



Testimony

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on

H.R. 3458, the Recreation Not Red Tape Act and

H.R. 3879, The Simplifying Outdoor Access for Recreation Act

before

The Subcommittee on

National Parks, Forests, and Public Lands

United State House of Representatives

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Madam Chairwoman and members of the Subcommittee thank you for giving America Outdoors Association the opportunity to provide testimony in support of H.R. 3458, the Recreation Not Red Tape Act (RNR), and H.R. 3879, The Simplifying Outdoor Access for Recreation Act (SOAR). America Outdoors Association is a national, non-profit trade association representing the interests of outfitters and guiding companies, many of which operate on federally managed lands and waters under permits authorized by the Federal Lands Recreation Enhancement Act (FLREA). Our members include whitewater rafting outfitters, guest ranches, bike-touring companies, canoe and kayak rental businesses, guided hiking outfitters, hunting outfitters and educational organizations providing skills training and trips for youth.

We support both H.R. 3458 and H.R. 3879 as introduced. We are encouraged by the bipartisanship you have demonstrated in bringing this legislation forward and by your active role in advancing recreational uses of public lands. As you know, the authority to issue outfitter and guide permits for the Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the Bureau of Reclamation is contained in a somewhat vague provision in FLREA, which currently sunsets October 1, 2020. The need to reauthorize this important authority and to improve upon it are among the strongest justifications for this legislation. We note that SOAR and RNR do not amend the provisions in FLREA which authorize amenity fees. Many outfitters pay amenity fees in addition to permit fees and these bills do not modify that authority.

Benefits of Permit Modernization in SOAR and RNR

SOAR and RNR build on the past successes of the recreation special use permitting programs in the agencies covered by the legislation. The benefits of these programs to rural economies are significant and often overlooked. We estimate that over 14,000 permits for outfitting and guiding and special events are covered by this legislation. The Bureau of Economic Analysis estimates that guided tours and outfitted travel contributed \$25.7 billion to the gross output in 2016. Much of that contribution is not from outfitting on public lands, but you can infer from that data that the contributions to the economy from the permitting authorized in SOAR and RNR are very significant. The BEA data will be updated tomorrow to include the GDP data for each state, including contributions from outfitting and guiding.

One of the greatest benefits of the permitting provisions in H.R. 3458 and H.R. 3879 is the permanent reauthorization of outfitter and guide permitting authority for these agencies, which is now subject to annual renewal through appropriation legislation. Both bills improve the efficiency of permitting processes and enhance access to federal lands while maintaining public safety and environmental protection. Over the past 40 years permitting processes have become more complex and costly. These processes exceed the capacity of the agencies to authorize new uses and as a result stifle access by the segment of the public in need of services from outfitters. Even minor adjustments to existing permits to adapt to changing markets have become difficult because of this overburden of process.

RNR goes beyond permitting by providing some important incentives to advance outdoor recreation by creating a new National Recreation Areas System.

The permitting provisions in SOAR and RNR are very similar. For the purposes of this testimony, I will focus on SOAR and what I think are three primary benefits of H.R. 3879:

- Improving access to public lands, including access to underserved populations, while protecting the environment;
- Improving permitting systems and reducing administrative costs;

- Improvements and simplification to permit fee calculations and cost recovery reform.

How SOAR improves access while protecting the environment

- **SEC. 4. (d) Eliminates a needs assessment prior to authorizing new uses outside of designated wilderness.** In recent years National Forests added an assessment of the need for new outfitter services to their documentation requirements prior to issuing new permits. These documents are supposed to forecast the need for additional outfitter services in a Forest. Some were sophisticated while others were haphazard. This documentation requirement was derived from the statutory needs assessment provision for commercial recreational services in the Wilderness Act which states: “(5)Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” (Emphasis added). There is no statutory obligation to determine “to the extent necessary” for outfitter services outside wilderness. When groups are appealing for permits there is no reason to deny them simply because the needs assessment has not been completed or updated.
- **SEC. 5 Permit Flexibility allows permit holders to engage in recreation activities that are substantially similar to the activity that is specifically cited in their permit provided it is comparable in type and does not result in greater ecological impacts.** For example, an outfitter authorized to use canoes and kayaks in paddlesports instruction would be able to use standup-paddleboards as well without getting the permit amended and having to go through NEPA compliance.
- **SEC. 6 (c) authorizes the Forest Service and the Bureau of Land Management to develop temporary permits, which will enable outfitters to try new services for the public where capacity is available. Temporary permits may also authorize access to underserved populations.** The Forest Service used temporary permit prior to 2008. At that time the agency made changes to their permitting policy, eliminating the temporary permit except for a short-term authorization for 180 days not to exceed 200 service days. The temporary permit authorization in SOAR would authorize the BLM to develop a temporary permit as well. Currently, both agencies use the same long-term permit but for a one or two-year term when they want to authorize short-term uses. Temporary permits are eligible for categorical exclusions in the Forest Service and the BLM and should be much simpler to issue and administer than the standard 19 to 20- page priority use permit used by the Forest Service. SEC. 6 also authorizes the agency to develop a process to convert the temporary permit to a long-term permit where appropriate and the temporary permit should reflect that potential for conversion.
- **SEC. 8 revises current Forest Service use reviews if they are implemented to determine the extent to which an outfitter is using the capacity authorized by the permit.** In 2008, the Forest Service bifurcated the formula for assigning use when it is reviewed use under a “use it or lose it” policy. Larger outfitters are penalized by requiring them to use a higher percentage of their capacity than smaller outfitters. The provision in SEC. 8 standardizes this “use it or lose it” formula for all permit holders and recognizes that extenuating circumstances make use reviews inappropriate in those circumstances. Importantly, this provision also allows outfitters to grow if capacity is available and improves the utilization of unused permitted capacity for current and potential permit holders.
- **SEC. 11 automatically extends permits for up to five years if the agency fails to act on a renewal application.** This provision is important because in a few circumstances the Forest

Service has not acted on permit renewal applications due to staff turnover or other obligations, leaving the permit holder uncertain of their status after their permits have expired.

How permit processing and the efficiency of the permitting system are improved to reduce costs

- **SEC. 4. Permitting process improvements.** One of the most important provisions in SOAR is in SEC. 4. (a)., which calls for agencies to evaluate permitting processes to reduce costs, processing times and duplication. Most importantly, SOAR sets deadlines for completion of this evaluation and for changes to the regulations.
- **SEC. 4. (c) authorizes the agencies to develop categorical exclusions (CEs) in compliance with the National Environmental Policy Act (NEPA), which includes an obligation to consider the potential for extraordinary circumstances when certain resource conditions are present.** While the Forest Service has issued a proposed rule on categorical exclusions which would probably satisfy this provision, the statutory authority in SOAR reinforces and justifies that proposed rule. CEs help reduce the costs associated with NEPA compliance. Making these CEs consistent among all the agencies would be another benefit of this provision.
- **SEC. 4 (b.) (1.) (A) authorizes the use of programmatic environmental assessments to reduce site specific NEPA costs and encourages the agencies to use previous NEPA documentation to authorize uses when appropriate.** Some agencies are implementing programmatic NEPA documentation and the Forest Service recently proposed to use programmatic EAs. Providing agencies with statutory authority reinforces that effort.
- **SEC. 7 authorizes one permit for trips that cross agency boundaries to include trips authorized under NPS commercial use authorizations.** For example, when a trip crosses from National Forests to a BLM unit, this authority would enable a lead agency to issue one permit for that service instead of having two separate permits with different requirements. The Forest Service claimed last December that this authority was included in the Service First Act, but the BLM has said the Service First authority was not adequate and the Forest Service has since acknowledged that as well. This provision is probably more difficult for some agencies to accomplish than others. We suggest that time frames be put on complying with this authorization to enable the agencies to report on their progress and identify barriers to achieving this mandate.

Improvement and simplification of permit fee authority and cost recovery

The Federal Lands Recreation Enhancement Act is the authority under which permit fees are returned to the agency and used to support recreation activities where they are collected. The uses of fees outlined in FLREA are maintained in SOAR. SOAR adds authority to use the fees to fund improvements and operation of the permitting system. SOAR makes important changes to the Forest Service fee calculation policies that are cumbersome and difficult to administer.

SEC. 3 in SOAR eliminates fees for goods and services delivered and consumed outside agency boundaries.

According to the Forest Service Handbook on Fee Determination for outfitters, permit fees are based on “Gross Revenue” which includes:

“c. Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded.”

The Forest Service fee policy requires fee calculations to be based on the total cost of the trip, including services delivered outside the boundaries of public lands. The agency then discounts the fee based on

the time spent on the Forest, but that discount is not proportionate to the time and services delivered off the Forests or on other agency lands.

SEC. 3 (h) (ii) of SOAR prohibits including the charges to clients for lodging and goods and services outside federal lands when calculating permit fees. Including charges for activities on other federal lands is also prohibited.

The BLM currently follows this policy to some extent as their guidance stipulates that deductions “from gross receipts are allowed for actual transportation and lodging costs incurred by the permittee before the client’s arrival at the beginning of a trip, and after departure at the end of a trip.” (H-2930-1 BLM Recreation Permit and Fee Administration Handbook, pg. 31.)

(iii) authorizes a flat per person fee which the Forest Service had as an alternative until 2008. While the agency currently has a flat fee for temporary permits, it does not apply to priority use permits. A flat fee schedule would improve the ease of calculating fee payments by charging per day for a specific activity. When trips cross agency boundaries or involve extensive travel to other federal lands, a flat fee makes the fee calculation much simpler.

SEC. 10 removes the Catch-22 in the Forest Service’s cost recovery rule by conforming to the intent expressed in the Forest Service’s final cost recovery rule in 2006. The Forest Service recognized the potential negative economic impact of cost recovery on small entities in the publication of its Final Rule (Fed. Reg. 8891, 8897 Feb. 21, 2006):

The Forest Service has prepared a cost-benefit analysis of the final rule, which concludes that the final rule could have an economic impact on small businesses if their application or authorization requires a substantial amount of time and expense to process or monitor. These entities could be economically impacted, for example, when they apply for agency approval to expand or change their authorized use, or when an expired authorization prompts them to apply for a new authorization to continue their use and occupancy, and the application requires a substantial amount of time and expense to process.

In response, the Forest Service provided an exemption from cost recovery for the first 50 hours or less of agency work for the application and processing of outfitter and guide permits, but illogically eliminated that exemption when the time required to process permits exceeds 50 hours. In other words, full cost recovery applies back to the first hour when time spent processing permits exceeds 50 hours. There is no credit on the outfitter’s cost recovery bill.

In practice the BLM has rarely implemented cost recovery for permit administration. The Forest Service has done so at times but has not implemented it consistently, probably in recognition of the burden on small businesses.

SEC. 10 does not eliminate cost recovery but revises the requirement to apply a 50-hour credit for each permit, not one 50-hour credit for a group of permits. SEC. 10 also recognizes extenuating circumstances and gives the Forest Supervisor the option of waiving cost recovery.