COMMERCIAL AIR TOUR VOLUNTARY AGREEMENT FOR BISCAYNE NATIONAL PARK

Robert C. Gretzke, doing business as Wings

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SUMMARY

This Voluntary Agreement (Agreement) provides the terms and conditions for commercial air tours to be conducted over Biscayne National Park (BNP) as an alternative to an air tour management plan, under the provisions of the National Parks Air Tour Management Act (Act) of 2000 as amended by the FAA Modernization and Reform Act of 2012. The parties to this Agreement are the National Park Service (NPS), the Federal Aviation Administration (FAA), and Robert C. Gretzke doing business as (dba) Wings (Wings).

1.0 INTRODUCTION

The Act, as amended, requires that all persons conducting or intending to conduct a commercial air tour operation over a unit of the national park system apply to the FAA for authority to undertake such activity before engaging in that activity. The Act further requires that the Administrator of the FAA (Administrator), in cooperation with the Director of the NPS (Director), establish an Air Tour Management Plan (ATMP) for each park that does not have such a plan in effect at the time that a person applies to the FAA for authority to conduct a commercial air tour operation.

As an alternative to an ATMP, the Director and the Administrator may enter into an agreement with a commercial air tour operator who has applied to conduct commercial air tour operations over a national park.[1] In such cases, the Act requires that the agreement address the management issues necessary to protect the resources and visitor use of the park without compromising aviation safety or the air traffic control system.[2] An agreement may also include: conditions for the conduct of air tour operations (including routes, altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights per unit of time, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts); incentives for the adoption of quiet aircraft technology by air tour operators; an allocation of opportunities to conduct air tour operations if there is a limitation on the number of such operations for any time period; and provisions to ensure the stability of and compliance with the voluntary agreement. Each agreement reflects the provisions and conditions appropriate for the particular national park to which the agreement applies.

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[1] 49 U.S.C. § 40128(b)(7)(A)
[2] 49 U.S.C. § 40128(b)(7)(B)

2.0 APPLICABILITY

This Agreement applies only to commercial air tour operations conducted by Wings at BNP. Biscayne National Park is depicted in Figure 1. As defined in 14 CFR Part 136, a commercial air tour operation is any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½-mile outside the boundary of any national park, or over tribal lands abutting a national park, during which the aircraft flies:

> (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
>
> (2) Less than one mile laterally from any geographic feature within the park (unless more than ½-mile outside the boundary).

3.0 OVERVIEW OF BNP

Biscayne National Park is located in Miami-Dade County, Florida, south of downtown Miami at the northernmost end of the Florida Keys. The northern boundary of the park is near the southern tip of Key Biscayne, and the park's southern boundary is near Key Largo. The boundaries of BNP encompass approximately 173,000 acres, with emergent land representing only 5% of the total area in the park boundary. The western boundary consists of natural areas intersected by canals, and the eastern boundary extends out to sea about 14 miles to the east, as defined by the contiguous 60-foot (10 fathoms) depth contour. BNP is not adjacent to tribal lands.

BNP is a marine park consisting of mostly submerged land and includes coral reefs, sandy shoals, undeveloped mangrove shoreline, and 42 keys or islands. The coral reefs, also called the reef platform, comprise the northernmost extension of living coral reefs in the United States. The park is a unique subtropical marine and estuarine environment of national significance, renowned for its productive coral reefs and diverse and abundant natural resources. Annually, BNP averages 500,000 visitors, with approximately a third of the visitation in the summer (June, July, and August). Visitors come to the area for recreational opportunities including snorkeling, scuba diving, paddling, bird-watching, nature viewing, boating, and recreational fishing.

Cultural resources can be found at BNP from aboriginal occupation and use, Spanish exploration, pirates, shipwrecks, marine salvaging, agriculture, and

development that reflect the continual link between humans and the sea that has characterized this area for 10,000 years. Remnants are represented by both terrestrial and submerged cultural resources.

Biscayne National Park was established as a national monument in 1968. In 1980, it was enlarged to its current size and designated a national park. The purpose of BNP is to preserve and protect for the education, inspiration, recreation, and enjoyment of present and future generations a rare combination of terrestrial, marine, and amphibious life in a tropical setting of great natural beauty (16 U.S.C 410gg).

3.1 Management Issues Addressed by this Agreement

Air tours have the potential to affect wildlife and visitor use at specific areas of BNP that may be particularly sensitive to overflights. Conditions for the management of commercial air tour operations, contained in Section 4.0, are designed to minimize effects at the following areas:

1. The Arsenicker Keys are known as nesting grounds for bald eagles, double-crested cormorants, white ibis, reddish egrets, tri-colored herons, and/or white-crowned pigeons. Sensitive habitats in this area include rookeries for several species of wading birds, and the marine and wetland environments provide habitat for rare species.

2. Boca Chita Key and Elliott Key areas have campground areas that include picnic tables, grills, restrooms, and swimming areas.

3. The Florida Coastline areas are shallow and used by small vessels. Visitor use in these areas offers a serene experience.

4. Boca Chita Key is a popular destination (the most popular island in BNP), containing cultural resources, a historic ornamental lighthouse, a public campground, and several beaches. The Honeywell Complex on Boca Chita Key has been documented in a Historic Structure Report and considered part of the Cultural Landscape Inventory that designates the Boca Chita Key Historic District.

5. Soldier Key, Arsenicker Key, and Sands Key are closed to the public to protect natural and cultural resources.

6. Nesting birds, including a very limited number of roseate spoonbill nests, are contained in Jones Lagoon. The areas in and around Jones Lagoon are virtually undisturbed and have had little human-caused

influence. This area contains some of the only remaining true natural area in all of the Florida Keys. Sensitive habitats in this area include rookeries for several species of wading birds, and the marine and wetland environments provide habitat for rare species.

7. Fowey Rocks Lighthouse is listed on the National Register of Historic Places and owned by BNP. It is appropriately managed in accordance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. BNP contains the potential for establishment of a maritime cultural landscape, which would include the Fowey Rocks Lighthouse.

8. Stiltsville (near Biscayne Channel) is composed of 7 structures that were privately built and maintained before incorporation within the park's expanded boundary.

4.0 CONDITIONS FOR THE MANAGEMENT OF COMMERCIAL AIR TOUR OPERATIONS OF BNP

This Agreement includes the following provisions and conditions:

4.1 Commercial Air Tour Routes and Altitudes

All commercial air tours over BNP and within a ½ mile of the BNP boundary shall be conducted on the routes designed for Wings contained in Figure 2. The minimum altitude for commercial air tours over BNP is 500 feet above ground level (AGL). Additional provisions include:

- Air tours will maintain a distance of 1,000 feet east laterally from the eastern Florida coastline.
- Air tours flown near Arsenicker Key, West Arsenicker Key, Mangrove Key, Ragged Key #5, Soldier Key and Sands Key will *either* maintain an altitude of 1,000 feet AGL *or* 500 feet AGL plus 1,000 feet lateral distance from land's end on either side of the island.
- Air tours will avoid Jones Lagoon by following routes as shown in Figure 2.
- Air tours will be flown 1,000 feet east or west laterally from campground areas.
- Air tours will be flown 1,000 feet east or west laterally from land's end of Boca Chita Key.

- Air tours will be flown 500 feet laterally (in all directions) from the Fowey Rocks Lighthouse.
- Air tours will be flown 500 feet east or west laterally from the Stiltsville Structures.

Deviations and Temporary Modifications

Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized for a specified purpose, Wings will adhere to these routes, altitudes, and operating hours to the fullest extent possible.

Absent exigent circumstances or emergency operations, Wings will provide a minimum of a week's notice, in writing, requesting an adjustment. Parties will retain and/or document correspondence which confirms receipt of, and agreement with, requests.

4.2 Number of Operations

Wings is authorized to conduct up to 110 commercial air tour operations annually over BNP. The majority of the air tours would occur November through May.

4.3 Aircraft Type

Wings is authorized to conduct commercial air tour operations in the following types of aircraft: Cessna 170, 172, 185, and 206. Any new or replacement aircraft must be at least as quiet as the aircraft being replaced. Any modifications, including repairs or upgrades, to the aforementioned aircraft must not result in an increase in the level of noise output for each aircraft.

4.4 Restrictions for Particular Events

Absent exigent circumstances or emergency operations, BNP will provide a minimum of a week's notice, in writing, to Wings to request avoidance of air tours due to special events, cultural events, safety precautions, and weather. Parties will retain and/or document correspondence which confirms receipt of, and agreement with, requests.

4.5 Time-of-Day Restrictions

Wings is authorized to conduct commercial air tour operations over BNP from 8:00 AM until 6:00 PM.

5.0 COMPLIANCE

5.1 Compliance with this Agreement will be ensured through ongoing communications among the parties to this Agreement, periodic reporting of air tour operations by the operator (as set forth in Section 5.4 below), and enforcement measures if necessary. The parties agree to work together to address any possible compliance issues.

5.2 The parties will meet on a periodic basis, or as necessary, to discuss compliance issues and ways to improve the protection of BNP resources.

5.3 Allegations of non-compliance with this Agreement may be reported to the FAA's local Flight Standards District Office (FSDO) and may result in an investigation by the FAA. Investigative determination of non-compliance may result in partial or total loss of any privileges that may be accorded by this Agreement and reversion to the Interim Operating Authority held immediately prior to implementation of this Agreement. Any violation of Operations Specifications (OpSpecs) and/or Letters of Authorization (LOA) shall be treated in accordance with FAA Order 2150.3 – FAA Compliance and Enforcement Program.

5.4 Reporting Requirements

Commercial air tour operators conducting air tours over national parks and abutting tribal lands are required to submit reports to the FAA and NPS[3]. The agencies require operators to submit reports of their operations on a quarterly basis (January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31) and report that information to FAA and NPS no later than 30 days after the close of each quarter.

Guidance on these reporting requirements and the reporting template the agencies developed can be found at either of the following two websites:

http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/program_information/

http://www.nature.nps.gov/sound/resources.cfm

Wings will fill out the reporting template and submit concurrently to the following email addresses:

[3] 49 U.S.C. § 40128(d)

9-AWP-ATMP-Reports@faa.gov

NPS_NRSS_NRPC_AirTourPlanning@nps.gov

6.0 TRIBAL CONSULTATION

The Act requires the Director and the Administrator to consult with any Indian tribe whose tribal lands are, or may be, flown over by a commercial air tour operator. BNP is not adjacent to tribal lands, nor will air tours associated with this Agreement fly over tribal lands. Therefore, tribal consultation was neither required nor conducted as part of this Agreement.

7.0 PUBLIC REVIEW

The Act requires the Director and the Administrator to provide an opportunity for public review of a proposed voluntary agreement. The proposed Agreement was made available for a 60-day public review period on July 1, 2015 by being posted on the National Park Service Planning, Environment and Public Comment web site (PEPC). The availability of the proposed Agreement and the public review period were announced in a press release.

8.0 AMENDMENT

The NPS, the FAA, or Wings may request an amendment to this Agreement. Written notice to amend the Agreement should be sent to the other two parties to the Agreement. Revisions to the Agreement can only be approved if all three parties sign the amendment to the Agreement, following the opportunity for public review.

9.0 TRANSFER OF VOLUNTARY AGREEMENT

This voluntary Agreement is not transferable to another air tour operator unless the transfer is pursuant to the complete sale of the air tour company to another company and the Agreement is re-signed by FAA, the NPS, and the new air tour operator.

10.0 CONFORMANCE OF OPERATIONS SPECIFICATIONS

Changes to existing Interim Operating Authority or other operating authority as defined by this Agreement will result in the amendment of the appropriate OpSpecs. Revised OpSpecs will be reissued within 90 days of the effective date of

this Agreement and will remain in effect until this Agreement is revised or terminated.

11.0 TERMINATION

11.1 This Agreement may be terminated at any time at the discretion of:

(1) the Director, by notification to the FAA and the operator, if the Director determines that the Agreement is not adequately protecting BNP resources and/or visitor experiences;

(2) the Administrator, by notification to the NPS and the operator, if the Administrator determines that the Agreement is adversely affecting aviation safety and/or the national aviation system; or

(3) the Operator, for any reason, by notification to the FAA and the NPS.

11.2 If this Agreement is terminated, Wings shall return and conform to the requirements for Interim Operating Authority in effect immediately prior to this Agreement, as delineated in the operations specification B057.

11.3 The effective date of termination of this Agreement shall be 90 days following a termination notice by any of the parties to the Agreement to allow sufficient time for the FAA to reissue the appropriate amended OpSpecs and ensure uninterrupted operational authority under valid OpSpecs.

12.0 AGREEMENT AND EFFECTIVE DATE

The parties to this Agreement, which include the FAA, the NPS, and Wings, agree to abide by the terms set forth in this Agreement. This Agreement is effective upon the date of the last signature of all parties below and may be signed in counterparts, each of which will be deemed to be an original. All such counterparts, including facsimiles, shall together constitute a single, executed instrument when all parties have so signed.

Robert C. Gretzke,
Owner, doing business as Wings

6/16/16
Date

Jonathan B. Jarvis
Director, National Park Service

6-30-2016
Date

Glen A. Martin
Regional Administrator, Western-Pacific Region
Federal Aviation Administration

7/11/2016
Date

APPENDICES

Figure 1. Area Map of Biscayne National Park

Figure 2. Air Tour Routes for Agreement

Figure 1. Area Map of Biscayne National Park
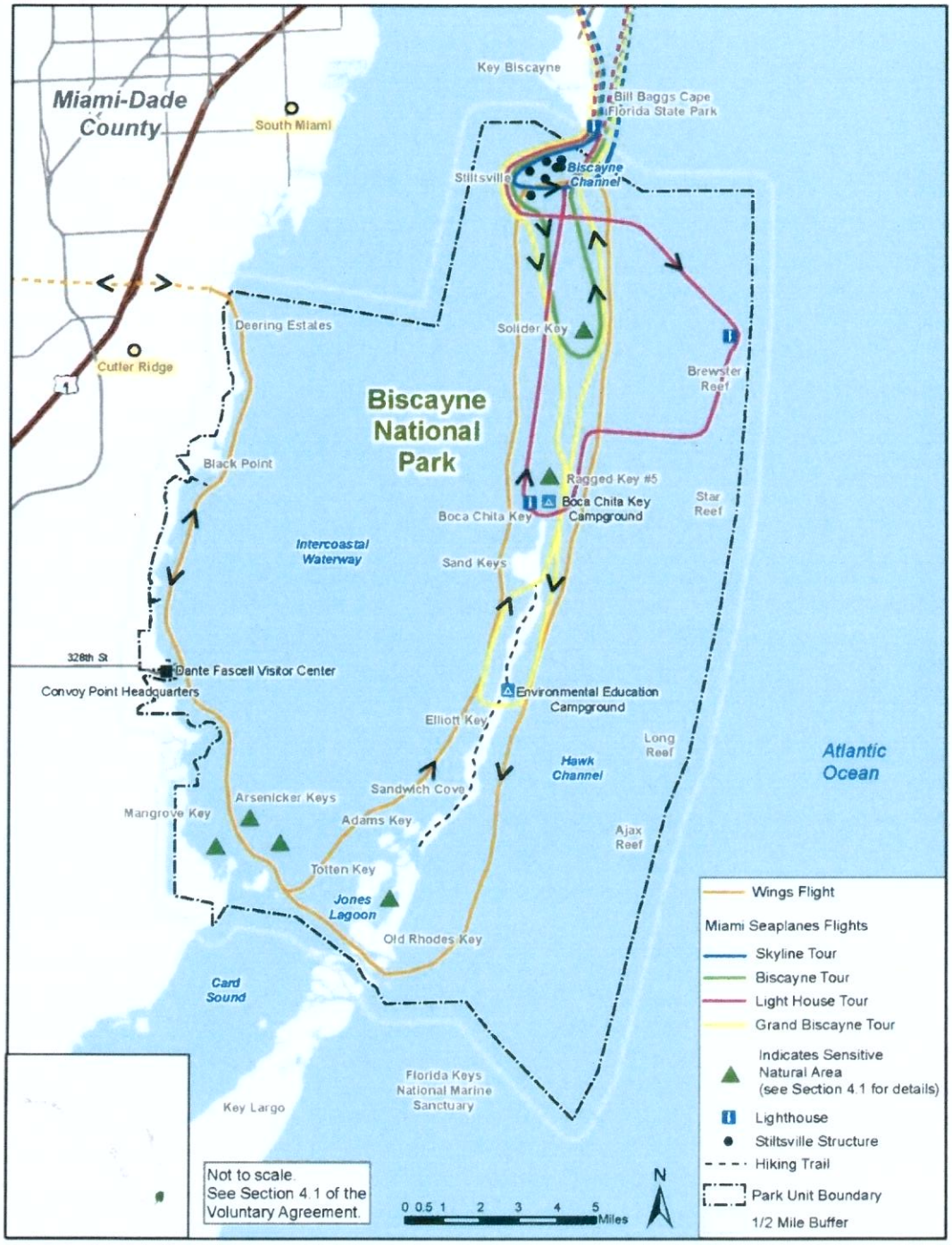
Figure 2. Air Tour Routes for Agreement