, the plan to convene an ad hoc group never came to pass. A followup memorandum on March 13, 1985, clarified that not only had the meeting been permanently cancelled, but also the hold on management actions related to the trails. Regions could continue management of their trails as before the November 27 memorandum. (Twenty-five years later, the NPS still has not issued any comprehensive statement addressing management of national trails.)

In 1985, the Service was initiating a feasibility study of the California and Pony Express Trails, which also follow the same ground as the overlapping portions of the Oregon and Mormon Pioneer NHTs. On June 19, the Denver Service Center Assistant Manager for the Alaska/Pacific Northwest/Western Team sent a memorandum to the Midwest, Rocky Mountain, Western, and Pacific Northwest Regional Directors calling on them and Washington Office staff to address how and where national trails should be managed. Letters from the States of Nebraska and Wyoming had been received asking that the feasibility study be stopped until the Service resolved the management issues for national trails. The Nebraska Governor’s Chief of Staff, Don Nelson, stated: “Further planning of trails is absolute insanity until the National Park Service meets jointly with the states to agree upon a consolidated trails planning effort. This is now the fifth time over three years that I have made this request. Can we get all parties together before another dime is wasted?”

Responding to this, the Midwest, Western, and Pacific Northwest Regional Directors sent memorandums to the Associate Director, Planning and Development, calling on him to revitalize plans for the meeting of regional and Washington staff to discuss trail management that was scheduled the previous December and subsequently cancelled. The Western Region's comments stated: "The current policy of assigning total management responsibility for a given trail to a single region should be abolished." The Midwest Region stated, "There is confusion within the Service and outside this agency over what we really intend to do." The Region reiterated its call for administration of all NSTs and NHTs as "units" of the National Park System, taking advantage of an already well-established management paradigm within the Service, and added: "The least effective approach would be to divide up responsibility for each trail according to Regional boundaries." (emphasis in original)

Two weeks later, on July 16, 1985, Midwest RD Chuck Odegaard sent a memorandum to Director Mott offering to host in Omaha the meeting to discuss management of NSTs and NHTs that had been postponed the previous December. The Director accepted the offer and on July 31, RD Odegaard sent a memorandum to all of the Associate Directors and the RDs of regions administering such trails inviting them to the meeting in Omaha on August 8-9. The urgency of the situation regarding national trail management was evident in the memorandum:

The way in which the Service administers National Scenic and National Historic Trails is an unresolved issue which needs serious attention. Except for the Appalachian National Scenic Trail, there is no clear policy and guidance regarding the fulfillment of our administrative responsibilities for them. Lack of such direction has hampered Service management of authorized trails as well as the preparation of national trail feasibility studies and comprehensive management plans.

The Director recognizes the urgent need to resolve this situation. He has asked Dave Wright and me to convene a meeting of Service personnel from certain Regions and the Washington Office who have responsibilities for managing, planning, and/or studying National Scenic and National Historic Trails. The purpose of the meeting is to formulate recommended policies and procedures relating to management of these trails. Further discussion will focus upon administrative responsibilities for the trails, their status within the National Park System, the optimum operational structure for carrying out our administrative responsibilities, and the staffing and financial requirements for fulfilling our responsibilities.

This is an important meeting. The Director firmly believes that we need to move forward in fulfilling our responsibilities as administrator of these trails.

The meeting in Omaha was sparsely attended, but there was a good cross section of Washington and Regional trails staff. The participants identified six issues surrounding management of the trails. These "Issues" and the "Recommended Decisions" of the group, along with "Decision Factors/Criteria" summarizing the discussions, were written up as an Issue Paper by Midwest Region staff and refined by participants until reaching its final form in July 1986 for presentation and discussion at a Regional Directors' meeting that month.

The issues and recommendations were as follows:

ISSUE #1: Do we have specific continuing administrative responsibilities for National Scenic and National Historic Trails?

Recommended Decision: NPS recognizes its administrative responsibilities for long-distance national trails are of a continuing nature and will commit sufficient staff resources and operational base funding.

ISSUE #2: Should National Scenic Trails and National Historic Trails be treated differently in NPS policies and operations?

Recommended Decision: NPS policies and operations affecting trails should be based on how we handle them administratively. Since they [the two trail categories] are similar administratively, they should be treated alike. There are many different classifications in the National Park System, but administratively they are quite similar.

ISSUE #3: What should be the status of national trails within the National Park System?

Recommended Decision: All national scenic and national historic trails administered by the Service should be administered as “units” of the National Park System. The legal authorization for the trails and a sense of consistency would seem to demand such a decision. Any inconsistencies between normal operating and planning requirements and the particular circumstances of “trail units” are resolvable.

ISSUE #4: Where should administrative responsibility for trails be located?

Recommended Decision: Administrative responsibility for national trails should be located in Regional Offices, except for the Appalachian National Scenic Trail which is administered by the Appalachian Trail Project Office attached to WASO.

ISSUE #5: To which Regional Office should administrative responsibility for a given trail be assigned?

Recommended Decision: [Four criteria are presented in the Decision Factors/Criteria discussion.] These criteria/considerations should be adopted as NPS policy and collectively applied to arrive at the best decision for assigning administrative responsibility for each national trail administered by NPS.

ISSUE #6: Should administrative responsibilities for national trails be divided along Regional boundaries?

Recommended Decision: Administrative responsibility for an entire national trail should be vested in a single Regional Office. Coordination with other involved Regions to keep them informed will be a high priority.

At the Regional Director’s meeting held in Fort Collins, Colorado, in early July 1986, the RDs endorsed all of the Recommended Decisions with one reservation. Before completely endorsing the recommendation to make all national trails administered by the Service “units” of the National Park System, they asked for an analysis of the applicability of and any complications arising from Federal Regulations governing the System (36 CFR). They also asked for guidance on trail signing when multiple designations are applicable to the same ground/route, such as parts of the Oregon, Mormon Pioneer, California, and Pony Express Trails in Nebraska, Wyoming, and Utah.

Associate Director, Planning and Development, David Wright was given the responsibility to develop policy for administering national trails. Midwest RD Chuck Odegaard volunteered to

have his staff analyze these two issues and report back at the next meeting. He wrote to Mr. Wright on July 18 documenting these circumstances:

At the recently completed Regional Directors' meeting in Fort Collins, Colorado, the Director and the Regional Directors provided general endorsement of the recommended decisions set forth in the issue paper entitled "National Park Service Administration of National Scenic and National Historic Trails."

Although you have been given the responsibility of developing National Park Service policy based upon issues and recommendations outlined in the issue paper, this Office will be pleased to assist in that effort.

A number of additional issues concerning trail policy were raised at the Regional Directors' meeting. Primary among them, were the need to assure uniformity in the signing of the various trails and the need to determine the impact that unit status would have vis-à-vis NPS laws and regulations pertaining to such issues as hunting, motorized vehicular use, and other land use matters. Again, the Director accepted our offer to address these and other issues which might arise as you undertake to establish a nationwide trails policy. We are pursuing.

On November 26, 1986, RD Odegaard sent the analysis of these issues to the Director and Regional Directors in a memorandum and issue paper entitled "Administration of National Scenic and National Historic Trails: Uniform Signing and Applicability of 36 CFR." The memorandum summarized the Issue Paper as follows:

Uniform Signing or Marking of National Trails

The principal concern relates to placement of markers when the route is designated under two or more national trail authorizations by Congress. Currently, this occurs along portions of the Oregon and Mormon Pioneer National Historic Trails. Other occurrences are expected as other trails are authorized.

Recommendation: The continuity of route identification requires that markers for all the designations of a single route be used along the trail. These should be placed together on a single post. If this would be visually cumbersome, special signs could be manufactured which consolidate small representations of the applicable markers onto a single sign. Coordinated marking of trails with multiple designations would be easily accomplished if the overlapping trails are all administered by the same Regional Office in harmony with the criteria under Issue #5 in the July 1986 paper.

Applicability of NPS Regulations (36 CFR) to National Trail "Units"

Administering national trails for which the NPS is responsible as "units" of the National Park System raises questions about how NPS regulations apply or will apply. While the regulations do apply in general to national trails as "units," the circumstances of national trails serve to immediately limit their specific applicability. Their specific applicability to national trails is significantly restricted by Section 1.2(b): "The regulations contained in Parts 1 through 7 of this chapter are not applicable to privately owned lands and waters" "Privately owned lands and waters" is correctly interpreted to mean non-NPS lands and waters. Therefore, except where NPS owns portions of a trail, the regulations do not apply. (emphasis in original)

Based upon this examination, an activity such as hunting would be permitted along non-NPS portions of national trails, unless prohibited by another jurisdiction or landowner, because NPS regulations do not specifically apply. Motorized use, as another example, is prohibited on National Scenic Trails and somewhat restricted on National Historic Trails, not by NPS regulation, but by the National Trails System Act.

Recommendation: The Service should proceed with formal designation of all national trails as “units.” There are few, if any, complications with such designation due to 36 CFR.

Based on this followup analysis, the overall recommendation of making the trails operational entities was given guarded support at the next Regional Directors’ meeting. The Associate Director, Operations, was directed to integrate the trails into operations and issue a memorandum describing NPS policy on administration of NSTs and NHTs. However, there was little interest within Operations for taking on these “parks without a park.” No policy was formulated and no memo was issued. No one was held accountable.

On December 16, Director Mott sent RD Odegaard comments he had received from the American Hiking Society (AHS) on his 12-Point Plan with a personal note asking Mr. Odegaard to provide his thoughts back to the Director on AHS’ comments. On February 2, 1987, RD Odegaard responded. In it, he expressed his disappointment that there had been no indication of any activity at the Washington level to implement the recommended decisions in the July 1986 Issue Paper or to develop Servicewide policy based on the paper. Excerpted portions of the memorandum follow:

From the memorandums I have sent you and the issue papers we have prepared, I am sure you know how strongly we agree with the thrust of AHS’s comment that all national scenic and national historic trails for which the NPS is responsible should be administered as units of the National Park System. It is unmistakably clear from our experience that a full-time administrator/manager and base funding is needed for each of the eight trails we administer in addition to the Appalachian Trail.

It appears that this Office devotes more resources to administration of scenic and historic trails than other Regional Offices, yet our trail administrator is responsible for two scenic trails and one historic trail. He is also responsible for ... [five other program areas]. With staff spread so thin, it is understandable that AHS perceives that no one seems to be “in charge.” With no base funding for the trails, the cost of our trail administration activities is skimmed off the top of our Regional and parks’ budgets.

On page 7, the AHS requests NPS commitments to implement the management plans for these long-distance trails and to designate all of them as units of the National Park System. If followed, the recommendations in the issue paper we prepared, which you and the Regional Directors endorsed at our July 1986 meeting, would fully respond to these requested commitments. However, since the July meeting there has been no written communication stating that the recommendations have been adopted or should be the guidelines for our activities. Instead, some communications we have received from the Washington Office tend to imply that the issue paper and its recommendations are being totally ignored. Clarification of the status of those recommendations is needed from you personally. (emphasis added)

These are my reactions to the AHS comments. I would like to share some additional comments of my own related to trails and the 12-Point Plan.

Point 5 focuses on public understanding of the roles and functions of the NPS as well as the classification of NPS units. Our national scenic and national historic trail constituencies nationwide are still unsure what our role will be in implementing plans for these trails because we have not yet defined that role ourselves. They are also confused about the classification of national scenic and national historic trails since three of the nine we administer are units; the other six are not. There is no consistent or rational explanation for why some are and some are not. Perhaps it is necessary to increase our own staff's understanding that an NPS unit is "any area of land and water now or hereinafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes." (16 U.S.C. 1c(a)) That is broader than just those areas NPS owns and directly manages. (emphasis added)

Again, our strong belief that the administration of all nine national scenic and national historic trails deserves a rightful place in the mission and mainstream operations of the NPS is reflected in these comments.

On February 17, 1987, RD Odegaard responded to the Director's request for input on the NPS' leadership role for trails nationwide. Following are excerpts of his reply:

Focusing Attention and Direction on the Total Trails Program

The most important thing we can do to focus this attention is to designate all nine national scenic and national historic trails assigned to the NPS as units of the National Park System and aggressively implement their respective management plans. Presently, three trails are units and six are not, with no logically explainable basis for the distinction. Designation of all trails as units, backed up by staff and base funding, will send a strong signal of our commitment to trails to constituencies nationwide. To capture this national attention, we recommend the following actions:

Recommendations:

1. Immediately designate all nine national scenic and national historic trails as units of the National Park System. This will resolve an organizational problem, taking the trails out of the realm of being a "program" and instead recognizing them as "park" areas which we administer, as laws clearly require.
2. Establish a position of administrator/project manager/Superintendent for each trail, and program adequate base operational funding for each trail into the Operation of the National Park System budget element beginning in FY 88.
3. Establish the recommendations in the July 1986 issue paper as the nucleus of NPS policy for national scenic and national historic trails.
4. Remove the responsibility for policy decisions regarding operational scenic and historic trails from the Park Planning and Special Studies Division and let policy questions regarding trail units be handled by the appropriate WASO division in the same manner as they would for any other

park area. General policy questions on trail units should be handled by the Associate Director, Park Operations.

5. Convene a task force of key knowledgeable NPS staff to formulate an initial body of needed policies regarding administration of national scenic and national historic trails.

A Central Office

Various proposals have been advanced in the past 3 years for creating a central office for administering all of the NPS' national scenic and national historic trails, be it located in Washington or elsewhere. We do not recommend the establishment of such an office. The criteria in the July 1986 issue paper were designed to geographically place the responsibility for each trail in the Region that could most effectively administer it. A central office would diminish that effectiveness. A central office for the trails would be a much weaker signal to trail constituencies than establishment of each trail as an individual unit of the National Park System.

In this vacuum of inaction on setting policy and direction for national trail administration, the Assistant Director for Recreation Resources offered to take the matter from the Associate Director, Operations. The offer was accepted. The national trails now had a "home" and an advocate in the Washington Office, but the regions were disappointed that it was not within Park Operations. It also sent another clear signal that NPS did not consider NSTs and NHTs to be "units" of the National Park System.

Also in this vacuum of inaction, the constituency for the Ice Age NST grew weary of NPS inattention to their trail. From their perspective, a few brief trips each year to Wisconsin by a staffer from the Midwest Regional Office in Omaha, Nebraska, was not sufficient. Working through Wisconsin's U.S. Senators, they succeeded in getting language in the Senate's Fiscal Year (FY) 1987 Interior appropriations committee report earmarking \$60,000 for the Ice Age NST and directing the NPS to use those funds to open an office with a full-time director for the trail in Madison, Wisconsin. Another trail, besides the Appalachian NST, now had a field office headquarters. The FY 1987 earmark of existing funds was converted to base operational funding of \$112,200 for FY 1988, \$174,000 for FY 1989, \$180,100 for FY 1990, and \$186,000 in FY 1991.

At the 1987 meeting of the Ice Age NST Advisory Council, John Zillmer (chair of the council and president of the Ice Age Park and Trail Foundation) suggested that all of the fledgling NSTs and NHTs might benefit from a gathering at which key partners—the Federal administrators of the trails and the principal private non-profit supporting organizations—could discuss mutual challenges and exchange ideas. Midwest Regional Director Odegaard agreed and he committed to co-sponsoring the conference. NPS Midwest Trails Coordinator (and manager of the Lewis and Clark NHT and North Country NST) Tom Gilbert and Gary Werner, the Ice Age Park and Trail Foundation's lone staffer, were delegated the responsibility to organize the conference.

Over the next 12 months, Tom and Gary found a facility, selected the dates, assembled a list of the key public and private officials associated with each of the 16 trails, surveyed these individuals regarding priority topics to be covered at the conference, organized the agenda, identified and invited presenters, organized registration, and sent out invitations. Approximately 75 people attended all or portions of the (First) National Conference on National Scenic and

National Historic Trails held September 27-October 1, 1988, at Camp Whitcomb near Hartland, Wisconsin. All who attended felt that the conference had been well worth their time (many of the private representatives had to take vacation time from work). Among the outcomes of their deliberations was the following item: “Federal Agencies need to give greater administrative recognition to NSTs and NHTs through increased status within agency operations and increased commitments of staff and financial resources.”

Just before the meeting, Congress had marked up the FY 1989 Interior appropriations and had included \$400,000 for administration of the NSTs and NHTs within NPS. The Senate Appropriations Committee staff worked with the NPS Recreation Resources leadership to determine how the funds would be utilized. A total of \$340,000 was distributed to Regions administering the trails and \$60,000 was retained in WASO to support a new staff position devoted to the National Trails System. Steve Elkinton was hired to fill that position and continues to serve very capably in that role.

On November 8-9, 1989, the Washington Office convened a meeting in Kansas City, Missouri, of Regional Directors and regional staff involved in NST and NHT administration to discuss trail development and management issues. One of the initiatives begun at the meeting was the development of draft legislation needed to improve the administration of NSTs and NHTs. Steve Elkinton, Tom Gilbert, and David Gaines (Santa Fe and Trail of Tears NHTs Superintendent) worked as a committee to review the current National Trails System Act and to draft and prioritize needed amendments. Their work continued through 1990 and 1991. On February 13, 1992, the Assistant Director, Legislative and Congressional Affairs circulated to all Regional Directors a draft of a bill based upon the committee’s work, asking for regional review and comments. Among the amendments to the Act was an additional sentence for Section 7(i) [16 U.S.C. 1246(i)] which read: “National scenic and national historic trails that are administered by the Secretary of the Interior through the National Park Service shall be units of the National Park System and administered in a manner consistent with the authorities and restrictions in this Act.” Whatever the outcome of this Servicewide review, no bill was ever put forward by the Administration.

A Second National Conference on National Scenic and National Historic Trails was held in 1991 in the Columbia River Gorge east of Portland, Oregon, at a conference center known as Menucha. (The 12th Conference on National Scenic and Historic Trails is slated for July 11-15, 2009, in Missoula, Montana.) The private nonprofit partners at the 1991 conference organized themselves into a coalition (The Committee of 17, today the Partnership for the National Trails System with ~25 member organizations) with a very focused agenda—work to establish annual Federal appropriations for each individual trail in order to support dedicated Federal Agency staff and other appropriate activities (trail publications, trail signing [mandated by law as a Federal responsibility], interpretation, etc.). The budgets each trail enjoys today can be directly related to these efforts.

Congress continued to appropriate the \$400,000 “pot” of national trail administration funding through FY 1994. However, in most Regions it did not lead to permanent NPS staff positions for each trail because the money was “soft,” i.e. the amount of money a Region received each year was decided on a competitive proposal basis by WASO. Funding to support one or more

permanent positions was not guaranteed. This obstacle was resolved in 1994; representatives of the Partnership persuaded NPS leadership to convert the fund allocations from the “pot” that year into individual trail base funding levels for future budget years.

In early 1993, WASO circulated a “Draft Long Distance Trails Program Policy Directive” for Servicewide review. It addressed a full range of policy and program issues related to NSTs and NHTs, but stopped short of declaring all such trails to be “units” of the System, instead giving them parity with traditional park units in terms of access to NPS financial and programmatic resources. In his comments, Midwest Regional Director Don Castleberry stated:

The proposed policy directive, if issued and effectively communicated throughout the NPS, would essentially clarify and resolve all of the issues about NST/NHT administration, including budgetary, which have been intensely debated over the past 10 years. It does this very simply, by deciding their administrative status or posture, not by treating all of the many issues individually. This is the approach that has been advocated by those within the NPS who are familiar with and have dealt with these issues.

. . . we want to emphasize that we believe the proposed directive would provide to NSTs/NHTs every benefit that those who have argued for “unit” status have anticipated would come with that status. The most effective way to assure parity for all NSTs/NHTs would be to give all trails “unit” status.

Based on regional input, the draft directive was revised by the Recreation Resources Assistance Division staff and forwarded to Associate Director, Planning and Development, Denis Galvin for consideration by the NPS Directorate and presentation to the Director for signature. It was hoped that it could be signed in time and announced on the 25th Anniversary of the National Trails System Act during the Third Conference on National Scenic and National Historic Trails in Kansas City, Missouri, in October 1993. It never made it.

Somewhere along the way, someone in NPS decided the directive should be reviewed by the U.S. Forest Service and the Bureau of Land Management (BLM), because long stretches of these trails traversed lands owned and managed by them. However, this was totally unnecessary because this issue was already adequately address in Section 7(a)(1)(A) of the Act:

Nothing contained in this Act shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided [written agreements].

The Forest Service clearly understood this principle and chose to not even formally reply, explaining that they considered the contents of the directive to be an internal NPS matter. The BLM, however, took months to respond, eventually voicing serious concerns about the directive and the status of the trails as they crossed lands they managed.

Taking these responses into account and emphasizing the guarantees of Section 7, the Assistant Director, National Recreation Programs, Bill Spitzer again attempted to advance a revised draft directive for approval in June 1994. This version actually would have declared the trails to be

“units,” not merely give them parity with units. However, by this time the NPS was in the midst of developing a Servicewide restructuring plan and the draft directive became a low priority.

Despite 2 years of work and Servicewide reviews, another attempt to establish a comprehensive policy statement relating to the administration of national trails by the NPS came to no tangible result. This pattern has repeated over and over again, as the following paragraphs will detail. Forty-one years after the National Trails System Act and the addition of long-distance trails to the NPS realm of responsibilities, no comprehensive policy directive addressing them has been issued.

Disappointed over the failure to validate the operational status of the trails as “units,” the WASO recreation staff proposed creation of two administrative centers for NSTs and NHTs as part of the NPS restructuring—in Harpers Ferry, West Virginia, and Boulder, Colorado. The Midwest Region reacted with strong opposition to such a move, deeming it to be a serious retreat from the well-reasoned goal of “unit” status for all of the trails. The proposal went no further.

On May 7, 1996, Intermountain Regional Director John Cook, an ardent supporter of “unit” status for the trails, sent a very articulate and compelling appeal to Director Roger Kennedy, arguing that abdication of our responsibility to set clear policy on this matter was tempting some in Congress to meddle with our own agency prerogatives:

Consistent with your desire to strengthen the roots of the National Park System and the National Park Service, I want to once again express my adamant support for administering and developing the Service’s national scenic and national historic trails as units of one National Park System. The trails we administer can and do provide for the protection, public use, and enjoyment of nationally significant scenic and historic resources. They can do this in ways that cannot be accomplished within the boundaries of traditional park areas. Linkage of one scenic treasure to another, of one historic trail site to another, creates the potential for deeper appreciation of the nation’s environment and history than a single site can afford. We should also see the values of these far-reaching corridors for tangibly demonstrating and communicating National Park Service conservation ethics to millions of Americans.

Congress, through the National Trails System Act, has provided the Secretary with the power to use National Park System authorities in his ongoing administration of the national scenic and historic trails. Such authorities are subject to the limitations of the National Trails System Act and specific trail legislation, just like legislative limitations are imposed on “traditional” National Park System units which include National Wild and Scenic Rivers. The tools and methods used to achieve fundamental conservation and public use objectives vary from park to park and from trail to trail, but the mandated purposes are the same.

We cannot expect the public and our cooperating trail partners to believe in us, and to take pride in their association with the National Park Service, if we must equivocate on our commitment to carrying out traditional management policies on our national trails. The continued dual classification can only continue to contribute to a separate but inherently unequal situation, fueling the cycle which keeps many of these national trails a low priority for funding to meet basic operational needs, access to traditional planning, construction, research, and preservation needs, and ongoing and vigorous management. Lack of National Park System integration inhibits the potential of these trails to educate citizens along their paths about traditional parks’ values and needs. If we are going to attract and retain highly qualified people to accept the challenges of

advancing these trails, we need to bring these national trails into the fold so that we can have a free exchange of personnel, among equal units of one National Park System.

In recent weeks, the Selma to Montgomery National Historic Trail bill surfaced in the House with initial report language providing for state administration of the proposed new trail. A revised bill with related report language then surfaced, apparently addressing the fact that the National Trails System Act stipulates that the Secretary is legally mandated to be responsible for ongoing trail administration. The report language dropped the state reference but it contained new language prohibiting the administration of the trail as a unit of the National Park System.

This is the first time any trail bill contained such a provision, denying the Secretary's authority to utilize the authorities of the National Park System in carrying out his administrative responsibilities. The trail's supporters are understandably chagrined. The National Park Service should reaffirm its responsibilities for all its national trails before others misinterpret what we and the National Park System are supposed to be about. As the Selma to Montgomery trail pointedly illustrates, we also have "a seat at the back of the bus" issue to remedy.

In June 1994, after several years of discussion and debate within the Service, the Acting Assistant Director, National Recreation Programs, sent a proposed special directive concerning the granting of National Park System administrative status for Service administered trails to the Associate Director, Planning and Development. The language was based on understandings reached at the March, 1993 Regional Directors meeting. This special directive was even reviewed by the U.S. Forest Service and the Bureau of Land Management.

Roger, we can continue to talk this to death or we can do it. The Selma to Montgomery issue tells me we should just do it.

Regional Director Cook copied his memorandum to the entire NPS National Leadership Council. Incredibly, the NPS has spent 13 more years "talking this to death" and taken no action to clarify this ongoing void in our policies.

On October 15, 1996, Director Kennedy replied to Mr. William Y. Chalfant of Hutchinson, Kansas, who apparently had written expressing his concerns about funding for trails and their uncertain status within the National Park System. After addressing the funding issue, Director Kennedy stated:

As for the status of these trails within the National Park System, we have considered policy to recognize all of the NPS-administered long-distance trails as units of the System—however, this has not been acted upon. In part, this is due to the fact that many of the trails traverse Bureau of Land Management (BLM) areas. For BLM, calling them "units of the National Park System" raises the possibility of public confusion over which agency has responsibility for the lands associated with or adjacent to these trail corridors.

I appreciate your bringing these concerns to my attention.

The NPS and its trail partners continue to establish and certify trail segments across state, local, and private lands without serious concerns; the partners seem to understand the separation of authorities. The NPS' attempt to set clear policy for these trails, however, is held hostage by another agency within the same Department of the Interior over a non-issue—Section 7(a)(1)(A)

of the Act clearly precludes the problem raised by the BLM, as previously discussed. This is not an issue that is of concern to the public, as alleged. Surveys have shown that the average user of public lands does not understand or care about who manages a piece of land. They do not grasp the difference between national forests and national parks, or the distinction between state and national parks.

At the same time as Director Kennedy was replying to Mr. Chalfant, a new policy document structure was being established in the NPS, known as “Director’s Orders.” The WASO long-distance trails staff began developing “Director’s Order #45-1: National Scenic and Historic Trails.” Draft versions were circulated for Servicewide review in the Fall of 1998 and Spring 1999. The 1998 draft version directed that all NST and NHTs administered by the Service would be treated “as if they are units.” This separate but equal (“inherently unequal”?) status was rejected during that first review. The 1999 version stated more clearly:

3.1 All national scenic and historic trails which have been or may be established by Congress and assigned to the NPS for administration will be considered units of the National Park System.

A final draft version, containing this same language, was circulated for Servicewide review in May 2000. In its comments on the final draft, the Midwest Region stated:

The work on this order during the past 2-3 years, including two Servicewide reviews and several informal reviews by national trail managers, has resulted in a truly excellent document that will well serve the interests of these trails, their resources, and their managers—federal, state, local, and private. The refinements made during this work have very adequately responded to the various issues and concerns that have been raised, including the designation of trails which traverse lands administered by others as units of the National Park System. We look forward to the benefits and clarity that this order will bring to our administration of national scenic and historic trails.

The order had the unanimous support of NST and NHT managers throughout the Service and the final review by the Regions was very favorable. Signature by Director Bob Stanton appeared imminent. It was initially slated to be on the agenda of the National Leadership Council’s (formerly Regional Directors’) June meeting.

The order, however, never made it to the meeting. Deputy Director Denis Galvin, who was hugely skeptical of the appropriateness of including the trails in the National Park System, suggested that the “authorizing committees” in Congress should be briefed before the order was signed because it would have the effect of creating 13 new “units” of the System. It was a reasonable-sounding suggestion, but perhaps also well-calculated, anticipating significant “push-back” from conservative committee staff. The briefings were conducted, the push-back occurred, the order was not signed, and the Administration changed shortly thereafter. Years of effort again produced no result.

Trail managers, trail supporters, and trail constituents were hugely disappointed. Success had seemed so achievable. Director Stanton was a big supporter of “one National Park System, one

National Park Service,” no matter what label your area carried, even National Heritage Areas. He stated this publicly. With the change of Administrations, he retired.

The American Hiking Society carried a full-page editorial on the failure of this Director’s Order in the March-April 2001 of their magazine, *American Hiker*. Entitled, “A Missed Opportunity for Trails,” it stated:

Despite a flurry of activity by the Clinton Administration, one important item for trails fell through the cracks. It was small but would have made a big difference to 13 national scenic and historic trails administered by the National Park Service. At the last minute, the National Park Service (NPS) reluctantly tabled a Director’s Order that would have designated all the national scenic and historic trails under its watch as units of the National Park System.

Tom Ross, who heads NPS’s National Center for Recreation and Conservation, echoed many in the trails community when he said, “That was disappointing. We wanted all the trails to be treated equally and consistently.”

. . . Congress has historically allowed the NPS to decide whether or not the trails under its watch should be units of the park system. So the process has been hit-or-miss—mostly miss—for the trails.

The nonprofit community has been talking about the issue of unit status for many years. We found a sympathetic ear in NPS’s long-distance trails office, but until 2000, we were unable to interest anyone at a higher level. Then, last year, former NPS Director Bob Stanton pledged to sign the Director’s Order before he stepped down at the end of his term. The order was drafted, raising the status of the national trails to units and—more importantly—directing adequate staffing and operational funding for the trails.

But the Order languished on one desk after another because it wasn’t deemed a high enough priority to move along quickly. Then, as the end of the Clinton Administration loomed, National Park Service officials decided that even though they didn’t need congressional approval, they would brief the Republican and Democratic staff on the key House and Senate Parks Subcommittees. The briefings with the Democratic staff went smoothly, but the Republican staff was suspicious of why this order was being moved in the last days of the Clinton Administration.

The Director’s Order for the National Trails System fell victim to this end game activity. Republicans in Congress were concerned about designating 13 new national park units without congressional oversight, even though Congress had already approved the trails themselves. In the face of these concerns, the Park Service decided that the prudent course of action would be to step back and try again once President Bush appoints the new NPS director this spring.

Unit status is not an automatic remedy for the funding woes of our national trails, but it certainly could help.

The trail managers and WASO staff discussed what course should now be taken. There were mixed feelings about whether to try again with the same document in the new Administration or a version that was stripped of Item 3.1, quoted above, conferring unit status. Some felt any policy was better than none. Some felt that if a policy was adopted without the “unit” status language, a later effort to add the “unit” status designation would have little chance of success.

A new version of DO 45-1 was released to the trail managers for comment in January 2003. It retreated to the language of the 1998 draft policy directive, stating that NST and NHTs would be “treated as if they were units” and guaranteeing equal treatment on that basis. Some favored moving forward. The Midwest Region and others questioned why the trails were not going to be called units if in every way they are treated as if they are units. What is the point of this? It is merely capitulation to BLM’s discomfort over what is a non-issue and to the “push-back” from the Congressional committees on a matter which is not in their purview.

There was no consensus among trail managers as to what to do with this draft. Subsequently, in April 2003, Steve Elkinton prepared and circulated an issue paper on the subject of “unit” status for the trails. It presented a brief history of the issue, outlined four options (leave the situation as is, treat them as if they were units, declare them units through a Director’s Order, and ask or wait for Congress to declare them units), listed pros and cons for each option, and recommended that they be declared “units” by a Director’s Order with a fall-back position of declaring that they be treated as if they are units.

Based upon the recommendation in his paper, Steve revised and circulated to trail managers a new April 2003 version of DO 45-1 in which Item 3.1 was restored to its 2000 form, declaring that all NSTs and NHTs will be considered “units” of the National Park System. Nothing happened. In March 2004 another draft was produced. This one was completely silent on the issue of “unit” status, neither declaring them to be units or to be treated as if they were units. This had somewhat broad support from trail managers as it neither carried the liability of trying to declare them all to be units nor saddled them with an ambiguous label (“as if they are units”) that might prevent a successful bid for unit status in the future when the winds might be more favorable. Nothing happened.

In December 2004, NPS trail managers met in San Francisco to discuss a number of issues, including this one. Not all were in attendance and it was decided that Steve Elkinton would organize a conference call after the holidays among just the trail managers/superintendents to see if there was a consensus on how to proceed on this policy matter. The call was held on February 23, 2005. The 2-hour call surfaced a major shift in opinion among the superintendents—the NHT managers were unanimous in their belief that “unit” status for their trails was no longer desirable. They expressed the perspective that they now enjoy enough of the features of a “unit” (staffs, field offices, broad—although not complete—access to NPS funding and program resources) to be effective in their missions, but they are not saddled with many of the distasteful and labor-intensive reporting and operating requirements of units.

This was a significant reversal from the unanimous support for “unit” status in 2000. Four of the five NSTs participated in the call. The Appalachian NST and Potomac Heritage NST are units and really had no stake in the issue. Only Tom Gilbert, representing the two NSTs administered by the Midwest Region and that are not units, expressed continuing desire to have those trails recognized as “units” of the National Park System. There are clear, continuing, substantive ways in which the trails are excluded from participation in the mission, operations, and promotion of the National Park System. Until these are rectified, the trails will continue to be viewed as “second-class citizens,” lower priorities for available resources, and easy targets for cut-backs.

The non-unit trails are also frequently overlooked and forgotten by the NPS and its partners in messages and materials promoting the national parks.

Subsequent to the phone call, WASO and Midwest Region staff consulted and considered the possibility of proposing that all of the NSTs should be units of the System, but not the NHTs. After all, there is clear disparate treatment of trails within the scenic category. Only the two NSTs administered by the Midwest Region are not “units.” This paper was begun as a result of that consultation and in response to that proposition—that all of the NSTs administered by the NPS should be “units” of the National Park System.

Meanwhile, additional drafts of Director’s Order 45-1 have been produced and circulated to trail superintendents for comment in May 2005, May 2007, February 2008, September 2008, and February 2009. They are all silent on the “unit” status issue, just as the March 2004 version had been.

In 2007, supporters of the Captain John Smith-Chesapeake NHT, authorized by Congress on December 19, 2006, made a direct request to NPS Director Mary Bomar to designate the trail as a unit of the National Park System. The Director declined their request and, in doing so, added that she had no intention of designating any additional national trails administered by the NPS as “units” of the System. There seemed to be no further opportunity to advance this issue until her term ended.

Some change in sentiments among NHT superintendents has occurred since the February 23, 2005, conference call. At a meeting of trail superintendents in Santa Fe in early December 2008, John Maounis, superintendent of the Captain John Smith-Chesapeake NHT, was joined by several others in favoring “unit” status for their historic trails. The superintendent and staff of the nine NHTs administered by the Intermountain Region, however, continue to oppose “unit” designation of NHTs.

The Case for Unit Status for All NSTs

The debate over unit status for the Ice Age and North Country NSTs (and NHTs) has now gone on for 25 years without a satisfactory resolution. There has been no satisfactory resolution because every attempt by NPS or Interior officials to articulate a rationale for why these two trails have not be recognized as “units” is either legally unsupportable or the criterion offered for the distinction is also true of one or more of the “unit” trails or even of more “traditional” park units. The “Myths vs. Facts” section, below, addresses in more detail these various lines of reasoning that have attempted to draw a distinction.

The attempts to draw distinctions have overlooked the larger body of similarities between all of the NSTs and even the traditional units of the System. Establishment of each of these NSTs involves the creation of facilities—a trail tread, signing, and related structures such as bridges, boardwalks, campsites, toilets, interpretive wayside exhibits, and, in some cases, major interpretive facilities. Planning and development follows established NPS procedures and is done in compliance with the National Environmental Policy Act, the National Historic Preservation Act, Endangered Species Act, etc.

The NPS has a positive, ongoing responsibility to “administer” these trails and to create them or foster their creation. We accomplish all of this work through partnerships, and these partnerships look the same across all five NSTs that we administer. We set the pace in terms of partnerships—a pace that traditional units are now being encouraged to follow. These long-distance trails are linear parks that the Service administers, regardless of the proportion of lands that NPS may own.

In the latter half of the 1980s, in response to directions from Congress, the NPS conducted a review of the criteria it uses for determining an area to be an “affiliated area.” The NPS completed its review and issued a report in 1988. While at least one edition of the NPS [Red] Index in the 1980s had listed the “non-unit” trails as “affiliated areas,” the review concluded that these trails did not fit that category. However, reluctant to designate them as “units,” the panel that conducted the review decided that they were merely “components of the National Trails System.” But labeling these trails as “components of the National Trails System,” which goes without saying, did not resolve the question as to whether or not they were also “units” of the National Park System. After all, the other three NSTs administered by NPS are both.

On June 9, 1989, Acting Director Eugene Hester issued a memorandum entitled “Classification of NPS Units and Related Areas” providing guidance based on the 1988 report. In the “Background” section, the memo stated:

The problem of how to classify units or related areas arises in those relatively unusual cases where NPS does not directly administer the area, but Congress has authorized some special cooperative arrangement. Many of these arrangements defy simple formulas for defining what we administer. For example, National Historic Trails such as the Santa Fe are administered by NPS although we currently do not own any land or manage any resources outside of previously established NPS units. Issues of classification most often arise immediately after an area has been authorized. However, in some cases the issue has arisen several years later when some or all administrative responsibilities are transferred from the NPS to another entity.

Curiously, the NPS does “not own any land or manage any resources outside of previously established NPS units” for the Potomac Heritage NST, yet it was designated a unit. In addition, years after the Appalachian NST was recognized as a unit, some of its administrative responsibilities for over 100,000 acres of NPS-owned lands were transferred from the NPS to another entity—the Appalachian Trail Conservancy—yet its “unit” status remains intact. Neither point is made to suggest that either of these trails should not be units. Rather it points out that any of the various filters that have been suggested over the years are not absolute determinants. “Unit” status is an administrative determination made by the Director, as the memo goes on to state:

In the past the Office of Public Affairs has been responsible for keeping the Index up to date and resolving problems of classification. The Director has the responsibility for making the decision, based on recommendation by the Office of Public Affairs which consults with other interested divisions. The History Division has traditionally played a leading role in advising on classifications.

The Director clearly has the latitude to designate the Ice Age and North Country NSTs as “units” of the National Park System.

A curious feature of the memo is that in referring to the legislative definition of the National Park System, it refers back to the 1953 law rather than the current 1970 law. There seems to be no other conceivable reason for doing so than to give a basis for mentioning (which the memo does) the no longer legally viable category of “miscellaneous areas,” and thus to perpetuate the exclusion of certain areas from the National Park System, including these two trails. The 1953 law made provision for designating an authorized park area as a “miscellaneous area,” the current law does not. For a more complete discussion of the difference between the 1953 and 1970 laws and the clear intent of the latter to eliminate the category of miscellaneous areas in order to unite all areas into “one National Park System,” see Myth #1/Fact #1, below.

The “Recommendations” section of the memo outlines the “steps [that will] be taken to implement the [1988] report’s recommendation on this issue:”

1. The Division of Legislation will have responsibility for making the initial finding or recommendation about how an area should be classified.
* * *
2. At the conclusion of each session of Congress the status of newly authorized areas should be agreed upon for printing in the National Park System Index.
* * *
3. In some cases the status or classification of an area may change due to transfers of certain lands or administrative responsibilities.
* * *

The memo continues:

In those few instances where the authorizing legislation does not clearly define an area “administered” by NPS[,] representatives of the interested divisions and offices should meet to develop a recommendation to the Director considering the following points:

The points (criteria, considerations) are given verbatim in the following table for the purpose of demonstrating how the NPS administration of the Ice Age and North Country NSTs compare to those points.

Points to Consider in Determining Area Status	Administration of the Ice Age NST (IATR) and North Country NST (NOCO)
Exactly what does the authorizing legislation provide?	IATR: “Overall administration of the trail shall be the responsibility of the Secretary of the Interior pursuant to section 5(d) of this Act. The State of Wisconsin, in consultation with the Secretary of the Interior, may, subject to the approval of the Secretary, prepare a plan for the management of the trail which shall be deemed to meet the requirements of section 5(e) of this Act.” While the Wisconsin DNR asked for the opportunity to prepare the plan, after enactment the DNR declined to prepare the plan; NPS prepared the plan and continues to lead all subsequent local trail corridor planning. NOCO: “The trail shall be administered by the Secretary of the Interior.”

	Both Trails: The full array of authorities in Section 7 of the Act applies to all five NSTs administered by the NPS. For IATR and NOCO, however, Federal Agencies are prohibited from spending funds to acquire lands for the trails, except for one interpretive site in each state—the same restriction as the Potomac Heritage NST, which is a “unit.”.
Does NPS own any land or interests in land in the area?	IATR: Yes. The NPS owns a 157-acre interpretive site along the trail and is currently preparing a GMP for the property. This is more land than the authorized acreage of 101 units of the National Park System. NOCO: No. The NPS currently does not own any land in the name of the trail. However, the trail passes through four NPS units, similar to the Potomac Heritage NST.
Are ONPS funds being used to support management of the area?	IATR: Yes. FY 2008 ONPS base was \$788,000. NOCO: Yes. FY 2008 ONPS base was \$873,000.
Are uniformed or other NPS personnel assigned to the site?	IATR: Yes. NOCO: Yes. The trails are combined administratively and have a total of 9 permanent FTE. Four of these positions are uniformed.
Has NPS delegated administrative responsibilities through a cooperative agreement?	IATR & NOCO: Trail construction and maintenance are carried out primarily by private nonprofit partner organizations. The NPS financially supports their work through cooperative agreements. The NPS retains responsibility for trail planning, environmental compliance, setting trail standards, approving trail development projects, providing trail signs and markers, developing and producing interpretive media, etc.
Does NPS retain ultimate responsibility for administration even though some operations have been delegated?	IATR & NOCO: Yes. If all partners terminated their participation, the NPS would be fully responsible for establishing and maintaining these trails.
What implications does the classification as a unit have for fee collecting, legal liability, law enforcement, or public understanding?	IATR & NOCO: <u>Fee Collecting</u> —Not feasible due to the multiple entry/exit points and limited NPS ownership; <u>Legal Liability</u> —The NPS retains a high degree of legal liability for everything done along the trail; it is a Federal undertaking; volunteers are VIPs and considered Federal employees for purpose of injury compensation and tort liability; <u>Law Enforcement</u> —Neither trail has any law enforcement operations; <u>Public Understanding</u> —Our partners remain confused about our uncertain status; the general public would be well served by understanding that these trails are indeed a part of our National Park System, extending the NPS mission and conservation ethics to places near where they live.

While the Midwest Region has believed, from the time they were authorized, that these trails deserve to be counted as “units” of the National Park System, and that “unit” status would help to clarify our functional operations and resource commitments for these trails, if one compared the administrative circumstances today with the circumstances that existed back in 1982, significant changes have occurred. Today, these trails have field office headquarters with base operating budgets and permanent FTE and staff. The trails are no longer collateral duties of regional office staff. The staff is led by a manager who carries the functional title of “Superintendent.” The trails participate in the Performance Management Data System and report to goals within that system. They utilize the Operations Formulation System and Project

Management Information System to request funding (although these non-unit trails have been largely unsuccessful in getting funds through these processes except as Congressional earmarks have elevated those requests). The most basic elements associated with being a “unit” of the National Park System are in place.

Nevertheless, the disparate treatment among NSTs continues every time the Service (or its national partners like the National Park Foundation or National Parks Conservation Association) issues a publication, press release, or public statement that includes a reference to how many “units” are in the National Park System. That number always includes the Appalachian, Natchez Trace, and Potomac Heritage NSTs and always excludes the Ice Age and North Country NSTs.

More important than merely being “part of the number” is the fact that the Ice Age and North Country NSTs are repeatedly cut off from participation in and access to NPS funds, programs, and special occasions that are available to the Appalachian, Natchez Trace, and Potomac Heritage NSTs. Some recent examples of this are:

- The Ice Age and North Country NSTs are not eligible to receive consideration for Centennial Challenge project funding despite the fact that their staffs developed projects that were highly rated by the Midwest Region. The Appalachian, Natchez Trace, and Potomac Heritage NSTs are eligible because they have “unit” status.
- Unlike “units” of the National Park System, including the Appalachian, Natchez Trace, and Potomac Heritage NSTs, the Ice Age and North Country NSTs were not invited to provide a 2007 Christmas holiday ornament for the White House. What possible administrative goal or policy is supported or advanced by adorning the White House with ornaments reminding the President and the First Lady, and their family and guests, of the Appalachian, Natchez Trace, and Potomac Heritage NSTs, but not bringing to their attention the North Country NST (our Nation’s longest NST) and the Ice Age NST (the grandest reminder we have of global climate change)? There is no sound rationale for this disparate treatment.
- The NPS now owns historic structures as part of its Ice Age NST interpretive site in Dane County, Wisconsin. The structures cannot be entered into the List of Classified Structures because the Ice Age NST is not a “unit.”
- The National Park Service 2008 Director’s Report has a very interesting and informative set of statistics listed on the back cover. It mentions “391 national parks,” and even “40 national heritage areas” which are not units. Unfortunately, because two of the NSTs we administer—the Ice Age and North Country—are neither, they (plus the 16 NHTs) are not reflected in the statistics at all.

Since the discussion over “unit” status for NSTs (and NHTs) began back in 1982, there have been many instances where funding and program access, or recognition for their contributions to the NPS mission, have been flatly denied to the non-unit trails. Some of these are described in the items below. There are other examples where the non-unit trails, while not technically denied access, were automatically deemed to be of lower priority than System “units” and therefore never ranked high enough to secure a share of the funding available.

- For many years, the Harpers Ferry Center (HFC) refused to include the informational folders for non-unit national trails in their program. The Ice Age and North Country NSTs folders

still are not part of their program. These folders are written and designed by the “park” staffs and printed using park base funding.

- HFC maintains that only the Appalachian, Natchez Trace, and Potomac Heritage NSTs can be shown on the National Park System brochure. The Ice Age and North Country NSTs are excluded.
- Non-unit trails were considered ineligible for ONPS base funding and FTE until 1994 when base operational funds were assigned to each of the then-authorized trails from a programmatic “pot” of funding for the trails that Congress had been adding and earmarking for this purpose for several years.
- Although the Midwest Region’s trails developed and submitted projects for the youth corps programs launched early in the Clinton Administration, we were informed later that our efforts had been in vain because only “units” of the system were eligible.
- In the formulation of the FY 1994 and 1995 budgets (Greenbook), the Ice Age and North Country NST were made subject to the “Uncontrollable Changes” decreases affecting all units, but were not included in the “Program Changes” increases enjoyed by all “units,” resulting in an erosion of their budgets. The Midwest Region registered a protest over this treatment in 1995 and the practice stopped in the formulation of the FY 1996 budget requests.
- In 1997, a new Volunteers-in-Parks program brochure was issued by the NPS. The three “unit” trails—Appalachian, Natchez Trace, and Potomac Heritage NSTs—were listed in the brochure. The Ice Age and North Country NSTs (and all NHTs) were not listed. Following protests from the Regions administering national trails, this exclusion was corrected in the 1999 version of the VIP brochure.

By excluding the North Country and Ice Age NSTs from the National Park System, the NPS is excluding from its portfolio two of the largest recreational facilities for which it is administratively responsible. While the Natchez Trace and Potomac Heritage NSTs are “units,” each of them is significantly shorter than the Ice Age NST and only about one-fifth the length of the North Country NST. Additionally, while the Natchez Trace NST is authorized by Congress to be approximately 694 miles, its NPS-produced CMP calls for development of only 20 miles of trail by the NPS, i.e. the Service did not even plan to carry out what Congress authorized. Yet this trail is deemed worthy of being a “unit” of the National Park System, while the North Country NST, already providing over 2,000 miles of premier hiking opportunities (as much as the Appalachian NST is long), is somehow considered unworthy of and ineligible for being a “unit” of the National Park System.

The Volunteers-in-Parks (VIP) programs at the Ice Age and North Country NSTs are larger than the programs at 350 of the traditional park “units.” These two trails recorded 42,290 and 49,290 VIP hours, respectively, in FY 2008. It is very satisfying that these two trails were included in the VIP coordinator funding increases contained in the FY 2008 budget. This is a rare exception to the prevailing practice of being excluded from such opportunities.

While the Midwest Region has no hesitation in recommending that the Ice Age and North Country NSTs be given “unit” status, it is with the full awareness that they, like many of the more recently authorized parks, do not easily fit the traditional “unit” model. Consequently, logical and reasonable accommodations will have to be made in applying Service systems,

policies, programs, and procedures to them, but this is no different than the case for the three “unit” NSTs and a growing number of recent partnership parks added to the system (e.g. Mississippi National River and Recreation Area).

Myths vs. Facts

MYTH #1: “In an Act of August 18, 1970, the National Park System was defined by law as ‘any area of land and water now or hereinafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational or other purposes.’ The same law specifically excludes ‘miscellaneous areas administered in connection therewith;’ that is, those properties that are neither federally owned nor directly managed by the National Park Service but which utilize Park Service resources.”

FACT #1: This is a quote from an October 16, 1985, letter from Acting Assistant Secretary for Fish and Wildlife and Parks P. Daniel Smith replying to a letter from Representative Gerald Kleczka (WI) advocating “unit” status for the Ice Age NST. The first sentence, including the quotation from the law, is indeed true, and by that definition all NSTs administered by the Secretary through the NPS should be “units” of the system. The definition, from the General Authorities Act of August 18, 1970, says the System consists of areas “administered by” the Secretary. Before 1970, however, the System was defined by the Act of August 8, 1953, as “all federally owned and controlled lands which are administered under the direction of the Secretary.” The reference to “federally owned and controlled” was amended out of the definition in 1970. The current definition only has the criteria of “administered by,” and the authorizing paragraph of every one of the NSTs (and NHTs) administered by the NPS states: “The trail shall be administered by the Secretary of the Interior.”

The second sentence in Myth #1, above—that “the same law specifically excludes ‘miscellaneous areas’”—is the myth, a fabrication with no basis in current law. However, it has been repeated so many times over the years in written descriptions of the National Park System that everyone accepts it as if it were a statement of law. Before the redefinition of the System in 1970, the (1953) law distinguished between units of the System and “miscellaneous areas administered in connection therewith.” The 1970 law, however, deleted the definition of miscellaneous areas and nine other references to “miscellaneous areas” from 16 U.S.C. 1.

It is a perversion of legal reasoning to now say that, based on those deletions, “the same law specifically excludes miscellaneous areas administered in connection therewith.” How can the law, which no longer defines or mentions “miscellaneous areas,” be interpreted as “specifically excluding” such areas? The very purpose of the 1970 redefinition of the National Park System and the removal of references to “miscellaneous areas” was to eliminate distinctions of quality and inequality among the various kinds and categories of areas administered by the NPS. This is absolutely clear from the language of the law, the House and Senate reports (91-1265 and 91-1014, respectively), and the letters from Secretary of the Interior Walter J. Hickel transmitting the proposed legislation to the House and Senate. By continuing to quote the deleted language, NPS officials are perpetuating the 1953 two-

tiered approach to the National Park System which the Service, Department, and Congress were seeking to eliminate with the 1970 legislation.

The 1970 General Authorities Act does not exclude areas like the Ice Age and North Country NSTs from the National Park System. What the 1970 law did was to exclude (repeal) the language in the 1953 law that formerly operated to exclude such areas. Thirty-nine years after the enactment of the broader definition of the National Park System, it seems that the NPS still has not completely aligned its operations with the current legal definition.

This intent—that all areas administered by the NPS are part of the National Park System—is further confirmed by Section 1 of the 1970 legislation, codified at 16 U.S.C. 1a-1:

Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are **united through their inter-related purposes and resources into one national park system** as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their **inclusion jointly with each other in one national park system** preserved and managed for the benefit and inspiration of all the people of the United States; and that **it is the purpose of this Act to include all such areas in the System** and to clarify the authorities applicable to the system. (emphasis added)

How could the intent of the Administration and Congress be any clearer?

RELATED MYTH & FACT: In his October 16, 1985, letter, Acting Assistant Secretary for Fish and Wildlife and Parks P. Daniel Smith also stated: “We do not intend to acquire these lands nor do we intend to request designation of the Ice Age National Scenic Trail as a unit of the National Park System.”

The question that must be asked is: From whom would the Interior Department or NPS “request” unit status? Answer: Ourselves. Unit status is an administrative decision of the NPS leadership, confirmed by the June 9, 1989, memorandum discussed above. It is rarely addressed in the authorizing legislation of areas administered by the NPS. The 1872 law establishing Yellowstone National Park says nothing about unit status; the 1931 law establishing Isle Royale National Park says nothing about unit status; the 1988 law establishing the Mississippi National River and Recreation Area says nothing about unit status. Yet they are all units. There is a persisting myth that Congress decides whether an area is a unit or not. It simply is not true.

MYTH #2: The Appalachian, Potomac Heritage, and Natchez Trace NSTs are “units” of the National Park System because the legislation authorizing them stated that they are to be units.

FACT #2: The authorizing paragraphs in the National Trails System Act say nothing about “unit” status. The Appalachian, Potomac Heritage, and Natchez Trace NSTs are “units” of the system because the NPS administratively decided they should be counted and treated as “units.”

The NPS could easily (and should) make that same decision for the Ice Age and North Country NSTs.

MYTH #3: Making the Ice Age and North Country NSTs “units” of the National Park System would create problems where they traverse National Forest lands or Bureau of Land Management lands because it would give the NPS management control over those lands, or at the very least “confuse” the public.

FACT #3: If this were indeed the case, it would already have surfaced as a problem in connection with the Appalachian NST. In fact, it is not a problem. Section 7(a) of the National Trails System Act [16 U.S.C. 1246(a)] precludes this from occurring:

SEC. 7. (a)(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 5(a) shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. **Nothing contained in this Act shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).**

(B) The Secretary charged with the overall administration of any trail pursuant to section 5(a) may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this Act. During any period in which management responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement except to such extent as the agreement may otherwise expressly provide.

(2) Pursuant to section 5(a), the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register; Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for the specific area in order to insure continued maximum benefits from the land. **The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary.** In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

As far as “confusing” the public is concerned, the average user of public lands is already confused. Surveys have shown that the average user of public lands does not understand or care about who manages the lands they are using. They do not grasp the difference between national forests and national parks, or the distinction between state and national parks. This is not an issue that is of concern to the public using our lands, as BLM alleges.

The real issue is not concern over the public perception, but rather turf issues among Federal bureaucrats. The NPS and its trail partners continue to establish and certify trail segments across state, local, and private lands without serious concerns; the partners seem to understand the separation of authorities. But setting clear policy for these trails within the NPS is held hostage by another agency within the same Department of the Interior over a non-issue. Apparently, state and local land managers and private landowners can understand this separation of authorities more clearly than professional land managers within the Interior Department.

MYTH #4: Making the Ice Age and North Country NSTs “units” of the National Park System would create problems with nonfederal partners and private landowners because it would impose NPS regulations in 36 CFR on the management of their lands.

FACT #4: Regulations at 36 CFR are applicable to NPS areas not because they are “units,” but because the lands are owned by the NPS. These regulations, with a few stated exceptions, are only applicable to lands owned by the NPS even within “units.” Thus, these regulations would not be applicable to the lands of any other public agency or private landowner whose lands are host to a portion of the Ice Age or North Country NSTs. There is provision within the National Trails System Act—section 7(j)—providing for the establishment of special Federal regulations that are applicable trailwide regardless of ownership; however the procedures for developing and issuing such regulations are very rigorous. The Appalachian NST has such special regulations at 36 CFR 7.100 that prohibit bicycle and horse use on the trail or hang-gliding from the trail. The Ice Age and North Country NSTs do not have any special regulations of this kind.

MYTH #5: The Ice Age and North Country NSTs are not “units” of the National Park System because the NPS does not own land along these trails.

FACT #5: Just like the Appalachian, Natchez Trace, and Potomac Heritage NSTs, the North Country and Ice Age NSTs traverse lands owned by the NPS as components of other park “units.” The North Country NST traverses or will traverse Fort Stanwix National Monument, Dayton Aviation Heritage National Historical Park, Pictured Rocks National Lakeshore, and Saint Croix National Scenic Riverway. The Ice Age NST traverses a portion of Saint Croix National Scenic Riverway and the 157-acre NPS-owned “interpretive site” in Dane County, Wisconsin, just west of Madison.

MYTH #6: The North Country and Ice Age NSTs are not “units” because the NPS does not own any land along them “in the name of” the trail.”

FACT #6: There is no validity to using this as a discriminating factor. Land ownership and control as a factor for “unit” status was amended out of the law in 1970. And, even though it once was true that the NPS owns no land along the Ice Age NST, it is no longer true. The NPS purchased a 157-acre “interpretive site” along the Ice Age NST in Dane County, Wisconsin, in 2002 under the authorities of sections 7(c) and 10(c)(1) of the National Trails System Act. This is a land base larger than the authorized acreage of 101 units of the National Park System.

As just stated, land ownership and control by NPS was a consideration under the 1953 definition of the National Park System, but this was amended out of law by the General Authorities Act of

1970. Yet, despite this, the NPS continues to use this outdated, invalid criterion in asserting why the Ice Age NST and other non-unit trails cannot be units of the System. As recently as December 2007, NPS Director Mary Bomar used this criterion, with a new twist, in a letter explaining to Andrew Hanson, Trailway Director, Ice Age Park and Trail Foundation, why the Ice Age NST cannot be a unit of the System: “. . . only three of these—the Appalachian, Potomac Heritage, and Natchez Trace National Scenic Trails—are considered units of the National Park System. The key determining factor for unit status is that the National Park Service controls most of the Federal land within those trail corridors. As you know, at the Ice Age National Scenic Trail the National Park Service manages only a few key interpretive sites.”

This new twist—controlling most of the Federal lands— has no basis in law or policy. According to the December 31, 2008, NPS property database, the Service owns 0 acres of land along the Potomac Heritage NST and the Natchez Trace NST, so it would be difficult to make the case that the NPS controls the majority of Federal lands along these trail corridors. In addition, there are “traditional” park units where the NPS does not own the majority of the Federal lands within the park: Assateague Island National Seashore, Buck Island Reef National Monument, Canaveral National Seashore, Curecanti National Recreation Area, Hagerman Fossil Beds National Monument, Lake Roosevelt National Recreation Area, and the USS Arizona Memorial.

MYTH #7: Although the Appalachian NST is a “unit” of the National Park System, it is a special case with different authorities under the National Trails System Act, and it is not a comparable example to the other NSTs becoming “units” of the National Park System.

FACT #7: The Appalachian National Scenic Trail and all other National Scenic Trails have the same legal status under the National Trails System Act.

MYTH #8: The Ice Age and North Country NSTs are not “units” of the National Park System because their authorizing legislation prohibits Federal Agencies from spending funds to acquire lands for the trails outside existing Federal areas.

FACT #8: If this was a valid discriminating criterion, then the Potomac Heritage NST, which is a “unit” of the system, would not be a “unit,” because it has this same restriction in its authorizing legislation. The Appalachian and Natchez Trace NSTs have authority to spend funds to acquire lands outside Federal areas, but the Natchez Trace NST’s authority is not significant—Federal spending for this purpose is limited to a total of \$500,000.

MYTH #9: The Potomac Heritage NST is a unit because a large section of it consists of a unit of the National Park System—the Chesapeake and Ohio Canal National Historical Park (NHP).

FACT #9: The Potomac Heritage NST’s “unit” status does not derive from the existence of another “unit” of the system along its route. The superintendent of the Potomac Heritage NST has no administrative authority over the C&O Canal NHP. The latter is a separately-authorized autonomous “unit” of the system. The Potomac Heritage NST’s “unit” status can only relate to the portions of the trail route outside the NHP—portions over which it has administrative responsibility. The Potomac Heritage NST has status as a “unit” simply because NPS leadership

administratively decided it should be a “unit.” The North Country NST traverses four NPS “units.” The western terminus of the Ice Age NST lies within an NPS “unit.” If passing through other “units” of the system was a valid criterion for determining “unit” status, then the NPS could just as easily administratively decide that the Ice Age and North Country NSTs are “units” of the System.

MYTH #10: The NPS decided to make the Potomac Heritage NST a “unit” of the National Park System because of the high proportion of the route that is comprised of publicly owned lands.

FACT #10: About 50 percent of the route of the Potomac Heritage NST is comprised of public lands; about 50 percent will need to be established across private lands. The percentages for the North Country NST are roughly the same.

Every criterion and rationale that has been offered over the past 25 years to explain why the Ice Age and North Country NSTs should not or cannot be designated “units” of the National Park System has been shown to be without foundation or inconsistent with the circumstances of other trails or park areas that have been designated “units.” Attempts to continue to find some valid, consistent reason should be abandoned. The Service should recognize both trails as “units.”

Conclusion

There is no legal basis or policy rationale for maintaining a two-tiered approach to NPS administration of NSTs. The Ice Age and North Country NSTs should be immediately designated as additional units of the National Park System, bringing the total to 393.

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Appendix A

NPS-Administered National Scenic and National Historic Trails

Unit Status Profile

Year Authorized	Trail Name	Unit Status	
		Unit of the National Park System	<u>Not</u> a unit of the National Park System
<u>National Scenic Trails</u>			
1968	Appalachian NST	X	
1980	North Country NST		X
1980	Ice Age NST		X
1983	Potomac Heritage NST	X	
1983	Natchez Trace NST	X	
<u>National Historic Trails</u>			
1978	Oregon NHT		X
1978	Mormon Pioneer NHT		X
1978	Lewis and Clark NHT		X
1980	Overmountain Victory NHT		X
1987	Santa Fe NHT		X
1987	Trail of Tears NHT		X
1990	Juan Bautista de Anza NHT		X
1992	California NHT		X
1992	Pony Express NHT		X
1996	Selma to Montgomery NHT		X
2000	El Camino Real de Tierra Adentro NHT (co-administered w/ BLM)		X
2000	Ala Kahakai NHT		X
2002	Old Spanish NHT (co-administered w/ BLM)		X
2004	El Camino Real de los Tejas NHT		X
2006	Captain John Smith Chesapeake NHT		X
2008	Star-Spangled Banner NHT		X