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Snake River Birds of Prey National Conservation Area Case Study

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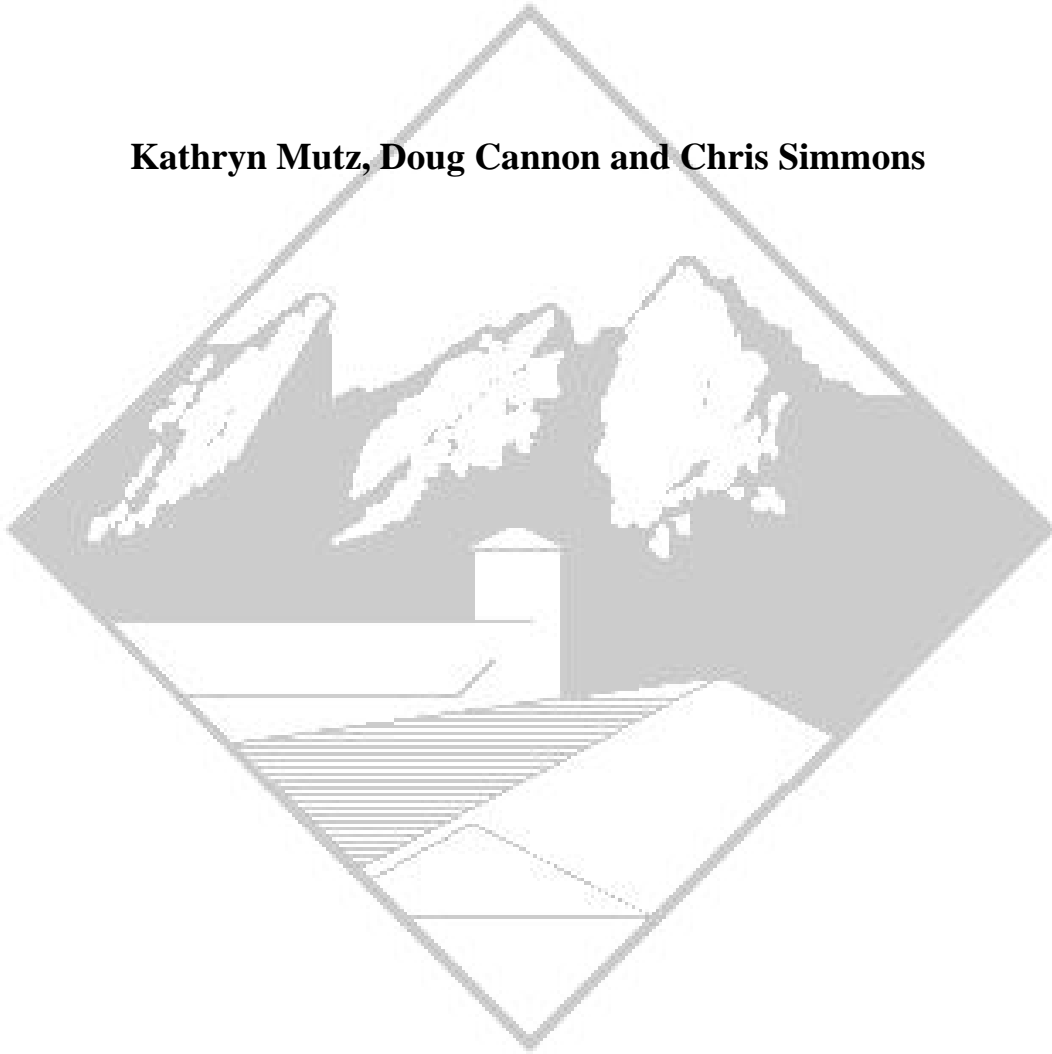
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**SNAKE RIVER BIRDS OF PREY
NATIONAL CONSERVATION AREA
CASE STUDY**

Kathryn Mutz, Doug Cannon and Chris Simmons



**Natural Resources Law Center
January 9, 2004**

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NCA ESTABLISHMENT

SRBP NCA Basics

The Snake River Birds of Prey National Conservation Area (the NCA) is located in southwestern Idaho about 30 miles south of Boise, Idaho along the Snake River. The area reaches into Ada, Canyon, Elmore, and Owyhee Counties, Idaho.¹ The area consists of about 485,000 or 757 square miles of public land managed by the Bureau of Land Management (BLM).² 65,000 are critical nesting habitat and 420,000 acres is prey habitat.³ There is an additional 41,000 acres of land held by the State of Idaho and 65,000 acres held by private parties within the boundaries of the conservation area.⁴ Also included within the area is about 81 miles of the Snake River.⁵ The NCA was established by Public Law 103-64 in 1993.⁶

The area was designated because it supported the greatest concentration of nesting birds of prey in North America, with about 700 raptor pairs nesting each spring.⁷ A unique combination of climate, geology, soils, and vegetation create an ecosystem for raptors and their small rodent prey,⁸ and, the area supported the densest ground squirrel population ever recorded.⁹ In addition to the unique population of birds of prey, the area has hundreds of cultural sites, some dating back as far as 12,000 years.¹⁰ Based on the unique population of birds of prey and the valuable cultural sites in the area it has been formally protected since 1971, though the form of this protection has changed over time.¹¹



Snake River Canyon above Swan Falls. Photo - Larry Ridenhour, BLM

¹ <http://www.Id.blm.gov/planning/srbp/facts.htm>, (June 24, 2003).

² *Id.*

³ <http://www.Id.blm.gov/bopnca/overview.htm>, (June 24, 2003).

⁴ <http://www.Id.blm.gov/bopnca/facts.htm>, (June 24, 2003).

⁵ <http://www.Id.blm.gov/planning/srbp/facts.htm>, (June 24, 2003).

⁶ Pub. L. No. 103-64 (1993), codified at 16 U.S.C.A. §460iii et seq (West 2003).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 16 U.S.C.A 460iii(1)-(3) (West 2003); 36 Fed.Reg. 20228 (1971).

Figure 1. Map of Snake River Birds of Prey National Conservation Area



two-thirds reduction in prairie falcons and a severe decline in Swainson's hawks.¹² Some of this decline was due to pesticide spraying in the Swainson hawk's winter habitat in Argentina, but much is blamed on the reduction in prey base in the NCA. Recent full canyon surveys (later in 2002 and 2003), however, suggest a rebound of prairie falcon nesting pairs to 218 and 213, respectively, from an all time high of 220 nesting pairs.¹³

Early Administrative Action

The NCA has a fairly simple history when compared to many areas with similar designations. In 1971, Secretary of the Interior Rogers C.B. Morton withdrew from all forms of appropriation under the public land laws, including mining, 26,310 acres of land in Ada, Canyon, Elmore, and Owyhee Counties, Idaho. These lands were designated the Snake River Birds of Prey Natural Area (the Natural Area).¹⁴ This withdrawal did not remove the lands from leasing under the Mineral Leasing laws and also did not withdraw the river portion of the area from use for hydroelectric projects.¹⁵

In 1972 the BLM conducted a year-round study on all the raptors in the newly created Natural Area in order to develop a management strategy.¹⁶ Research showed that the current size of the area only encompassed critical nesting areas and failed to include raptor hunting areas.¹⁷ These hunting areas were being disposed of fairly quickly under the Carey Act and the Desert Land Act¹⁸ to be converted to agricultural land which most believed would not support as large a raptor prey population. This led the BLM to issue an administrative moratorium in 1975 on the processing of any new Desert Land Act or Carey Act applications for a 278,227 acre area adjacent to the Natural Area, including 40 more miles of river canyon.¹⁹

After additional studies the BLM found that the raptors were using even more land for hunting than originally thought.²⁰ This prompted the Secretary of the Interior to issue a directive in 1977 that expanded the area by an additional 234,025 acres.²¹ The directive instructed the BLM and the Bureau of Reclamation to suspend all activities in the expanded area that might conflict or jeopardize raptor prey habitat until such time as a permanent boundary protection could be established through legislative action.²² The agencies were also instructed to have proposed

¹² Woodward, Tim, *Raptors along Snake River an increasingly rare sight. Fans hope to restore conservation area's main attractions*, Idaho Statesman, July 7, 2002.

¹³ Until 2002, the last full canyon survey had been in 1997. Limited surveys in subsequent years had shown a decline in prairie falcon nesting pairs to 140-150 pair. Segmentation of the study area indicated that some segments can support the same number of nests in good and bad (drought) years, but other segments cannot sustain the nests in years with poor prey production. NCA manager John Sullivan, telephone interview by Kathryn Mutz 12/8/03.

¹⁴ 36 Fed.Reg. 20228-20229 (1971); Public Land Order 5133 (Oct. 12, 1971).

¹⁵ *Id.* at 20229.

¹⁶ U.S. Dept. of the Int. and BLM, *Snake River Birds of Prey Final Environmental Statement*, 1-1, (1979) (hereinafter 1979 EIS).

¹⁷ *Id.*

¹⁸ *Id.*; In *Nelson v Kleppe*, 457 F.Supp. 5 (D. Idaho, 1976) (in a case against the Secretary of the Interior and BLM, the court decided that it was without jurisdiction to review a challenge to the Secretary's determination of lands as suitable for a certain agricultural classification subject to disposal under the Carey Act).

¹⁹ 1979 EIS at 1-1

²⁰ *Id.* at 1-2

²¹ *Id.* at 1-2

²² *Id.* at 1-2

Table 1. Snake River Birds of Prey Timeline and Abbreviations

Date	Designation (Abbreviation)	Action	Document or reference
1971	Snake River Birds of Prey Natural Area (Natural Area)	<i>Withdrawal:</i> 26,311 acres withdrawn from all forms of appropriation under public land laws, including mining laws, but not from mineral leasing laws	PLO 5133
1975	Natural Area extension	<i>BLM Administrative moratorium</i> on processing Desert Land and Carey Act applications on 278,277 acres; total of almost 305,000 acres protected	1979 EIS 1-1
1977	Snake River Birds of Prey Study Area (Birds of Prey Study Area)	<i>DOI Administrative action:</i> Memo from SoI to BLM and BOR to suspend all action in the study area (about 539,000 acres) that would jeopardize or conflict with the raptor prey habitat until a permanent natural area boundary is established; continue to allow uses that do not conflict; directed to prepare alternatives including proposed legislation that would permanently protect the area.	1979 EIS 1-2
1978	Proposed Birds of Prey National Conservation Area (Proposed NCA)	<i>Management Plan</i> prepared for Proposed Birds of Prey National Conservation Area (512,000 acres)	1978 Plan
1979	(Proposed NCA)	<i>EIS</i> proposed that 515,257 acres be designated the Snake River Bird of Prey National Conservation Area and be withdrawn from Mining Law, Desert Land Act, Carey Act, State of Idaho Admissions Act; Still available under Mineral Leasing Act and Geothermal Steam Act according to plan developed under FLPMA; Locatable minerals should be leasable; management continues under 1978 management plan	1979 EIS

Date	Designation (abbreviation)	Action	Document or reference
1980	Snake River Birds of Prey Area (Birds of Prey Area)	<i>Withdrawal:</i> 64,865 acres (essential nesting habitat) withdrawn from mining laws, but not mineral leasing laws; 417,775 acres withdrawn from agricultural land laws and State selection statutes (total 482,640 acres)	PLO 5777
1985	(Birds of Prey Area)	<i>Management Plan</i> prepared for Snake River Birds of Prey Area	1985 plan
1991	Snake River Bird of Prey National Conservation Area (NCA)	<i>H.R. 2141:</i> Bill eventually failed Same as subsequent P.L. 103-64 (H.R. 236), except P.L. 103-64 did not allow mineral extraction under mineral leasing, but did allow disposal of minerals from existing sites to continue	H.R. 2141
1992	(NCA)	<i>S. 1183:</i> NCA bill included in Kaysville land transaction bill; failed	S. 1183
1993	(NCA)	<i>H.R. 236, P.L. 103-64:</i> Withdrew 482,457 acres from mining law, Desert Land Act, Carey Act, State of Idaho Admissions Act, mineral leasing and geothermal leasing laws, and mineral material disposal laws, although materials still available from existing sites if compatible with purposes of the NCA	H.R. 236 Establishment legislation
1995	(NCA)	<i>1995 Snake River Bird of Prey National Conservation Area Management Plan:</i> incorporated the 1985 management plan and added management actions for shooting and access management; 484,873 acres	1995 plan
2001-2002	(NCA)	<i>NCA Resource Management Plan:</i> Preparations begun on new planning document	NCA RMP

There has been a significant decline in raptors and their prey base in recent years, but it is unclear whether this is a short-term fluctuation or a long-term decline.²³ In 2002, USGS biologists and Snake River Raptor Volunteers estimated a 15 percent decline in golden eagles,

²³ U.S. Dept. of the Int. and BLM, *Snake River Birds of Prey National Conservation Area Revised Management Plan*, scoping comment #3720, Lahsha, Johnston, The Wilderness Society.

management plans to the Secretary within two years, including proposed legislation for protecting the entire area, which now included about 538,000 acres of federal public land.²⁴

In 1976 the Natural Area became an “instant study area” under section 603 of the Federal Land Policy and Management Act (FLPMA), which required that lands formally identified as primitive or natural areas before November 1, 1975 be included in BLM’s wilderness review (about 27,000 acres). The Birds of Prey NA was one of three such areas in Idaho and 55 areas nation-wide. In March 1979 BLM recommended that this area and contiguous studied areas totaling about 161,000 acres be considered unsuitable for wilderness designation because naturalness was significantly impacted by a long history of power development, off-road vehicle (ORV) use, military training, agriculture and roads. Three individuals and one representative of The Wilderness Society criticized the agency’s review procedure (particularly the agency’s interpretation of “roads”) and objected to BLM’s proposed findings regarding three specific inventory units in the area. The comments indicated that similar criticisms might be applied to other inventory areas as well. Only one inventory unit, the Wild Horse Butte Unit, was discussed in any detail in these individual’s comments. In its comments, the Wilderness Society recommended reducing the size of this inventory unit. BLM finalized its inventory its original decision in August 1979. The area was reported to Congress as nonsuitable for wilderness in 1985.²⁵ In 1993, the NCA establishment legislation found that the public lands in the Natural Area had been adequately studied and had been found unsuitable for wilderness and therefore released the lands from further non-impairment management.²⁶ The legislation does not mention the remainder of the area studied for wilderness or the portion of the NCA that was apparently not studied.

The BLM issued a Final Environmental Statement in late 1979 (the 1979 EIS) proposing that 515,257 acres of federal public land be designated by Congress as the Snake River Birds of Prey National Conservation Area (the NCA).²⁷ The BLM also proposed that the lands be removed from disposition under the public land laws, including the hardrock mining laws, but that BLM lease minerals ordinarily locatable under the 1872 mining law.²⁸ The 1979 EIS recommended that the area remain open to mineral and geothermal leasing and grazing²⁹ and that the Idaho National Guard continue to use the lands for training. The area at that time had 66 lessees who grazed about 65,000 animal unit months (AUM’s) in the area.³⁰

The BLM’s proposal was controversial. There was widespread recognition of the unique raptor habitat in the area and most agreed that some protection was warranted. But some (e.g., Idaho Farm Bureau and Idaho Attorney General) expressed concerns about the amount of land involved in the BLM proposal, specifically upland prey habitat areas that would no longer be available for conversion to cropland.³¹ One headline in a local paper read “Potatoes or prairie

²⁴ *Id.* at 1-2, table 1-1

²⁵ U.S. Dept. of the Int. and BLM, *Idaho Wilderness Study Report*, Volume 5, Appendices, 1992 (SRBPNA Final Wilderness Report is Appendix V (1982)).

²⁶ 16 U.S.C.A. §460iii-5(b) (West 2003).

²⁷ 1979 EIS

²⁸ *Id.*

²⁹ *Id.* at 3-4.

³⁰ *Id.* at 2-20.

³¹ *Id.* at letters of comment (9-45).

falcons?”³² The Idaho Attorney General along with members of the Idaho State Senate also opposed the plan on the grounds that it would be too heavy a burden on agriculture in the area and on the grounds that the Department of the Interior had historically not dealt fairly with Idaho in deals that involved land swaps, as this plan likely would.³³ Governor John Evans did not oppose the plan, but he did raise questions about the impacts the plan would have on the local economy and traditional land uses in the area.³⁴

The Wilderness Society favored the plan, and even proposed a slight expansion. The Boise League of Women Voters also wrote in support of the plan. The Environmental Protection Agency supported an NCA designation, but questioned the BLM’s ability to protect the raptor and prey habitat based on existing uses in the area.³⁵ Overall the comments were mixed with most parties supporting some protection, but having reservations about the BLM’s specific proposal. One issue that was not contentious was the continued use of the area by the Idaho National Guard. The BLM environmental study cited the fact that the military had been using the area for training since 1953 and that it could continue to occur into the foreseeable future because the exercises did not adversely impact the land, raptors or prey species.³⁶

Then-Secretary of the Interior Cecil Andrus issued a public land order in 1980 creating the Snake River Birds of Prey Area (Birds of Prey Area).³⁷ This order withdrew 64,865 acres of the most critical nesting area from disposition under the federal mining laws, but kept it open to mineral and geothermal leasing.³⁸ In addition the order withdrew an additional 417,775 acres (raptor hunting area) from entry, application, or selection under the Desert Land Act, the Carey Act, or the Idaho Admission Act.³⁹ Secretary Andrus considered creating a “donut” around the military exercise ground and excluding it from the conservation area, but after discussions with the Sierra Club and the Audubon Society, who saw the military range as a compatible historic use, he decided to keep the practice grounds within the conservation area.⁴⁰

One of the main points that made the local farmers angry was the fact that the 1979 EIS proposed that the area previously available to farmers under the Desert Land Act and the Carey Act would no longer be available.⁴¹ This meant the farmers would have to pay \$200-300 per acre for private farmland instead of the \$1.25 per acre price for the federal lands.⁴² After Secretary Andrus followed the BLM recommendations and withdrew the area, local opponents took their case to Congress. Vernon Ravenscroft, President of the Sagebrush Rebellion (a local anti-expansion group), argued to protect agriculture while raptor expert Morlan Nelson argued that farming was not compatible with birds of prey. “They’re asking us to make great economic sacrifices for

³² Ken Slocum, Farmers, Ecologists Look to Washington to Resolve Fight Over Idaho Bird Reserve, Wall St. Jour., eastern ed., vol.104, s.2 pg.23 (Jan 30, 1981).

³³ 1979 EIS

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 3-6

³⁷ 45 Fed.Reg. 78688 (1980); Public Land Order 5777 (Nov. 21, 1980).

³⁸ Public Land Order 5777 (Nov. 21, 1980).

³⁹ *Id.*

⁴⁰ Subcom. on National Parks and Public Lands of the Comm. On Interior and Insular Affairs. U.S. H.R., *Hearings on H.R.2141*, 37, 102nd (Aug. 12 and Sept. 26, 1991).

⁴¹ U.S. Dept. of Int. and BLM, *SNAKE RIVER BIRDS OF PREY ENVIRONMENTAL STATEMENT*, 3-4, (1979).

⁴² *Id.*

birds that aren't an endangered species, and they haven't proved the same number of birds wouldn't exist with farm land."⁴³ On the other side of the argument bird expert Morlan Nelson said "we have to face the fact we can't have both farming and birds of prey, and if this expansion is turned down, mankind has made a terrible error."⁴⁴ The debate was so heated that Mutual of Omaha insurance company cancelled an episode of the TV show "Wild Kingdom" that focused on the Birds of Prey area. The company cited pressure from anti-expansion forces that thought the program would muster too much support for expansion of the area.⁴⁵

Later, the Sagebrush Rebellion, Inc. and a number of farmers seeking Desert Land Act claims brought a lawsuit challenging the NEPA process employed by the BLM and the failure of the Secretary to give proper notice of the administrative creation of the new conservation area.⁴⁶ After a number of procedural appeals involving parties seeking to intervene.⁴⁷ The 9th Circuit found the Secretary had acted within the required notice requirements of the Federal Land Policy Management Act (FLPMA).⁴⁸ The court found that all other claims brought by the Plaintiffs were without merit, including the NEPA claims, and affirmed the District Courts grant of partial summary judgment in favor of the Federal government.⁴⁹

Secretary Andrus made the withdrawals under Section 204 of FLPMA.⁵⁰ Because these withdrawals were over 5,000 acres they were valid for only 20 years.⁵¹ Therefore, congressional action was required in order to permanently protect the Birds of Prey Area. There does not appear to have been any effort to try and pass legislation at the time the report was released.

Initial Legislation – 1991

Congress waited until the 102nd Congress in 1991 to address permanent protection for the Birds of Prey Area.⁵² Representative LaRocco (ID) introduced H.R. 2141, a bill to establish the NCA.⁵³ H.R. 2141 had 46 cosponsors from both sides of the aisle.⁵⁴ The bill was unanimously approved by the Senate Committee on Energy and Natural Resources.⁵⁵

⁴³ Ken Slocum, *Farmers, Ecologists Look to Washington to Resolve Fight Over Idaho Bird Reserve*, Wall St. Jour., eastern ed., vol.104, s.2 pg.23 (Jan 30, 1981).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Sagebrush Rebellion, INC. v. Hodel*, 790 F.2d 760, 763, (9th Cir. 1986).

⁴⁷ *Sagebrush Rebellion, INC. v. Watt*, 713 F.2d 525 (9th Cir. 1983).

⁴⁸ *Sagebrush Rebellion, INC. v. Hodel*, 790 F.2d 760, 769, (9th Cir. 1986).

⁴⁹ 36 Fed.Reg. 20228-20229 (1971), Public Land Order 5133 (Oct. 12, 1971).

⁵⁰ H.R. Rep. No. 102-354 (II), 9-10, (Nov. 23, 1991); 43 U.S.C.A. §1714(a) (West 2003).

⁵¹ 43 U.S.C.A. §1714(c)(1) (West 2003).

⁵² Current SRBP NCA manager John Sullivan did not think it odd that it took over 10 years to get legislation. Telephone interview by Kathryn Mutz 12/8/03.

⁵³ Subcom. on National Parks and Public Lands of the Comm. On Interior and Insular Affairs. U.S. H.R., *Hearings on H.R.2141*, 2-16, 102nd, (Aug. 12 and Sept. 26, 1991).

⁵⁴ Bill summary and Status for 1-2nd Congress, H.R. 2141.

⁵⁵ The bill was approved in an en bloc vote, but if voted on individually, it would have been 19 to 1 with only Wellstone (D- MN) opposed. Committee on Energy and Natural Resources: Johnston, Bumpers, Ford, Bradley, Bingaman, Wirth, Conrad, Akaka, Fowler, Shelby, Wellstone, Wallop, Hatfield, Domenici, Murkowski, Nickles, Burns, Craig, Seymour, and Garn

Hearings were held in Washington, D.C., and Boise, Idaho. During the Hearings in Boise a majority of those commenting were in favor of the bill. Only two groups expressed any opposition to the bill. First, the Idaho Cattle Ranchers Association was concerned that the size of area was excessive and they wanted to make sure provisions were included in the legislation that allowed grazing to continue at current levels, which at the time of the hearing was about 50,000 AUMs.⁵⁶ The Idaho Farm Bureau supported the bill on condition that Idaho water law applied in the conservation area, that existing water rights retained their priority, and that increased regulation in the area not lead to banning some agricultural practices.⁵⁷ In the end the way in which water was to be dealt with was one of the biggest points of controversy.⁵⁸

One of the most adamant supporters of the bill was the Idaho Governor, who happened to be Cecil Andrus, the same individual who had administratively created the area in 1980. He spoke out strongly in favor of the area and believed that the area could be managed to both protect the raptors and preserve the agricultural and ranching heritage in the area.⁵⁹ In addition the Idaho Department of Fish and Game supported the measure⁶⁰ as did numerous land and raptor conservation groups.⁶¹ Another group of support came from the archeological camp.⁶² Besides just being prime raptor habitat the area also contained a number of important historical and cultural sites, including petroglyphs.⁶³ These groups spoke out in strong support of the reservation of the area to make regulation and preservation of the historic sites easier.

The military use of the area as a practice range was, again, not a particularly controversial issue. Many saw the military range in terms of strict benefits. It brought millions of dollars to the area, it provided fire protection to a large portion of the conservation area, and the military provided its own environmental officer to help in the preservation of the area. All of these additional resources only helped the area. In most people's view the use of tanks had no impact on the raptors hunting patterns.⁶⁴ One of the few to speak directly to the military use issue was General Manning of the Idaho National Guard who spoke in favor of the continued use of the military area.⁶⁵ A spokesman for the International Council for Bird Preservation and the Raptor Research Foundation, however, cautioned that not enough was known about the impacts of military activity and recommended that a study of impacts be conducted.⁶⁶ One issue surrounding the military use of the land that had been debated, and was debated in this case, is under section 302(b) of FLPMA federal military troops cannot use public lands without the issuance of a right of way or a formal withdrawal.⁶⁷ If the area is used during peacetime and is

⁵⁶ Subcom. on National Parks and Public Lands of the Comm. On Interior and Insular Affairs. U.S. H.R., *Hearings on H.R.2141*, 90-98, (Aug. 12 and Sept. 26, 1991) [hereinafter H.R. 2141 Hearings].

⁵⁷ *Id.* at 99

⁵⁸ *Id.* at 90-98,99,174-175,191

⁵⁹ *Id.* at 27-36

⁶⁰ *Id.* at 102

⁶¹ *Id.* at 70, 80, 100

⁶² *Id.* at 99, 165, 181

⁶³ *Id.* at 157-164

⁶⁴ *Id.* at 26-37

⁶⁵ *Id.* at 44

⁶⁶ *Id.* at 136. At the same hearing, Scott Reed, National Audubon Society expressed a sense of comfort with the on going military training because a \$5.5 million research study on the military training had commenced. *Id.* at 73.

⁶⁷ 43 U.S.C.A. §1732(b) (West 2003).

over 5,000 acres legislation is required in order for the military to use the area.⁶⁸ In this case the Department of the Interior classified a national guard unit as a state organization and not a federal organization and therefore could allow military use of the area with just a memorandum of understanding (MOU).⁶⁹ The State of Idaho, the BLM, and the Idaho National Guard signed a 30-year MOU in 1985.⁷⁰ Some Congressmen have disputed this practice of treating federal troops differently than state troops.⁷¹

This bill eventually made it to the floor of the House and was passed.⁷² The Senate also passed the bill in an amended form, but no final action was taken prior to sine die adjournment.⁷³ During the second session of the 102nd Congress, Senators Garn (R-UT) and Hatch (R-UT) presented a bill for the purpose of conveying land to the City of Kaysville, Utah.⁷⁴ S. 1183 was soon passed by the Senate and sent on to the House for consideration.⁷⁵ When the bill reached the House it underwent significant amendments in committee. One amendment added a section creating the NCA.⁷⁶ This bill was passed by the House and was referred back to the Senate for consideration of the House amendments.⁷⁷ When the Senate took up the bill again, Senators Ford (D-KY) and Bumpers (D-AR) proposed a new amendment that struck a majority of the House language including the provisions for the establishment of the NCA.⁷⁸ These amendments were passed by the Senate but were never taken up by the House and the bill died without further action.⁷⁹

Little is known about the political history of this bill because it was an amendment added in committee along with a large number of other amendments. In addition the bill was buried in another bill and does not appear to have received a lot of attention. Apparently, there was no congressional debate on the Snake River Birds of Prey portion of the bill and the House committee report does not make specific references to the bill outside the printing of the bill provisions.⁸⁰

Final Legislation – 1993

In 1993 Congress once again took up the issue of formally creating the NCA. Representative LaRocco and George Miller (D-CA) cosponsored H.R. 236, a bill very similar to H.R. 2141

⁶⁸ 43 U.S.C.A. §156 (West 2003), This is known as the Engle Act.

⁶⁹ H.R. Rep. No. 102-354(II), 10, (Nov. 23, 1991).

⁷⁰ *Id.*

⁷¹ Subcom. on National Parks and Public Lands of the Comm. on Interior and Insular Affairs. U.S. H.R., *Hearings on H.R.2141*, 54-55, 102nd, (Aug. 12 and Sept. 26, 1991).

⁷² H.R. Rep. No. 103-80(I), 16, (May 6, 1993); 137 Cong. Rec. Index, 3576 (1991).

⁷³ *Id.*

⁷⁴ 137 Cong. Rec. Index, 3426 (1991).

⁷⁵ H.R. Rep. No. 103-80(I), 16, (May 6, 1993); 137 Cong. Rec. Index, 3576 (1991).

⁷⁶ H.R. Rep. No. 102-944, 13, (Sept. 29, 1992) compared to S. Rep. No. 102-208, (Nov. 12, 1991).

⁷⁷ 138 Cong. Rec. Index, 2430 (1992).

⁷⁸ 138 Cong. Rec. 33781 (1992).

⁷⁹ 138 Cong. Rec. Index, 2430 (1992).

⁸⁰ There is some speculation that the Snake River Birds of Prey amendment was attached in the House Interior and Insular Affairs Committee by Rep. Lagomarsino who is a member of the committee and was a strong supporter of creating the Snake River Birds of Prey National Conservation Area. He had previously spoken of his support for the area, see 137 Cong. Rec. 11075-11076 (1991).

which had failed during the previous Congress.⁸¹ The bill was passed by both the House and the Senate and signed by the President as Public Law 103-64.⁸²

The bill that created the NCA was very similar to both the final version of H.R. 2141 and to S. 1183 from the previous congress. The NCA legislation withdrew the entire NCA area from all forms of entry, appropriation, or disposal under the public land laws and from entry, application, and selection under the Desert Land Act, the Carey Act, the Idaho Admissions Act, and school section exchange statutes⁸³ in order to prevent conversion of raptor prey habitat to private agricultural use.⁸⁴ The law also included provisions for the Secretary to conduct a land acquisition program to acquire, through voluntary means, private lands within the conservation area.⁸⁵ It specified, however, that the Secretary has no authority to “restrict recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.”⁸⁶ Further, it made clear that grazing was to continue in the area unless the Secretary determined that the levels of grazing were inconsistent with the purposes for which the area was established.⁸⁷

The legislation also withdrew all the lands within the conservation area from location under the general mining law, as well as operation of the mineral and geothermal leasing laws.⁸⁸ Provisions regarding withdrawals from mineral development had evolved in H.R. 2141. As introduced, H.R. 2141 would have only withdrawn the original Natural Area from the mining laws, but not the mineral leasing or geothermal leasing laws. Previously locatable minerals found outside this “essential nesting area” would have been leasable under the first version of the bill.⁸⁹ The final version of H.R. 2141 and the final legislation withdrew the entire NCA from both the mining and mineral leasing laws subject to valid existing rights. The final legislation

⁸¹ See H.R. 236 Cosponsors and Status; Committee on Energy and Natural Resources votes in favor of the bill: Johnston, Ford, Bradley, Bumpers, Bingaman, Akaka, Shelby, Wellstone, Campbell, Mathews, Wallop, Hatfield, Domenici, Murkowski, Nickles, Craig, Bennett, Lott. Geoff Webb, special assistant to the Director of BLM spoke in favor of the bill; Secretary of the Interior Babbitt & BLM Director Baca were mentioned as committed to exploring new ways of managing public lands, including the expanded use of NCA designations.

⁸² Pub. L. No. 103-64 (1993), codified at 16 U.S.C.A. §460iii *et seq* (2000).

⁸³ 43 U.S.C.A. §851 (West 2003), 43 U.S.C.A. §852 (West 2003).

⁸⁴ H.R. Rep. No. 102-944, 15, (Sept. 29, 1992).

⁸⁵ 16 U.S.C.A. §460iii-4 (2000); Land exchanges have taken place and land acquisition with Land and Water Conservation Fund money has been used to help acquire inholdings. Some NCA lands near the boundary have been exchanged for this purpose.

⁸⁶ 16 U.S.C.A. §460iii-3(h) (West 2003).

⁸⁷ 16 U.S.C.A. §460iii-3(f) (West 2003).

⁸⁸ H.R. Rep. No. 102-944, 15, (Sept. 29, 1992).

⁸⁹ H.R. 2141 §3(d)(2) “(2) Subject to valid existing rights, that portion of the conservation area identified as ‘essential nesting habitat’, as generally depicted on the map referred to in subsection (b), shall continue to be withdrawn from operation of the mining laws of the United States but not the mineral and geothermal leasing laws, and mineral exploration and development under the mining laws of the United States and regulations thereunder are prohibited. Minerals located outside the ‘essential nesting habitat’ that would otherwise be subject to disposal under the mining laws of the United States after the date of enactment of this Act may be disposed of only by lease through regulations promulgated by the Secretary. Such leases, as well as leases issued under the Mineral Leasing Act (30 U.S.C.A. 181 *et seq.* (West 2003)), the Mineral Leasing Act for Acquired Lands (30 U.S.C.A. 351 *et seq.* (West 2003)), or the Geothermal Steam Act of 1970 (30 U.S.C.A. 1001 *et seq.* (West 2003)) shall contain such stipulations and conditions as the Secretary deems necessary to comply with the provisions of the management plan for the conservation area.”

added a specific allowance for material disposal to continue at existing sites to the extent that this extraction was compatible with the purposes of the NCA.⁹⁰

The law also addressed water issues, but provided no specific protection for water of the NCA. The law acknowledged an on-going water adjudication in the Snake River Basin and made clear that the Secretary and other federal officials were to “take all steps necessary to protect all water rights claimed by the United States.”⁹¹ But the final legislation also stated that because of the on-going Snake River adjudication, “there is no need for this Act to effect a reservation by the United States of rights with respect to such waters in order to fulfill the purposes for which the conservation area is established.”⁹² This provision was added to H.R. 2141 during the 102nd Congress. Regarding development of water resources for energy, the law specified that the Federal Energy Regulatory Commission retained all of its “current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed and unlicensed under the Federal Power Act located within the boundaries of the conservation area.”⁹³

The legislation creating the conservation area also allowed for the continued use of the Orchard Training Area (OTA) within the conservation area for live-fire training by the Idaho National Guard. The statute requires the Secretary to review results of an on-going study on the effects of the military maneuvers on the raptors and to adjust its management plan as necessary. Pending that reevaluation, the law authorized continued military use of the OTA under an existing memorandum of understanding between the BLM and the Idaho National Guard.⁹⁴

In addition to specific land use directives, the law also found that the public lands in the Natural Area had been adequately studied and had been found unsuitable for wilderness; it, therefore, released the lands from further non-impairment management.⁹⁵

Finally, the law also required the Secretary to create a management plan for the area to “identify the levels, types, timing, and terms and conditions for the allowable nonmilitary uses of the lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established.”⁹⁶ The law’s requirements for management and BLM’s management of the area are discussed in more detail in the following section.

⁹⁰ 16 U.S.C.A. §460iii-2(d) (West 2003).

⁹¹ H.R. 2141 §6(d)(4), 102nd Congress, (1991); 16 U.S.C.A. §460iii-5(d)(4) (West 2003).

⁹² H.R. 2141 §6(d)(1), 102nd Congress, (1991); 16 U.S.C.A. §460iii-5(d)(1) (West 2003).

⁹³ 16 U.S.C.A. §460iii-3(i) (West 2003).

⁹⁴ 16 U.S.C.A. §460iii-3(e) (West 2003); At the time the bill was passed the Idaho National Guard was using about 135,000 acres for training, this had been reduced from a high usage of about 200,000 acres. The reduction came when the military agreed to remove training from critical nesting grounds.

⁹⁵ 16 U.S.C.A. §460iii-5(b) (West 2003).

⁹⁶ 16 U.S.C.A. §460iii-3(b)(7) (West 2003).

MANAGEMENT PLANS

Management Requirements of the NCA Legislation

Pre-NCA Legislation Management

What is now the NCA has been managed through a series of plans over the last several decades. In 1977, Secretary of the Interior Cecil Andrus issued a directive requiring BLM to suspend all actions that might in any way jeopardize raptor prey habitat in the Birds of Prey Area.⁹⁷ BLM then developed its first management plan specifically for the Birds of Prey Area. In 1979, BLM finalized an EIS for the Proposed Birds of Prey National Conservation Area (proposed NCA). After completing the 1979 EIS, BLM completed five land use plans addressing different portions of the proposed NCA – Owyhee Management Framework Plan (MFP) in 1981, Bruneau MFP in 1983, Kuna MFP in 1983, Jarbidge Resource Management Plan (RMP) in 1987, and Cascade RMP in 1988. An RMP replaced the Owyhee MFP in the late 1990s. These plans were developed to be compatible with the proposed NCA designation. In 1985, BLM developed the Snake River Birds of Prey Area Management Plan (1985 plan) consistent with decisions of the SRBP NCA EIS (1979), the 1979 Agricultural Development for Southwest Idaho EIS, and the 1983 Bruneau-Kuna Grazing EIS.

NCA Legislative Standards

The NCA legislation requires that the area be managed:

to provide for the conservation, protection and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area.⁹⁸

The “Management and Use” section of the legislation⁹⁹ specifically provides that the Secretary should allow “only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the Conservation Area is established” with two major exceptions. One exception was that NCA lands were completely withdrawn from some uses, basically assuming that they would not further the purposes of the NCA (i.e., disposal of land for farming, mining, mineral leasing). Second, management of the NCA for visitor use, National Guard use, and livestock grazing need not “further the purposes” of the NCA. Uses in these three categories would only be precluded if the use were “not compatible” with the purposes of the NCA. Congress specifically noted that this was a meaningful distinction.¹⁰⁰

According to the establishment legislation the management plan in the area should meet five criteria:¹⁰¹

1. The plan should emphasize management, protection, and rehabilitation of habitat for the raptors and of other resources and values of the area.

⁹⁷ U.S. Dept. of Int. and BLM, *Snake River Birds of Prey National Conservation Area Management Plan*, 10, (1995) (hereafter 1995 plan).

⁹⁸ 16 U.S.C.A. §460iii-2(a)(2) (West 2003) (emphasis added).

⁹⁹ 16 U.S.C.A. §460iii-3 (West 2003).

¹⁰⁰ S. Rep. No. 102-481, 15, (Oct. 8, 1992); H.R. Rep. No. 102-354, 13, (Nov. 22, 1992).

¹⁰¹ 16 U.S.C.A. §460iii(5)(A)-(E) (West 2003).

2. The plan should provide for continued military use to levels that do not pose a threat to raptor populations or habitats
3. The plan must address the need for public education and provide interpretive opportunities
4. The management plan must allow for diverse uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and
5. The plan should demonstrate management practices and techniques that may be useful to other areas of the public lands and elsewhere.

The plan also provided that area management plans were to assess the desirability of assessing fees, including recreation fees, for using the area.¹⁰²

Following designation of the NCA in 1993, the BLM prepared the 1995 Snake River Birds of Prey National Conservation Area Management Plan (1995 plan). The 1995 plan also calls for review of existing authorizations as they expire to determine whether renewal or reauthorization is consistent with purposes of the NCA. In the 1995 plan, BLM recognizes protection of raptors and their nests (cliffs and riparian areas) from disturbance during the nesting season, and protection, restoration or enhancement of prey and prey habitat (including ground squirrels, jack rabbits, riparian habitat) as the main management objectives. Before designation of the NCA, the nesting area of the Snake River canyon had been protected through special management as the Birds of Prey Natural Area. The importance of formally protecting the habitat of prey species was officially recognized in the expansion of the natural area (to almost 305,000 acres) in 1975. 482,640 acres were eventually withdrawn in 1980 in anticipation of the NCA designation which totaled 482,457.

The 1995 plan incorporates much of the 1985 plan, including management actions of the 1985 plan that were not completed because of staffing and funding limitations.¹⁰³ The only elements of management new to the 1995 plan were shooting and access management proposals. The 1995 plan was originally intended to be followed in 1996 with a new plan, but the Record of Decision for the 1995 plan concluded that the 1995 plan fully satisfied the legislative requirement for preparing a “new” management plan by January 1, 1996.¹⁰⁴ Part of the justification for not preparing a completely new plan was that limited funding and staff were available for management of the NCA and would be better spent on management than on planning.¹⁰⁵

The 1995 plan, currently in effect, is an “activity level” plan that conforms with, and is used in conjunction with the five existing land use plans.¹⁰⁶ The plan has five management goals, developed from the management direction found in section 3(b) of the SRBP NCA legislation:

¹⁰² 16 U.S.C.A. §460iii-3(b)(8) (West 2003). According to current NCA manager John Sullivan, fees aren’t practical because of the many access points for use of the area. A fee may be instituted in the Cove area because of new improvements being developed. Telephone interview by Kathryn Mutz 12/8/03.

¹⁰³ *Id.* at i.

¹⁰⁴ 16 U.S.C.A. § 460iii-3(a)(1)(A) (West 2003).

¹⁰⁵ 1995 plan at 11 (preparing the new plan would “decrease other management capabilities, while not providing substantial benefit.”).

¹⁰⁶ Environmental Statements; Notice of Intent (to prepare a SRBP NCA RMP), 66 Fed. Reg. 41263, 41264 (2001).

- provide for conservation, protection, and enhancement of raptor populations and habitats, and the scientific, cultural and educational resources and values of the NCA;
- provide for continued and diverse public uses that are consistent with the objectives of protecting raptor populations, conserving and enhancing their habitats and properly managing other resources and values of the NCA;
- coordinate research and studies of raptors, raptor prey and their habitats;
- demonstrate vegetation and habitat management and enhancement practices and techniques that may be applied elsewhere; and
- enhance public understanding of and appreciation for natural processes and special resources and values through public education and interpretive programs.¹⁰⁷

The 1995 plan recognizes that the NCA designation withdrew the area from entry, appropriation, disposal, and selection under a variety of land laws. Consequently, applications filed under the Desert Land Act, the Carey Act, the State of Idaho Admissions Act, and school section exchange statutes¹⁰⁸ are automatically rejected. All other new applications for use of the public lands in the NCA are evaluated for consistency with the purposes of the NCA. These include anything from placement of temporary beehives on public land and requests for rights-of-way for pipelines, power lines and roads to requests for land exchanges or disposal under the Recreation and Public Purposes Act.¹⁰⁹

The establishment legislation required a review of the plan at least once every 5 years and make revisions as appropriate.¹¹⁰ On August 7, 2001, the Department of the Interior published a Notice of Intent to prepare a Resource Management Plan (RMP) and an environmental impact statement (EIS) for the NCA. While this plan – the NCA RMP – will replace the management decisions made in the existing five land use plans and the 1995 plan, it will not be as detailed as the 1995 "activity level" plan. An Interagency Coordination Group is currently developing alternatives for the new plan.¹¹¹ BLM is currently developing alternatives for the new plan¹¹² and expects to finish a draft plan in late 2004. A final plan should be in place by mid-2006. In addition, BLM may develop a specific activity level plan for travel by 2006 or 2007¹¹³ and for recreation.¹¹⁴

The 1995 plan indicated that many of the management activities of the 1985 plan had not been implemented. This continues to be a problem and NCA manager, John Sullivan, indicated that this was largely due to lack of funding. The establishment legislation authorized appropriations,¹¹⁵ but little funding has been forthcoming. Sullivan indicated that the NCA budget was \$100,000 – 200,000 per year. His current staff includes himself, an outdoor recreation planner, a

¹⁰⁷ 1995 plan at 6-7.

¹⁰⁸ 43 U.S.C.A. §851 (West 2003) and 43 U.S.C.A. §852 (West 2003).

¹⁰⁹ Pub.L. No. 100-648.

¹¹⁰ 16 U.S.C.A. § 460iii-3(a)(1)(B) (West 2003).

¹¹¹ Interagency Coordination Group Meeting Notes, <http://www.Id.blm.gov/planning/srbp/index.htm>, (July 30, 2003), (last visited Nov. 6, 2003).

¹¹² Alternative Development Process Meeting Schedule, <http://www.Id.blm.gov/planning/srbp/index.htm>, (last visited Nov. 6, 2003).

¹¹³ Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03.

¹¹⁴ Telephone interview with Larry Ridenhour, NCA recreation planner by Kathryn Mutz 12/16/03.

¹¹⁵ 16 U.S.C.A. § 460iii-6 (West 2003).

wildlife biologist, and an environmental education specialist/volunteer coordinator (this position used to be a park ranger). During the NCA RMP development process, they also have a GIS specialist. Aid of other specialists can be obtained from other BLM areas. Sullivan indicated that NCA designation was a double edged sword – it increased the profile of the area resulting in attracting more people (especially national and international visitors) without providing more funding for dealing with resulting management problems.¹¹⁶

MANAGEMENT ISSUES

As indicated, the NCA is currently managed under the 1995 plan. This plan addressed several issues directly related to the raptors and their habitat and additional issues peripheral to the central purposes of the NCA designation.¹¹⁷ The 2003 NCA RMP process recognizes many of the same issues in the “public issue statements” developed in the process.¹¹⁸ Major management issues identified in the 1995 management plan and reiterated in the 2003 NCA RMP planning process are:¹¹⁹

1. Native vegetation, which supports the raptors’ prey species, is being replaced by exotic species. The 1995 plan identifies wildfires, historic overgrazing, and ORVs as the major contributing factors to this poor ecological condition. The 1995 plan includes a general strategy for restoring the vegetation, but restoration of exotic annual dominated communities is extremely difficult, especially during the periods of drought that the area periodically experiences.¹²⁰ The NCA RMP process reiterates concern for the deterioration of perennial plant communities and the raptor prey base. Impacts or potential impacts on soils stability, water quality, riparian habitat, and watershed health are attributed to military training, grazing, recreation (ORVs), and other uses. The NCA RMP issue statements also recognize that existing land use plans do not adequately address protection, enhancement and restoration of native communities and that fire management is needed to protect both native wildlands and urban/rural interfaces. Scoping comments for the NCA RMP criticize the condition of the NCA and challenge the BLM to focus on restoration of the area. The NCA manager indicated that the only

¹¹⁶ Telephone interview by Kathryn Mutz 12/8/03. The area population (Treasure Valley?) is expected to double again in the next 15 to 20 years.

¹¹⁷ The peripheral issues – sensitive species (other than raptors), non-game wildlife, game management, water quality management, and cultural resources – are not discussed further in this report.

¹¹⁸ Public Issue Statements, <http://www.blm.gov/planning/srbp/index.htm>, (last visited Nov. 11, 2003).

¹¹⁹ 1995 Plan at 7-9.

¹²⁰ The general strategy for restoring vegetation of the area includes:

- protect and restore native plant communities by finding effective biological, chemical and mechanical controls for exotic plants;
- develop and apply new techniques for reestablishing native vegetation;
- reestablish prey species-appropriate non-native vegetation where native vegetation cannot be reestablished because of site conditions, cost or lack of native seed;
- develop an overall conservation/rehabilitation plan for the NCA that incorporates specific guidance from the 1995 plan and integrates related existing plans related to shrub restoration, noxious weeds, greenstripping, fire, and rehabilitation;
- prioritize treatment areas on the basis of site potential and ecological status; and
- develop an overall monitoring plan for the NCA to address the specific needs described in the plan and integrate monitoring requirements for all resources.

funding available for restoration has been related to fire. He hopes that Department of Defense money will become available for some restoration projects (see Military Use discussion, below).¹²¹

1. According to the 1995 plan, human activity/disturbance is directly detrimental to raptors and the prey species on which they depend. The human activity at fault includes authorized recreation use, unauthorized use (agricultural and livestock trespass, vandalism, trash dumping, illegal OHV use, illegal shooting, etc.), and research activities.¹²² Various NCA RMP public issue statements recognize the need to manage recreation, grazing, military use and wildlife to be compatible with raptor populations and their habitats. The public issue statements also recognize increased demand for road, utility and communications services as potential problems that must be addressed in conjunction with other levels of government. Scoping comments suggest that the entire area be closed to visitation during critical times for raptor reproduction, that all recreational shooting be eliminated, and that military use of the area be restricted.¹²³
2. The 1995 plan notes that with increased use of the area, conflicts within and among user groups are increasing (recreation and grazing, grazing and military, military and recreation, research and other uses) from both authorized and unauthorized activities and that BLM does not have the staff or funding to adequately monitor or police use of the NCA. The NCA RMP process re-raises the issue of conflict in its public issue statement on socio-economics. The statement notes that current land use and recreation trends may affect traditional (grazing, minerals, farming, etc) uses and values. The statement questions how BLM can manage allowable uses, emerging activities and traditional uses for sustainable use and resource health and to maintain the "custom, culture and economic health" of local communities. Scoping comments during the NCA RMP process indicate that conflicts between user interests remain. Recommendations run the gamut from closing all or part of the NCA to various uses (e.g., shooting, grazing or ORV use) to confining raptors to the NCA in order to avoid conflicts with hunting.¹²⁴

Grazing

Congress recognized that the NCA area had been used for livestock grazing for over a century prior to establishment of the conservation area. The ranchers had come to rely on this land, and the land and the ranchers contributed to the economic stability of the local community and the state. Based on this Congress declared that grazing was expected to continue in the area in accordance with applicable regulations and management plans. Congress specifically stated, however, that grazing could only continue if it remains compatible with the purposes for which the conservation area was created.

¹²¹ Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03.

¹²² Specific problematic activities (authorized or unauthorized) include: hiking and rock climbing disturb nesting activities; dropping objects from cliffs; ORV driving can cause nest abandonment or destruction; taking of birds for falconry; shooting firearms; and pesticide use. (1995 plan at 29).

¹²³ U.S. Dept. of the Int. and BLM, *Snake River Birds of Prey National Conservation Area Revised Management Plan*, scoping comment 3740, Johnston, TWS.

¹²⁴ *Id.* at scoping comment 3720, unidentified commentor ("keep raptors within the birds of prey boundaries and away from private and state lands there for eliminating raptor feeding on state birds and animals- including sage hens.").

H.R. 2141, the first NCA proposed legislation provided only that grazing in the NCA would remain subject to the Taylor Grazing Act and that grazing could continue in that part of the OTA outside the Artillery Impact Area. An amendment by Senator Craig changed this provision to provide that “grazing will occur on public lands within the conservation area to the extent the Secretary determines such use of such lands is compatible with the purposes for which the conservation area is established.”¹²⁵ Essentially the same language was enacted in 1993 through S.B. 236. Grazing use of the NCA never appeared to be a major question. Even conservationist proponents of the NCA – including one from the National Audubon Society – observed that grazing could be compatible with and even beneficial to the raptors of the area. In an economic analysis of the proposed SRBP NCA in 1980, the economists note that “Cattle grazing and raptor habitat are compatible. The cattle keep the vegetation short, enabling the raptors to view their prey more easily.”¹²⁶ Congress was also clear in its discussion of the bill that grazing management need not enhance raptor habitat, but simply could not be incompatible with the raptors.¹²⁷ This acceptance of livestock grazing as a compatible use of the NCA is in direct contrast to almost universal recognition that allowing conversion of public lands to private farming would not be compatible with the purposes of the NCA.

The entire NCA has been grazed heavily since the mid-1800’s. Historic overgrazing, especially from post-World War I to the mid-1930s, caused a depletion of native perennial grasses and increases in exotic species. Range improvement practices, better distribution of water, and very low numbers of cattle and steady decline in sheep numbers reduced pressure on the range for several years following the crash in the 1930s. The quality and productivity of the range improved substantially since the 1930s. Since World War II, allotted AUMs steadily increased on Idaho ranges. BLM and Forest Service cattle and horse AUMs grew from 711,000 in 1951 to 789,000 in 1961 and 931,000 in 1971. Sheep numbers steadily declined from 960,000 in 1947 to 693,000 in 1961 to 534,000 in 1971 and 494,000 in 1974. The sheep decline was partly due to a shortage of sheep herders due to changes in immigration laws.¹²⁸

Currently, the dominant species present in shrub communities is cheatgrass, and Sandberg bluegrass. In many areas the native perennials have been depleted to the point that livestock operators depend on cheatgrass as their primary forage species for cattle. Although cheatgrass is a good forage species, it only provides good forage for a few weeks of spring. Cheatgrass is highly sensitive to soil moisture leading to highly variable annual forage production. Even in a good year, it dries quickly and is prone to burn.¹²⁹ In its 1979 EIS, BLM notes that the change in plant species structure resulting from historic grazing gave rise to abundant prey populations. This, in turn, has helped raptor populations immensely. The 1995 management plan notes that although historic overgrazing by livestock has depleted the dominant native perennial grasses,

¹²⁵ H.B. 2141 §4(f), 102nd Cong. (1991).

¹²⁶ Dickerman, Alan and Douglas Stone, *An Economic Analysis of the Snake River Birds of Prey Conservation Area*, Presented to the 14th Annual Pacific Northwest Regional Economics Conference, (May 2, 1980).

¹²⁷ S. Rep. No. 102-481, 15, (Oct. 8, 1992).

¹²⁸ Yensen, Dana, *A Grazing History of southwestern Idaho with emphasis on the Birds of Prey Study Area*, 45-57, USDI-BLM, Snake River Birds of Prey Research Project, (1982).

¹²⁹ *Officials Worry About Golden eagles and Prairie Falcons*, Associated Press, (June 1, 2002). Cheatgrass goes dry by July and then the ground squirrels that the raptors rely on for food get lower nutrition from the dry grasses.

properly managed grazing can be compatible with healthy shrub and grass communities.¹³⁰ It also recognizes that drought can prevent vegetation from recovering from spring grazing and can lead to further replacement of native vegetation with undesirable exotic annuals. Several years of drought have plagued the area. This in turn impacts squirrel populations. To try to understand and remedy this situation, a conference was held to look at ways in which to protect areas yet to be impacted and to revegetate areas affected by the non-native species.¹³¹

In 1980, 66 permittees were allotted 65,000 AUMs in the 515,257 acre NCA study area. In 1985, a total of 24 grazing allotments supported 70 permittees with 45,968 AUMs. 80% was used by cattle, while 20% was used for sheep. In 1995, 71 operators ran livestock on 27 separate allotments located entirely or partially within the slightly smaller (484,873 acre) NCA. 66,500 AUMs were allocated on these allotments within the NCA. Grazing within specific allotments is managed by the resource area in which the allotment is located. The Sunnyside Spring/Fall and Sunnyside Winter allotments north of the Snake River comprise about three-quarters of the public land in the NCA.

A few problems with management of grazing in the NCA were highlighted in the 1995 management plan. First, over one-third of the AUMs allotted in the National Guard's Orchard Training Area (OTA) are within the impacted area which is not easily accessible to cattle or permittees due to military maneuvers. Consequently, cattle have overused adjacent areas. Licensed use has never been officially reallocated to account for the inaccessibility of the OTA area forage. Second, drought from 1987 to 1993 limited the amount of available forage in allotments – particularly those dominated by exotic cheatgrass. Permittees in the Sunnyside Spring/fall allotment voluntarily reduced their livestock use about 30% to compensate. Other permittees in the NCA also voluntarily reduced their livestock numbers in response to fire, drought or other natural reductions in forage. The 1995 plan does not, however, indicate whether or not sufficient reductions were made to protect the resource from deterioration. Third, the 1995 plan indicates that there is insufficient monitoring data to determine whether grazing levels in the Sunnyside allotments are acceptable. BLM was gathering grazing use pattern and ecological trend data to make this evaluation and develop specific management actions.

Specific management provisions related to grazing in the 1995 management plan include:

- improve riparian areas by protecting them from grazing and by planting native species;
- develop strategies to avoid conflicts between grazing and military training activities that lead to overgrazing in adjacent areas;
- develop site specific management plans after evaluating use-pattern mapping and range trend data for the Sunnyside allotments and other allotments;
- manipulate allotments to keep some as common allotments and change others to individual allotments (it is not clear from the plan what effect this will have on the resource; it may just be to better accommodate permittees);
- after reestablishment, BLM may modify management of the areas consistent with purposes of the NCA;

¹³⁰ 1995 plan at 18.

¹³¹ Entwistle, P.G., et. al., *Proceedings: Sagebrush Steppe Ecosystem Symposium*, BLM publication no. BLM/ID/PT-001001+1150, Boise, Idaho (2000).

- allow “flash grazing” of greenstrips in early spring to reduce fuel accumulation (cheatgrass);
- the Animal Damage Control agency has designated the NCA as a special ecosystem area in which special control measures are used, including limitations on use of lethal methods that might effect non-target species; use biological agents to control insects and animals within the NCA where possible;¹³²
- monitor recreation and livestock use within the Snake Canyon to identify potential conflicts; and
- monitor ADC activities and reevaluate them if conflicts with recreationists cannot be mitigated or resolved.

The scoping process for the NCA RMP indicates that grazing in the area is controversial, but may not be as controversial as grazing in other BLM areas. In the scoping hearings, held jointly for the NCA and Bruneau RMPs, there were many more grazing comments on the Bruneau RMP than on grazing in the NCA.¹³³ Representatives of the Idaho Cattle Association and two ranches concentrated their pro-grazing comments on the Bruneau RMP. Most of the comments specific to grazing and the NCA were critical of the overall condition of the NCA and the impact of grazing on the area. (e.g., “The BOP is being multiple-used to death, and is now a weed Hell.”¹³⁴) Both unaffiliated individuals and representatives of the Committee for Idaho’s High Desert and the Western Watersheds Project called for eliminating all grazing in the NCA. Others who criticized grazing, including president of Snake River Raptor Volunteers, Inc. called for developing planning alternatives that balance livestock with ensuring a viable native plant community.

The farmers’ (as opposed to the grazers’) objections to the NCA seem to have dissipated and according to a local representative of the Peregrine Fund, there really is not much opposition from agricultural sources any more.¹³⁵ The NCA manager confirmed that cultivated agriculture was a moot question in the NCA and no longer controversial. He said, however, that grazing would be the most difficult issue to address in the RMP revision.¹³⁶ The question is not necessarily *whether* grazing would continue, but its *timing*. BLM could decide that spring grazing is not compatible with the purposes of the NCA because the cattle compete with raptor prey (ground squirrels) for the short-lived cheat grass vegetation cover. It is likely, however, that there would be opposition by at least some permittees to having their spring grazing eliminated.

Mining and Mineral Leasing

There has been relatively little controversy over mineral development in the NCA with relatively little resource to argue about. In the 1979 EIS, BLM reports that:

¹³² The 1995 plan includes a list of 11 control measures for ADC activities at 67-8.

¹³³ 190 comments addressed grazing in the Bruneau area; about 100 comments were addressed to both areas, although many of these specified issues in Bruneau; only nine comments were specific to the NCA.

¹³⁴ U.S. Dept. of the Int. and BLM, *Snake River Birds of Prey National Conservation Area Revised Management Plan*, scoping comment 4020.

¹³⁵ Telephone interview with Jeff Cilek, Peregrine Fund, Boise, Idaho by Doug Cannon (Oct. 7, 2003).

¹³⁶ Telephone interview by Kathryn Mutz 12/8/03. (the ground squirrels are only active and eating above ground from January into June and they must get enough nourishment to survive the entire year.).

- Hardrock. Of the various minerals subject to location under the Mining Law of 1872, only clay and placer gold have been identified within the Study Area. The Pullman Brick Company has two mining claims located for clay which produce about 13,000 cubic yards of clay annually. Fine placer gold has periodically been recovered from Snake River, but there are no profit making operations in existence within the Study Area in 1979.
- Oil and Gas. The USGS had classified large portions of the Snake River Plain as prospectively valuable for oil and gas development and geophysical reconnaissance studies suggested the theoretical occurrence of petroleum reservoirs in the area. But deep well drilling in the vicinity did not suggest abundant oil or gas. There were 84 oil and gas leases covering 144,926 acres in the Study Area in 1979. Work on 32 additional oil and gas applications covering 66,409 acres, 5 oil and gas simultaneous leases (expired) on 3,684 acres was suspended until the final EIS was complete.
- Geothermal. The USGS had classified large portions of the Snake River Plain as prospectively valuable for geothermal development. There are 17 geothermal leases covering an estimated 25,882 acres; test wells exist outside the study area in the area's major aquifer; work on 13 geothermal lease applications covering 26,894 acres was suspended until the final EIS was complete.¹³⁷
- Salable minerals. In 1978 there were 14 permits for sand, gravel and cinders. In 1995, there were five existing community pits and 21 material sales or free use permit areas for sand and gravel, cinders or clay.¹³⁸

The EIS predicted no major mineral production “barring any major oil or gas discoveries, or advancement in geothermal engineering technology.”¹³⁹

A representative of Intermountain Gas Company (IGC),¹⁴⁰ as well as the State of Idaho, the League of Women's Voters, and Atlantic Richfield criticized the document for providing inadequate information on existing mineral potential, exploration, and development and confusion about BLM's proposal to lease locatable minerals.¹⁴¹ Atlantic Richfield and IGC recommended that the area, including the military training area, be open to mineral exploration and development.¹⁴² The Idaho Mining Association objected to expansion of the protected area from the small raptor nesting area to include the larger raptor prey area. They strongly objected to the proposal to lease minerals that are otherwise locatable under the mining laws.¹⁴³ EPA expressed concern that the “administrative controls” that BLM proposed to use to control impacts of the proposed permitted mineral development would not be adequate to protect raptors and their habitat.

¹³⁷ U.S. Dept. of the Int. and BLM, Environmental Impact Statement for Snake River Birds of Prey, 2-25, 2-26, (1979) (hereafter 1979 EIS).

¹³⁸ *Id.* at 3-6 and 1995 plan at 86 and 164.

¹³⁹ 1979 EIS at 2-34.

¹⁴⁰ *Id.* at 9-13.

¹⁴¹ *Id.* at letters 31, 27

¹⁴² *Id.* at letter 27

¹⁴³ *Id.* at letter 38. The concept of leasing locatable minerals was included in the first proposed legislation several years later, but was removed from subsequent versions of the bill and final legislation.

These criticisms appear to have been largely ignored as Congress withdrew the NCA from entry under the general mining laws, mineral and geothermal leasing laws, and mineral material disposal laws, except that mineral materials subject to disposal could still be available from existing sites.¹⁴⁴ The 1995 plan makes the general statement that no new mineral materials sites will be opened and future mineral material use authorizations for existing sites will include whatever restrictions or stipulations are necessary to protect NCA resources and values. The plan includes no discussion of what conflicts might exist – whether impacts from the material use sites might directly impact raptors and their nests or be limited to impacts of land disturbance on the prey base – or what stipulations/restrictions have been or might be imposed.

Very few mineral related comments have been made during the joint NCA and Bruneau RMP scoping process. None of the comments were specific to the SRBP NCA, and it is unclear to which RMP area some of the general comments referred. The minimal comments focused on maintaining any existing rights to mine¹⁴⁵ and maintaining access to areas for recreational rockhunting. Additional comments from the RMP scoping meeting recommended reclaiming all lands subject to mineral development and restricting development to protect important natural resources. The NCA manager confirmed that minerals/mining is not much of an issue. Several sites for sand, gravel and clay are operating and others could be reopened.¹⁴⁶

Table 2. Mineral Resources of Snake River Birds of Prey Area

Mineral Types	1979 EIS	1995 Plan
Locatable	2 clay mines; minor non-commercial placer gold mining	No indication of continuation of the 2 clay mines; 1 new clay mine claim filed in 1983 is in dispute with a community pit (established in 1990) that wants to operate; no indication of additional placer mining
Leasable	84 oil and gas leases covering 144,926 acres; 17 geothermal leases covering 25,882 acres	No mineral leases in effect
Salable	14 permits for sand, gravel and cinders	5 community pits and 21 sale or free use areas

¹⁴⁴ Language of the version of HR2141 introduced in 1991 and the proposal analyzed in the 1979 EIS suggested that the NCA would be withdrawn from the 1872 Mining Law, but that both locatable minerals and traditionally leasable minerals could be leased with appropriate stipulations (H.R. 2141, Section 3(d)(2) “Subject to valid existing rights, that portion of the conservation area identified as ‘essential nesting habitat’, as generally depicted on the map referred to in subsection (b), shall continue to be withdrawn from operation of the mining laws of the United States but not the mineral and geothermal leasing laws, and mineral exploration and development under the mining laws of the United States and regulations thereunder are prohibited. Minerals located outside the ‘essential nesting habitat’ that would otherwise be subject to disposal under the mining laws of the United States after the date of enactment of this Act may be disposed of only by lease through regulations promulgated by the Secretary. Such leases, as well as leases issued under the Mineral Leasing Act (30 U.S.C. §181 et seq. (2000)), the Mineral Leasing Act for Acquired Lands (30 U.S.C. §351 et seq. (2000)), or the Geothermal Steam Act of 1970 (30 U.S.C. §1001 et seq. (2000)) shall contain such stipulations and conditions as the Secretary deems necessary to comply with the provisions of the management plan for the conservation area.”)

¹⁴⁵ Comments by Adair, no affiliation provided.

¹⁴⁶ Telephone interview by Kathryn Mutz 12/8/03.

Hunting, Fishing and Other Recreation

Much of the activity that has the potential for disturbing raptors or their habitat can be nominally called “recreation” related. Recreation in the area includes hunting, fishing, camping, target practice (at clay or paper targets, raptors and raptor prey), bird watching, historical/cultural site viewing, and OHV use (discussed in a separate section). Parts of the NCA are included in five separate Special Recreation Management Areas, designated before the NCA was established.¹⁴⁷ Recreation studies in the spring and summer of 1976-1978 indicated that there are not, and need not be, any serious conflicts between an NCA and properly managed consumptive and other recreation uses such as hunting, fishing, and boating.¹⁴⁸ These studies reported that in 1977, approximately 11,500 recreationists visited the Natural Area and 52,100 visited the remainder of the NCA study area from May to August.¹⁴⁹ 71,981 people visited Bruneau Sand Dunes within the Study Area in 1977. From C.J. Strike Reservoir to Bernard’s Ferry between March 1, 1975 and February 29, 1976, there were an estimated 21,674 angler days, 3,358 hunter days, and 14,745 other days.¹⁵⁰

The 1978 plan indicated that development of additional camping and/or boating facilities was not planned and no management actions were planned that would directly and/or specifically alter fishing opportunities. The Idaho Department of Fish and Game (IDF&G) did create a regulation prohibiting the use of exposed baits or lures for trapping on dry land sets in the natural area.¹⁵¹ The IDF&G also prohibited taking raptors for falconry within the natural area and BLM closed the natural area (main nesting area) from March 1 – August 31 each year (initiated in 1973). “Studies of recreation activities in the BPNA and BPSA were conducted during spring and summer periods in 1976, 1977, and 1978. Visitor use studies conducted in 1976 – 78 in the natural area and the study area indicated that area recreation consists of fishing, upland bird and waterfowl hunting in season, camping, sightseeing, bird watching, nature field trips and trips to study the antiquities. It also noted that “there are not, and need not be, any serious conflicts with properly managed consumptive and other recreation uses such as hunting, fishing, and boating.”¹⁵² The 1978 management plan did, however, estimate that two full time and two temporary law enforcement type personnel were needed to accommodate the projected increased use.¹⁵³

The outlook regarding recreation reported in the 1979 EIS was less optimistic. In 1979, the BLM expected recreational use of the area to double by the year 2000, with or without the proposed NCA. At that time, BLM thought that the designation may further increase recreational use due to publicity and information programs associated with the birds of prey research.¹⁵⁴ It was feared that without more resources for law enforcement, increased recreation

¹⁴⁷ Telephone interview with Larry Ridenhour, NCA recreation planner by Kathryn Mutz 12/16/03 (e.g., Oregon Trail Corridor, C.J. Strike Reservoir, Owyhee Front, etc)

¹⁴⁸ U.S. Dept. of Int. and BLM, *Snake River Birds of Prey Management Plan*, 16, (1978). (hereafter 1978 plan).

¹⁴⁹ 1979 EIS citing the 1977 Recreation User Survey.

¹⁵⁰ 1979 EIS at 2-23.

¹⁵¹ 1978 Plan at 18.

¹⁵² 1978 Plan at 16.

¹⁵³ 1979 EIS at 1-5.

¹⁵⁴ 1979 EIS at 3-5.

would likely lead to more fires and stress/disturbance/abandonment of nests.¹⁵⁵ The 1979 EIS identified increased visitor use – with off road vehicles, litter, shooting and harassing/disturbing birds as potential results – as probably the most serious negative impact on NCA that needed to be controlled through management.

The 1995 plan reported that recreation in the western part of the NCA (corresponding to the former Natural Area) rose from an estimated 22,500 user days in 1986 to an estimated 38,500 in 1995. This area is currently managed as the SRBP Special Recreation Management Area (SRMA).¹⁵⁶ The 1995 plan noted that BLM’s NCA budget and staff were insufficient to monitor and control use. BLM recognized that public education was needed to meet public demand for information and to protect the resources by educating and instilling non-destructive behavior. In 2003, the BLM estimated that between 160,000 and 200,000 people visit the birds of prey area (not specifically the Natural Area or SRMA) each year.¹⁵⁷ The NCA manager indicated that the NCA designation has probably brought in many of the international visitors, but that the general increase in population in the Boise area has led to much of the increase in use of the area.¹⁵⁸ An estimated 145,000 people visited the NCA in 2003, down from previous years because of campground constructions.¹⁵⁹ This number probably does not capture all of the dispersed recreation outside of the canyon area. The University of Montana is currently developing a recreation monitoring program for the NCA to better estimate use of the area with minimal data collection.

The 1995 management plan includes a variety of management activities designed to protect and enhance raptors. Some of these are actions that could be implemented by the BLM, include:

- developing information, education and enforcement programs to reduce or stop inappropriate human activities detrimental to raptors or their habitats;
- prohibit rock climbing and rappelling within the Snake River Canyon, except for research purposes on a case-by-case basis;
- close certain public lands within the Snake River Canyon to year-round discharge of pistols and rifles;¹⁶⁰
- close certain areas of the NCA to discharge of rifles and pistols, but allow for a target shooting range(s) in the area;
- continue the public access and shooting closure within the artillery impact area of the OTA;
- monitor recreational use to determine in shooting closures modify use and what impacts these changes have on resources and other recreational users.

The 1995 management plan also recommended a few recreation-related actions that were not within their jurisdiction to implement. BLM recommended that:

¹⁵⁵ 1979 EIS at 3-2.

¹⁵⁶ Recreation planner Larry Ridenhour indicated that the SRMA covered the entire NCA. Telephone interview with Larry Ridenhour, NCA recreation planner by Kathryn Mutz 12/16/03.

¹⁵⁷ Comment by Larry Ridenhour, outdoor recreation planner for the area in “Kuna battles growth...”, Idaho Statesman, April 28, 2003.

¹⁵⁸ Telephone interview with John Sullivan, NCA manager, by Kathryn Mutz, 12/9/03.

¹⁵⁹ Telephone interview with Larry Ridenhour, NCA recreation planner by Kathryn Mutz 12/16/03.

¹⁶⁰ 1995 plan at 48, lists specific areas to be closed and specific exceptions for hunting.

- the Federal Aviation Administration should prohibit commercial and recreational aircraft from flying lower than 1,000 feet above the canyon rim within the NCA or FAA should create a special air management zone;
- IDF&G should eliminate collecting of any raptors for falconry in the entire NCA – not just in the natural area;
- IDF&G should incorporate safety-related shooting closures in their fish and game regulations; and
- State and county officials should more stringently enforce existing speed limits within the NCA.

Other specific recreation related management activities relate to hunting and recreational shooting, which according to the 1995 plan, increased dramatically in the early 1990s and became a serious safety problem in many parts of the NCA. Shooting activities include sighting in rifles, target shooting, plinking (mostly at non-game animals including the major prey species), and hunting. It is not clear from the management plans, however, whether these controls are primarily designed to protect raptors and their prey or to protect other area users (from ranchers and their cows, to researchers, and other recreationists) from the hunters and recreational shooters. The safety problem is most significant in the western area of the NCA. Several proposals for managing shooting were analyzed in the 1995 plan and considerations in choosing the preferred alternative included compliance with legislative mandates (to protect raptors and their habitats while allowing compatible uses including hunting and other recreation), mitigating safety hazards, and minimizing the costs of administering closures.

Prior to 1995, the SRBP Natural Area was closed to all firearms from March 31 to August 1 each year and the artillery impact area of the OTA was closed to recreational shooting year-around. In general, the 1995 plan reduced the size of the March 1 to August 31 closure area, but closed this smaller “natural area” for most of the year. A portion of this natural area is still open to all firearms during the deer hunting season and to shotguns and muzzleloaders from Sept 1 – Feb 14. The 1995 closure maintained the traditional closure in the National Guard’s OTA and added a closure area north of the river for all but permit operated shooting ranges.

Comments at the NCA RMP scoping meetings indicated that recreation is still an extremely important use of the NCA. Commenters mentioned both providing or maintaining access for developed recreation including horse riding, camping and biking, and controlling recreation use to limit impacts on the land and raptors (including eliminating rock climbing in some areas). In an interview, Morley Nelson and the Idaho Fish and Game Department believe that rock climbing during the raptor nesting season disturbs the birds and can put nests at risk. Both entities would like to see rock climbing banned. Others propose implementation of a permit system during the nesting season to better regulate climbers, but not eliminate climbers.¹⁶¹

¹⁶¹ *Rock Climbers Disrupt Nesting Sites Above Boise River*, Associated Press, (April 12, 1999).

Table 3. Firearm Use in the Snake River Birds of Prey Area

Prior to 1995 (no action alternative of 1995 plan)	1995 Plan Preferred Alternative
SRBP Natural Area closed to all firearm discharge from March 1 – August 31	Close public lands within the Snake River Canyon (about the same length of river as the Natural Area closure) , ½ mile either side of the river or 100 yards back from the canyon rim, whichever is greater: <ul style="list-style-type: none"> • to shotguns and muzzleloaders except for Sept 1 – Feb 14 • all other firearms are prohibited year-round except in deer hunting season in HU 40 (south of the river?)
Public lands within the artillery impact area of the OTA closed to all non-military firearm discharge year-round	Public lands within the artillery impact area of the OTA closed to all non-military firearm discharge year-round
	Close to rifles and pistols an area of the NCA north of the 500-kV transmission line and west of Swan Falls Road (an area N and W of the OTA). Organized groups may apply to operate shooting ranges in this area

The NCA RMP process generated three comments on hunting/shooting in the NCA. The environmentalists suggested eliminated ground squirrel shooting in the NCA and instituting hunting restrictions on raptor prey. The unaffiliated commentator suggested banning all firearm use in the area because of the damage caused by hunters, including property vandalism, fires and prey removal.¹⁶² The NCA manager thought that shooting was not a particularly big issue now even though gun users have to travel a few more miles to use areas open to firearms. He indicated that while ground squirrel plinking used to be a major pastime (hundreds killed in an afternoon by each plinker), the closure of about 40,000 acres to rifles and pistols was primarily for safety concerns. A few deaths had occurred and some recreationists had been afraid to use the area.¹⁶³ Recreation planner Larry Ridenhour opined that recreation use of the NCA is less controversial than that of the nearby Bruneau area partly because use of wilderness study areas is in contention in the Bruneau area and partly because locals do not realize how large the NCA is. That is, they do not realize that their use of the desert area adjacent to the Snake River canyon is actually constrained because it is part of the NCA. Ridenhour indicated that a single SRMA

¹⁶² U.S. Dept. of the Int. and BLM, *Snake River Birds of Prey National Conservation Area Revised Management Plan*, scoping comments code 5600 and 5620.

¹⁶³ Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03

encompassing the NCA might be established and an activity level recreation plan developed after completing the NCA RMP process.¹⁶⁴

ORVs

Three general types of OHV vehicle use impact soils and vegetation in the NCA: recreational vehicles, research vehicles, and National Guard vehicles. National Guard vehicles are discussed under “Military Use,” below. The 1995 management plan identified ORV use by research vehicles as a potential problem, noting that more than 75 people collected various kinds of scientific data in the NCA in 1993. The plan noted that procedures for managing research were being developed and that monitoring of the cumulative impacts of research projects would be used to evaluate impacts and modify research activities as needed. The NCA RMP process did not generate comments on raptor research activities. Recreational ORV or OHV use is by far the most significant vehicle use issue.

A problem with ORV use was recognized in the late 1970s. In the 1978 management plan, BLM noted that in order to protect nesting birds in season and to protect natural values year round, it had established a year round closure to vehicle travel off of designated roads in the BPNA and had initiated contracts to patrol off-road vehicle use with the Canyon, Ada and Elmore County Sheriffs’ Departments.¹⁶⁵ It also recognized a problem with regulating ORVs and shooting in that the Fish and Game Department lacked statutory authority to promulgate necessary regulations. The document suggested that in order to effectively control ORV’s and shooting without resorting to federal court, “it would be necessary to secure county ordinances similar to the federal regulations.”¹⁶⁶

In 1979, the EIS indicated that were several popular ORV areas partially within the study area (Murphy, Hammett, Oreana, Browns Gulch). Recreational ORV use included weekend unorganized use and several organized motorcycle rallies permitted by the BLM each year.¹⁶⁷ The EIS noted that the “anticipated rise in recreational use is expected to increase the present recreational problems of unauthorized off-road vehicle use and litter.”¹⁶⁸ A Boise resident commented that “ORV use is also extensive and very destructive. Unlike the National Guard activities, this use is all year long and the desert has little chance to recover.”¹⁶⁹ Mitigation measures recommended in the EIS included limiting road access to the canyon rim and within the canyon to existing roads only and diverting incompatible activities, such as ORV use and seasonal shooting uses, to areas outside of the conservation area.¹⁷⁰

The SRBP SRMA (the former Natural Area) is managed with designations of “roaded natural,” “semi-primitive motorized,” and “non-motorized.” The 1995 plan indicated that recreation use is heaviest in the Snake River Canyon at the west end of the NCA (Swan Falls Dam to Guffey Bridge). Ease of vehicle access in this portion of the canyon resulted in multiple, braided routes,

¹⁶⁴ Telephone interview with Larry Ridenhour, NCA recreation planner by Kathryn Mutz 12/16/03.

¹⁶⁵ 1978 Plan at 17.

¹⁶⁶ 1978 Plan at 24.

¹⁶⁷ 1979 EIS at 2-24.

¹⁶⁸ 1979 EIS at 3-5.

¹⁶⁹ 1979 EIS at comment letter # 18.

¹⁷⁰ 1979 EIS at 4-2.

destroying vegetation, causing erosion, damaging archaeological sites, and creating safety hazards. Use of the area by motorized recreation and non-motorized users expecting to view wildlife in a relatively natural environment has led to multiple conflicts. The BLM analyzed four access management alternatives in the 1995 plan. The plan requires vehicles to stay on designated roads or trails in most of the NCA (declaring the NCA a “Designated Vehicle Management Area”); blocked vehicle access to some areas; defined single routes and improved these routes in some areas; closed many of the roads in the far western canyon area; and signed areas to indicate prohibitions in off-road use. BLM chose their preferred alternative because it met the legislative mandate of protecting and enhancing raptor species; was most responsive to public concerns to maintain access along the south side of the river; provided for substantial reductions in air quality and erosional problems related to vehicle use, protected cultural sites and substantially reduced conflicts between motorized and no-motorized NCA users.

In the management actions listed to support this preferred alternative, BLM specifically retained the right to authorize necessary off-road vehicle travel for purposes related to livestock management, right-of-way facility construction and maintenance, military training, etc. The “Designated Vehicle Management Area” designation did not apply to the Owyhee Front SRMA or the Fossil Creek OHMV Management Unit which limits vehicles to existing roads, trails, and sand washes excepted as otherwise posted. Management actions specified in the 1995 plan included several improvements of trails, roads and parking areas and placing roads on an inventory lists to assure periodic maintenance.

Only a few of the ORV related comments at the scoping meetings were specific to the NCA. Comments from unaffiliated individuals suggested developing an ORV travel plan to restrict ORV use to designated routes that do not conflict with scenic, natural and primitive recreation values. Many more ORV-related comments were directed to both the NCA and Bruneau RMPs. These comments both criticized BLM for permitting organized ORV events and races and encouraged the agency to continue to permit them. A representative of the Capital Trail Vehicle Association called for site specific evaluation of roads, trails, and impacts before any ORV use is eliminated.

It is likely that the RMP will continue allowing ORV use only on designated roads until further designations are made in a travel plan. About 1800 miles of two-tracks or better roads are mapped in the area and a route designation process could close one-third to one-half of them without affecting access. A pending Argonne National Laboratory report on compatible uses for the RMP process could indicate that ORV use is the only current use that is incompatible with the purposes of the NCA.

Timber Harvesting

There does not appear to be timber in the area. Timber harvesting was not mentioned in any of the legislation or the management plans. A few general comments on timber management were made in the RMP scoping meetings, but they probably apply to the Bruneau RMP.

Military Use

As with general visitor use and grazing, the NCA legislation does not require military use of the area to have the effect of enhancing raptor populations, raptor habitat or any other of the NCA’s

resource values. The legislation merely requires that BLM identify the levels of military use that are compatible with protection of these resources and values. According to Congress, this was “obviously a different matter.” Many of the impacts of the military use of the area are related to OHV use of the area.

National Guard vehicles impact the Idaho National Guard’s Orchard Training Area (OTA). Cross-country tank traffic disturbs soils and reduced shrub and grass cover in the OTA. Roads in the OTA are rutted and “powdered” by tank traffic which causes smaller utility vehicles to avoid these areas and create successively wider roads. Prior to 1987, training activities occurred wherever the National Guard chose. Subsequently, a National Guard conservation program restricted training to previously disturbed sites. The 1995 management plan reports, however, that despite these improvements, impacts to vegetation and soils from military maneuvers have continued. The National Guard has also received rights-of-way – after preparing an EIS and an EA – to upgrade and construct new facilities including over 600 miles of roads. These facilities are subject to a 25 year renewable lease that may be subject to additional terms and conditions gained from a research report due out in 1996. The roads were upgraded with surfacing to prevent deterioration of adjacent areas damaged by vehicles avoiding badly damaged dirt roads. The National Guard also has an Integrated Training Area Management program on the OTA. This program includes a vegetation/soils data collection and analysis program, a land rehabilitation and maintenance program, and troop environmental awareness training. According to the 1995 plan, rehabilitation has not kept up with disturbance by vehicles and fires, partially because seeded areas are not adequately protected from subsequent disturbance and grazing. The plan suggests that off-site mitigation might be more effective.

Management activities specifically relate to military training include:

- require the National Guard to sign all fences (used to protect seeded areas from vehicles and livestock) in the OTA to ensure visibility during night maneuvers;
- protect areas for at least two years from military training use to allow for reestablishment of vegetation – either after reseeding or transplanting or in burn areas that will not be replanted;
- the National Guard must rehabilitate areas disturbed by military training activities and must coordinate this with the BLM, including monitoring of rehabilitation projects
- military vehicles will be restricted to improved roads in the OTA for administrative movements (point to point travel) as the OTA road system is improved
- declare the area a Designated Vehicle Management Area (OHMV Limited Level 6) requiring privately-owned vehicles to remain on designated roads, ways or trail routes;¹⁷¹

Specific management activities were recommended to reduce conflicts between military training and grazing. Most of these conflicts only indirectly affect the raptors or their prey, and only peripherally affect “the natural and environmental resources and values associated” with them. For example, grazing/military conflicts have led to overgrazing areas outside the artillery impact area and damage to fences have damaged revegetation that could have improved prey habitat. Management activities in the 1995 plan include:

¹⁷¹ Exceptions to this designation would include areas within the Owyhee Front SRMA and the Fossil Creek OHMV Management Unit and by special permission, 1995 plan at 49.

- complete EIS for military training and grazing analysis for the Sunnyside allotments and then develop and implement a management strategy; (this conflict affects the raptor prey base because the conflict results in overgrazing of part of the landscape.)
- National Guard will continue to repair and replace range improvements damaged by training exercises;
- BLM, the National Guard and livestock operators will jointly develop annual road maintenance and improvement plans.

The NCA manager indicated that the military have stopped using the live-fire impact area from early April to mid-May to allow permittees to graze without conflict. Removal of vegetation by cattle reduces fires later in the season.¹⁷²

Specific management activities were also recommended to reduce conflicts between military training and recreation:

- military security personnel should receive training to improve their ability to deal effectively with the public using the OTA area and improve communications and coordination with the BLM (only the Impact Area within the OTA is closed to the public); and
- the National guard should maintain warning, safety and closure signs around the Impact Area and control trespass.

In 1993 the BLM did a preliminary assessment of the OTA to identify areas potentially affected by hazardous materials – substances of concern under RCRA and CERCLA. Identified sites include 1) disposal sites with unexploded ordinance, fuels, and other hazardous materials; 2) unexploded ordinance on site; and 3) regulated heavy metals accumulations in soils around gunnery sites. BLM indicated that the National Guard should prepare a site characterization (by 1996) and that, if warranted, the National Guard should then draft a long-term remediation/corrective action plan and a site management plan.

There is little or no other discussion of direct military impacts on the raptors or their habitats. The 1995 plan noted that the EIS had not analyzed impacts of the military activity, but had stated that there were no known effects. A study, set to be released in 1996, was designed to evaluate the effects. The \$10 – 11 million study focused on 10 questions with inconclusive results – results that did not allow the BLM to determine whether or not the military activity is incompatible with the purposes of the NCA.¹⁷³ A field study during the brooding seasons from 1991 through 1994 compared the number of raptors and their behavior on training days as opposed to non-training days. The study also compared raptor numbers during various training activities. The study, reported in *The Condor* found that raptor counts on training days were essentially the same as raptor counts on non-training days when all training and non-training days were compared. Specific types of military activity, however, were found to have an effect on raptor abundance and behavior. Falcons, hawks and eagles tended to perch and fly higher on training days compared to non-training days. Fewer prey capture attempts were recorded during training. The lowest raptor counts during the study were found to occur during the firing of

¹⁷² Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03.

¹⁷³ Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03.

small arms, artillery and turret or machine-guns. Weather, time of day and vegetative characteristics also affected raptor counts. Overall, the report found that the observed military training activities have little negative effect on raptor behavior. Only highly intensive training, occurring during periods of low prey availability, was found to affect the raptor behavior.¹⁷⁴

In the RMP scoping process, two commentors expressed concern over military use of the NCA. Steve Guinn, Snake River Raptor Volunteers, Inc., expressed concern that military activity is impacting the raptors, their prey and the vegetation of the area and that impacts should be evaluated. Guinn also expressed concern that withdrawal of the area for military purposes, being considered in the RMP process, would hamper raptor management. Johnston, The Wilderness Society, suggested that temporary closures may be needed and that new or expanded permits should not be issued for military uses. Comments of unaffiliated commentors were mixed, some calling for eliminating grazing or hunting in the OTA to protect vegetation, prey and eliminate fires; others called for continuing grazing and continuing use of the training area to protect our national defense. Jeff Cilek of the Peregrine Fund indicated that some of the locals, including himself, believe that the section of the Birds of Prey area managed by the Idaho National Guard is actually in better shape than the area managed by the BLM. According to Cilek, the Guard has been much more proactive in protecting the area and has taken steps beyond those taken by the BLM to make sure the area remains good raptor habitat.¹⁷⁵

The NCA manager indicated that whether to allow any military use of the NCA was not really at issue, but that the type, season and equipment to be used was certainly in question. The pending Argonne Laboratory report could conclude that the only incompatible current use of the NCA is ORV use – including military off-road travel on the OTA. This conclusion would then affect what kind of military exercises could be conducted and where in order to make military use compatible with the purposes of the NCA as required by the establishment legislation. There is potential, however, that the impact area (area used for live-fire practice) could be withdrawn from the NCA for the Department of Defense (DOD). While this would eliminate BLM's potential to rehabilitate the area, it may provide mitigation money from DOD to BLM (for loss of the area) which can then be used to rehabilitate high priority raptor prey areas outside the OTA.¹⁷⁶

Wildfire

Over half of the native shrub habitat of the NCA was lost to wildfire since 1980 (mostly from 1981 through 1986).¹⁷⁷ This has increased the intrusion of exotic plants and in turn has impacted the squirrel and rabbit populations.¹⁷⁸ Native plants have been replaced by exotic annuals that perpetuate recurring fires. These annuals do not provide sufficient food or cover for the raptors' prey species. The BLM recognizes that rehabilitation involving restoration of native shrub

¹⁷⁴ Schueck, Linda S., et. al., *Influence of Military Activities on Raptor Abundance and Behavior*, The Condor 103:606-615, (2001).

¹⁷⁵ Telephone interview with Jeff Cilek, Peregrine Fund, Boise, Idaho, by Doug Cannon (Oct. 7, 2003).

¹⁷⁶ Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03.

¹⁷⁷ *Officials Worry About Golden eagles and Prairie Falcons*, Associated Press, (June 1, 2002).

¹⁷⁸ Woodward, Tim, *Raptors Along Snake River an Increasingly Rare Sight; fans hope to restore conservation area's main attraction*, Idaho Statesman Local1 (July 7, 2002). This article provides insights into many of the problems faced by the area and is a good overview.

communities is necessary but has little money to spend on it.¹⁷⁹ While a shrub restoration plan was completed in 1990, by 1995, only two restoration plans had been implemented. Rehabilitation projects and natural replacement was generally unsuccessful due to drought from 1987 through 1993. The BLM continues (as of 1995) to experiment with fire and herbicides to reduce weed competition in shrub restoration projects.

1995 management proposals specifically related to fire are:

- control fires quickly;¹⁸⁰ the National Guard has primary responsibility for fires in the OTA;
- the National Guard must provide BLM with data on fires annually
- the National Guard must reimburse BLM for any fire suppression costs related to their activities;
- rehabilitate ineffective fire breaks (greenstrips), and
- rehabilitate disturbed areas, including fire areas and areas where exotics have been eliminated, to reestablish native plants;¹⁸¹
- protect areas for at least two years from grazing to allow for reestablishment of vegetation – either after reseeding or transplanting or in burn areas that will not be replanted;

Despite recognition of the weed problem in 1995, noxious weeds are apparently still a significant and growing problem in the NCA, blamed largely on fires and failure to adequately revegetate afterwards.¹⁸² NCA RMP commentors called for a plan to deal with fires and land restoration.

The NCA manager indicated that the area was considered essentially fireproof until the late 1970s (called the “Asbestos Resource Area”). The change from perennial vegetation to annual plants was due to historic overgrazing by sheep and there was insufficient vegetation to carry a fire. Catastrophic wildfires occurred in the 1980s when there was lots of forage in normal or wet years. Recent fires have been small or infrequent in drought years. Only the last year combined a good water year and good vegetation with a low incidence of wildfire (less than 1000 acres burned).¹⁸³

Research Activities

The designation legislation recognized the on-going scientific research in the area and specified that the management plan should include scientific research on the raptors and other area resources as well as on management of the area. The 1995 plan briefly describes the history of research in the area and highlights the impacts of research on area resources and conflicts between research and other uses of the area. The management plan for research includes:

- encouraging cooperative research activities;

¹⁷⁹ Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03.

¹⁸⁰ The 1995 plan includes a major section on fire management at 53-61. Additional specific documents are cited in this section.

¹⁸¹ The 1995 plan’s fire management section includes detailed specifications for land rehabilitation after fires at 60-61.

¹⁸² U.S. Dept. of the Int. and BLM, *Snake River Birds of Prey National Conservation Area Revised Management Plan*, Scoping comments (4000 series).

¹⁸³ Telephone interview with NCA manager John Sullivan by Kathryn Mutz 12/8/03

- monitoring on-going research;
- evaluating the effects of research on area resources;
- evaluating and resolving conflicts among research projects and between research and other area uses;
- reviewing and evaluating all proposals for research;
- coordinating consumptive cultural resources research with Idaho SHPO and affected Indian tribes;
- developing a procedures document to manage research; and
- limiting placement and controlling the design of nest structures, hack sites and photographic blinds.

CONCLUSION

The most significant difference made by designation of the NCA seems to have been protection of the raptor prey base by permanent withdrawal of the area from disposal under the Desert Land Act, Carey Act, and State of Idaho Admissions Act. The raptor nesting area had already been protected as a natural area and did not appear to be otherwise threatened with development that could not have been regulated under FLPMA. There appear to be few negative impacts of the designation, although some might argue that that is because preexisting uses of the area have not been sufficiently controlled to protect the raptors and their habitat.

To date, NCA designation does not appear to have had any major economic impact on the area.¹⁸⁴ The tourist industry has continued to prosper in the area and some visitors – especially international visitors – have probably been drawn to the area by the designation. Most of the increase in recreation use is, however, thought to be associated with population growth in the local area, not attributable to the NCA designation. The NCA’s limitations on certain types of recreation has shifted some uses to adjacent lands (e.g., recreational shooting and ORVs). Some mineral development, including geothermal development, may have been precluded by the designation and associated land withdrawals, but it does not appear that there was a significant resource available for development. It may have been possible to conduct oil, gas and thermal development in the prey habitat area without major disruption of the raptors or their prey – at least no more disruption that is currently caused by military training – but enjoyment of the raptors would certainly have been affected by less stringent controls on mineral development. The only economic analysis found for the area is an economic comparison of the value of irrigated farming foregone versus the value of grazing preserved on the public lands by the NCA designation. The analysis – conducted prior to the NCA designation – suggested that preventing a conversion from grazing to cultivated agriculture would likely mean a long term economic gain for the agricultural sector – if grazing would not be curtailed.

Projections for future management of the area suggest that:

- spring grazing might be reduced or curtailed to reduce competition with raptor prey;

¹⁸⁴ The only economic analysis located compared the value of grazing to irrigated agriculture: 4. Hyde, William F., Alan Dickerman, and Douglas Stone, *Development versus Preservation in the Snake River Birds of Prey Conservation Area* (1982); Hyde, William F., Alan Dickerman, and Douglas Stone, *Development versus Preservation in the Snake River Birds of Prey Conservation Area* (1982).

- some braided roads/trails may be closed and additional ORV restrictions – on both recreational and military vehicles – may be instituted;
- additional minor restriction on recreation (e.g., climbing in raptor nesting areas) may be instituted; and
- the live-fire impact area may be withdrawn by the Department of Defense in exchange for funding that would be used for habitat restoration.

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