



Testimony
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Hearing on the Federal Lands Recreation Enhancement Act
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Mr. Chairman and members of the subcommittee thank you for taking the time to consider the concerns and issues that are necessary to improve the draft reauthorization of the Federal Lands Recreation Enhancement Act (REA). The time you are spending on this legislation is crucial to the future of outdoor recreation. Your efforts are very much appreciated.

America Outdoors Association is a national, non-profit trade association representing the interests of outfitters and guiding companies, most of which operate on federally-managed lands and waters under permits authorized by REA.

This is complex legislation. Since REA is the authority under which outfitter and guide permits are currently issued and those permit fees retained by agency units, America Outdoors Association members and our state affiliate organizations are hopeful that we can eventually support reauthorization of this authority. However, we cannot support passage of the discussion draft circulated prior to this hearing. My testimony today will focus primarily on the provisions in this legislation which impact backcountry recreation. The draft bill is unsustainable from a financial standpoint for holders of outfitter permits under Section 807. I will offer some solutions which enable the agencies to collect and retain reasonable recreation fees to support quality services and experiences for the public.

The provisions of this bill in many ways reveal the increasing costs of managing recreation on federal lands and why we need to work on the cost side of the equation and not just on the funding side.

SEC. 807 requires permit holders, primarily outfitters and guides, organized groups, special events and motorized recreationists, to cover some or all of the costs for

- (1) trail and facility construction;
- (2) maintenance;
- (3) natural and cultural resource monitoring;
- (4) restoration;
- (5) emergency response and law enforcement;
- (6) signage and user education;
- (7) permit administration.



Since most self-guided, backcountry recreationists are exempted from fees in the draft legislation, except in a handful of areas, these burdens would fall mainly on the outfitted public and their service providers. Outfitter permit holders would be saddled with the costs for trail maintenance, monitoring of natural and cultural resources, restoration, signage, law enforcement and user education for all users in most areas. In 2012 the Forest Service estimated that its trail maintenance backlog totaled \$314 million, which is beyond the financial viability of recreation permit holders and their customers. Outfitted use in wilderness usually amounts to around 15% or less of overall use, so the fees to support recreation for other users would largely be levied on the outfitted public.

Recreation.gov lists only 26 areas where the Forest Service and National Park Service collect permit fees from the self-guided (noncommercial), general public for backcountry uses. Fourteen areas are in National Forests. A few other areas charge permit fees for self-guided users which are not listed on recreation.gov, including a few rivers managed by the Bureau of Land Management (BLM), but few noncommercial backcountry users would share the cost recovery burdens listed in SEC. 807.

Several of the items under the cost recovery provision in SEC. 807 are defined in the April 9, 2012 Final National Forest System Land Management Planning rule. This rule provides evidence as to why the costs in SEC. 807 cannot be separated among uses or users or sustained solely by the outfitted public. For example, “natural and cultural resource monitoring” and “restoration” are very broad in scope as identified in the Forest Service rule. Forest plans are required to include *“monitoring of select ecological and watershed conditions and focal species to assess progress towards meeting diversity and ecological sustainability requirements.”* This same planning rule requires Forest plans to include in their *“maintenance”* and *“restoration”* goals, the requirement *“to provide for the maintenance or restoration of the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area.”*

These issues, impacts and costs, which are covered in SEC. 807, are often indistinguishable among users and uses, not to mention the impacts of natural disasters. They should be programmatic and not transferred to a small number of permitted visitors whom the agencies will find convenient to isolate and exploit for revenue. The construction and maintenance of public facilities and trails are also programmatic costs, which should not be borne solely by permit holders.

The threat of cost recovery for permit administration required of small businesses cannot be dismissed. The Forest Service acknowledged the threat to small businesses in its final cost recovery rule in 2006 when it stated: “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 a few areas cost recovery has been implemented appropriately. However, the risk of runaway analyses is ever present when permits are up for renewal. Permit holders are basically required to sign a “blank check” agreement to cover the costs, even when those costs may be well beyond their means. These



permitting processes should be streamlined following the model used in SEC. 603 of the recent Farm Bill (H.R. 2642), which authorizes categorical exclusions for forest restoration thinning projects. Likewise, permitting new outfitted activities on public lands is prohibitively expensive for both the BLM and the Forest Service. We had hoped the bill would include some streamlining of those processes by authorizing the use of programmatic Environmental Assessments and Categorical Exclusions in certain circumstances.

Permit fees should be dedicated first to permit administration and then to other uses in consultation with the permit holders. We do not believe the costs to construct recreation facilities and trails for the general public, forest restoration, emergency response, or law enforcement are appropriate costs to be paid by recreation permit fees since self-guided users are not required to have permits in most areas. Those agency actions benefit the public at large and are more appropriately paid by day use fees, recreation fees, or other sources of funding including appropriations, which provide a broader base of funding than permit fees. Outfitters may be subject to one of these alternative fees as well to support some of these costs.

SEC. 806 of the draft authorizes and promotes agency-led tours, services and equipment rental, which could compete with the private sector, without any of the similar permit or cost recovery obligations in SEC. 807. Nor are these agency services required to carry or pay for liability insurance. Some of these activities were authorized in the previous version of the legislation. Not all are objectionable to us. But these agency-led programs have begun to expand with the launch of the interagency reservation service, recreation.gov. The agency activities authorized by the legislation include

- guided walks, talks and tours,
- rental of stock animals, boats, equipment, cabins;
- and services where specialized equipment is required for programs of substantial length.

We do appreciate the Stewardship Credits proposed in SEC. 807. It is a step in the right direction. We offer ideas on expanding that program in our suggested list of changes.

We also appreciate the public participation provisions in SEC. 808 and the reporting requirements in SEC. 813, especially the provision to annually report how fees are being spent. SEC. 808 should include a provision that authorizes a public meeting on fee expenditures at each unit so that questions can be asked and input taken on the use of fees. Such a meeting should not be mandatory if there is no interest. An example of why such a meeting would be of value is included in our suggestions for changes to the draft.

While we do understand the importance for this authorization to sunset, a five year sunset may be too short. The agencies also need specific legislative authority to issue permits with terms beyond whatever sunset date is in the final bill or they may not issue them for fear their fee authority will expire during the term of the permit. We suggest a 10 to 15 year sunset provided the Congress conducts routine oversight hearings on implementation of this legislation.

As previously mentioned, we had also hoped this legislation would help resolve the near lockdown that currently exists on federal lands with regard to new or expanded outfitter services. If the Congress wants the private sector to be involved in providing outfitting services in Forests, Refuges and on BLM lands, it



has to provide the agency with the authority to streamline the required permitting processes. These changes would enable the agencies to open areas to new uses and enable existing service providers to adapt to changing markets.

The following modifications and additions to this legislation are offered for your consideration with the understanding that some of these suggestions may be more appropriate for other legislative initiatives.

1. Because about 8,000 outfitter and guide special recreation permits are issued by the Forest Service and BLM, the outfitter and guide special use permitting authority deserves its own Section in the legislation, which will enhance the clarity of this legislation instead of mixing that authority and those fees with other uses and users. We estimate that at least 60,000 full and part-time jobs are at stake in rural areas just among Forest Service, BLM and Fish and Wildlife Service permit holders.
2. All the costs in SEC 807 (b) should not be attributed to permit fees for outfitting and guiding. Permit fees should be held in a special account for permit administration first and foremost. Permit fees should be allowed to accumulate to help cover the cost associated with permit processing when permits expire. Permit holders should be consulted before those fees are used for other purposes or to benefit other uses. Fees to cover some or all of the costs for restoration, monitoring of biological and cultural resources, and similar items should be removed from SEC. 807.
3. A fee other than a permit fee should be considered to support maintenance of trails, facilities, user education and similar costs, but it should be applied to all users or to none. Perhaps, the Recreation Fee Section could be broadened so that a fee could be collected from anyone using a resource or facility which requires oversight, construction of specific facilities, and maintenance if the fees are reasonable, cost-effective and benefit the user base paying the fees.
4. The exemption from recreation fees for a wide range of uses in SEC. 806 is confusing and muddies the water. This exemption is so broad and ill-defined, the courts are likely to be the agent determining which if any fee these recreationists are subject to, including fees for use of facilities that provide "access" to rivers or permits which provide "access" since these users are exempted (by this Section).
5. We believe that restoration and ecological monitoring are general management obligations, inseparable among various users and natural events and should not be subject to fees.
6. Streamline permit documentation. Authorize the use of Programmatic Environmental Assessments (EA's) for recreation uses and activities to include the self-guided and outfitted portion of those uses. The BLM and National Park Service already use this strategy to some extent. The goal should be to enable these EA's to reduce some of the site specific documentation requirements when permits are issued. Categorical exclusions should be authorized for routine renewal of existing uses even in the presence of extraordinary circumstances when there is a finding of no significant impact. Lawsuits by those opposed to commercial outfitting activities have made the Forest Service gun-shy about using categorical exclusions in these circumstances; therefore a specific legislative authority would be helpful. We need to find ways to encourage efficiency in permit administration and NEPA documentation to enable these permits to be issued cost effectively. Five or six outfitters simply cannot bear the costs of a 700-page Environmental Impact Statement, as was done to authorize six outfitters to



- take 1,200 people per year into the Pasayten Wilderness. The Forest supervisor later decided the EIS was inadequate and withdrew the Record of Decision to issue the permits after the agency spent hundreds of thousands of dollars on the process for six permits.
7. We strongly recommend that Congress mandate what constitutes a valid assessment of need for commercial services in designated wilderness. This provision will help free the agencies from the fear of litigation. The Forest Service should eliminate these assessments of need in non-wilderness areas because there is no statutory basis or funding. In response to lawsuits challenging the need for commercial services, the agencies have to perform assessments of need for those services. The Act states: "Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas." Therefore, the assessment must also determine the extent of that need and the degree to which it impairs wilderness values. But the standards for documenting this need for commercial services are not established or standardized among the agencies. Therefore, it should be mandated.
 8. In order to provide more flexibility to accommodate new recreation services, reinstate one-year temporary permits for new types of outfitted uses. BLM currently has no temporary permit authority. The Forest Service has a temporary permit, but for only 200 service days. These temporary permits should include operating plans, performance reviews, fees, and utilization requirements similar to longer term permits. There should be a cost effective strategy to convert these permits to longer- term permits. Categorical exclusions are already authorized for temporary uses, which will make issuance of these permits feasible. These permits can be issued when the ranger does a simple assessment that the capacity is available for the new activity. Uses should be allowed to re-occur for up to three years. This authority should not be used to extend existing permits or for existing permitted activities unless there is unfilled need for those services.
 9. The provisions that are in the original REA authority, which prohibit additional charges for road use and monitoring for endangered species, should be reinstated. Permit holders should not be charged road use fees unless other users are also charged. Permit holders are often the minority users of roads but would likely be billed for all or most of the cost for road maintenance for every user. The same concern applies to fees for biological monitoring for endangered species since many other non-permitted users frequent these recreation areas.
 10. For trips or recreation services which cross agency boundaries, provide legislative authorization for one agency permit to be issued to cover uses on the lands and waters of both agencies.
 11. Provide the BLM and the Forest Service with the authority to concession-out, non-essential facilities for recreation services for permit terms sufficient to justify and attract the capital necessary to make them viable for commercial services. The BLM does not currently have this authority. The Forest Service has it but does not use it very often.
 12. Mandate that permit fees be based only on the activities on federal lands. Currently, the Forest Service bases permit fees on the entire cost of the trip, including activities that occur on private land, essentially taxing activities and services outside National Forests. The Forest Service was ordered by the U.S. District Court in Alaska to stop using this basis for fees (*Tongass Conservancy v Glickman*), but the practice continues as official agency policy outside the Alaska Region.
 13. The requirement for prior approval of the exemption from day use fees for education institutions is important. We also suggest limiting that fee exemption strictly to activities in pursuit of course



- credits so that adult continuing education recreational activities and similar programs are not inadvertently exempted from fees.
14. Provide clear authority for expansion of the pilot program for stewardship credits or begin contracting with outfitters for river and trail maintenance. We suggest including the goal of reaching 40 units by the end of year three and providing some form of reimbursement to ranger districts from fee revenues for fee credits if that strategy is adopted. There is also a new contracting authority (Sec. 8205. Stewardship end result contracting projects) for road and trail maintenance for the Forest Service in the Farm bill which may be considered if some source of funding is available.
 15. Consider use of the Land and Water Conservation Fund for the backlog of trail and facilities maintenance. While this authority is probably not within the domain of this legislation, we believe it is an important piece of the puzzle for future legislation when the Land and Water Conservation Fund is up for reauthorization.
 16. Limit the agencies' authority to provide fee-based services directly to public when those services can be provided by the private sector. We suggest clarification on what types of tours are authorized by this legislation in SEC. 806(b) and that they be limited to interpretive walks and hikes where outfitting or specialized equipment are generally not required. If cost recovery provisions are authorized for outfitter permits, those same cost recovery provisions should apply to the services agencies provide directly to the public.
 17. We appreciate the reporting requirements in the bill but do not believe they are adequate. Current reports of fee spending are often so general, one cannot easily tell how the fee money is being spent. The Salmon Challis National Forest report for 2012 describes a few projects which were completed, but does not reveal how much was spent on each project. Expenditures are given for operational costs, such as Visitor Services and Law Enforcement without further detail. In 2012 the Intermountain Region, which is comprised of 12 National Forests, reported spending \$319,899 on law enforcement from recreation fees for the entire Region. The Salmon Challis National Forests spent \$172,263, about half of the Region's fee-based, law enforcement expenditures. This imbalance could result because that Forest simply has more fee money to spend and is diverting it to law enforcement whereas the other Forests have to rely on appropriated funds. There is no way to tell if this spending is related to recreational activity. The public should have an opportunity to meet with the agency each year, to discuss these expenditures and get a more detailed accounting.
 18. The draft bill also conflicts with the National Park Omnibus Management Act authority for issuing contracts and commercial use authorization to outfitters operating in National Parks. REA should not govern contracting and permitting procedures in National Parks.

Thank you again for taking the time to consider this important legislation. We appreciate the opportunity to share our views on how we can continue to support the important economic and social benefits of outdoor recreation on federally-managed lands and waters.