

TESTIMONY OF
AMERICAN MOUNTAIN GUIDES ASSOCIATION

FOR CONSIDERATION BY THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

FULL COMMITTEE HEARING TO RECEIVE TESTIMONY ON PENDING LEGISLATION

S. 1665, the Simplifying Outdoor Access for Recreation Act

S. 1723, the Ski Area Fee Retention Act

S. 1967, the Recreation Not Red Tape Act

HELD ON OCTOBER 31, 2019

SD 366

Submitted by Matt Wade, Advocacy and Policy Director
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October 30, 2019

The Honorable Lisa Murkowski
Chair
Senate Energy and Natural Resources Committee
U.S. Senate
304 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Joe Manchin
Ranking Member
Senate Energy and Natural Resources Committee
U.S. Senate
304 Dirksen Senate Building
Washington, D.C. 20510

Dear Chair Murkowski, Ranking Member Manchin, and Members of the Committee,

The American Mountain Guides Association respectfully submits this testimony for inclusion in the public record regarding the Full Committee Hearing on S. 1665, the Simplifying Outdoor Access for Recreation Act; S. 1723, the Ski Area Fee Retention Act; and S. 1967, the Recreation Not Red Tape Act, to be held on October 31, 2019 in Room 366 of the Dirksen Senate Office Building.

The American Mountain Guides Association (AMGA) is a 501(c)(3) educational non-profit organization that provides training and certification for climbing instructors, mountain guides, and backcountry skiing guides throughout the United States. Founded in 1979, the AMGA has trained over 13,000 climbing and skiing guides who provide outdoor experiences for the public on public lands. As the American representative to the International Federation of Mountain Guide Associations, the AMGA institutes international standards for the mountain guiding profession in the United States and serves as an educational body for land management agencies, outdoor businesses, clubs, and other recreation stakeholders. Of additional relevance to this hearing, our membership includes outfitters and guides who have been operating on public lands since the inception of the modern commercial recreation permitting system. We have extensive experience with public land management systems, philosophies, and permitting, and we welcome the opportunity to provide testimony on the Simplifying Outdoor Access for Recreation Act (SOAR Act) and the Recreation Not Red Tape Act (RNR).

We appreciate the Committee's recognition of the need to improve recreational access to public lands and we commend Chair Murkowski, Ranking Member Manchin, and the Committee for taking steps to advance legislation that will enhance opportunities for Americans from all walks of life to access and enjoy public lands. In particular, we believe there is a significant opportunity to enhance accessibility of public lands and increase recreational opportunities by modernizing the outfitter and guide permitting systems of the federal land agencies. Currently, these systems are antiquated, layered with unnecessary analysis, and they lack the tools necessary to quickly and efficiently authorize outfitted and guided activities. This prevents outfitting and guiding businesses from

growing to their full potential and limits opportunities for the public to benefit from the assistance of an outfitter, guide, outdoor education center, outdoor adaptive program, veteran's outdoor program, or volunteer-based club. The situation has become increasingly dire in recent years as fire suppression costs have further reduced the agencies' ability to attend to the need for outfitting and guiding services on public lands.

To illustrate the challenges being faced by some of our members, we would like to share a few stories.

The American Alpine Institute and the American Mountain Guides Association partner to offer guide training courses for veterans. These courses can be paid for with VA benefits and they prepare veterans for careers in the mountain guiding industry. Several courses are offered annually in the Cascade Mountains of Washington State. The courses are very popular, they fill to capacity, and there is typically a lengthy waitlist for each course. However, at the present moment it is not possible to provide more of these trainings because the Okanogan-Wenatchee National Forest has been unable to complete the required needs assessment and environmental review that is necessary to authorize additional courses. Consequently, fewer opportunities are available for veterans to prepare for careers in the mountain guiding industry.

The Colorado Mountain School (CMS), located in Boulder, Colorado, provides instruction and guiding in rock climbing, mountaineering, backcountry skiing, and avalanche awareness. CMS has been a permittee of the Arapaho-Roosevelt National Forest for over a decade and has maintained full compliance with the terms and conditions of the permit throughout that time. Despite acceptable performance, CMS is required to resubmit a temporary permit application every 180 days because the agency is unable to complete the analyses required to issue a longer-term permit. The repetitive reissuance of a short-term permit is unnecessarily time consuming and inefficient for both the Colorado Mountain School and for the Forest Service.

Appalachian Mountain Guides, a climbing guide service in Fayetteville, West Virginia, was contracted by the Boy Scouts of America (BSA) to help them develop an outdoor climbing area at the Summit Bechtel Reserve, a BSA property near the New River Gorge National River. Both parties were excited to collaborate on the project to expand recreation opportunities for kids. The project was scheduled to be completed by summer 2019, just in time for the 24th World Scout Jamboree. When planning the project, the Boy Scouts of America approached the National Park Service (NPS) to get permission to cross a small section of NPS-managed land that lies adjacent to the Scouts' property where the climbing area is located. They were told it would take 3 years to issue the necessary permit due to the amount of paperwork required. As a result, the new climbing opportunity was not available in time for the World Scout Jamboree.

The Montana Wilderness School, located in Southwest Montana, provides youth mountaineering and backpacking courses that foster personal growth and help kids develop an appreciation for the outdoors. They often have to drive over six hours to run their courses because the Custer-Gallatin National Forest in their backyard is only able to grant them a permit on an irregular basis, in some

cases once every five years. The local forest office has cited an inability to complete the required paperwork as the reason for not issuing permits on a regular basis.

Fortunately, there are good opportunities to improve efficiency and restore functionality to the outfitting and guiding permitting systems of the federal land agencies. The Simplifying Outdoor Access for Recreation Act (SOAR Act) will clarify existing authorities and establish new authorities that will make special recreation permits easier for outfitters and guides to obtain and manage, and easier for the agencies to administer. In the following section, we would like to point out several provisions in the bill that are particularly notable.

In Section 4, *Permitting Process Improvements*, the bill directs the agencies to evaluate the special recreation permitting process and identify opportunities to eliminate duplicative processes, reduce costs, and decrease processing times. This includes the authorization of programmatic environmental reviews and tiering, and an evaluation of existing categorical exclusions (CEs) to determine if one or more new CEs would expedite the permitting process without significantly affecting the human environment. At the heart of this section is the fact that guided recreation activities, as a category of actions, are unlikely to have significant impacts on the environment and therefore present a unique opportunity to increase efficiency while upholding National Environmental Policy Act (NEPA) requirements and maintaining land management best practices. As noted in the *USDA Forest Service Proposed Rule on National Environmental Policy Act Compliance*,

[m]any of these recreation special uses occur on existing NFS roads or NFS trails or in existing facilities that are designed and managed for those uses and have no more impacts than noncommercial public use.¹

In short, guided activities have no greater footprint on the environment than noncommercial public use and therefore, in most cases, should not require additional analysis beyond that which has already been done to approve noncommercial use. Taking this into account, we believe Section 4 of the bill will result in significant new efficiencies for both agencies and outfitters while ensuring existing environmental protections continue to be upheld.

Similarly, Section 4(d) of the bill directs the agencies to conduct needs assessments only when new uses are proposed in wilderness as required by the Wilderness Act. Needs assessments are lengthy, time-consuming studies conducted by the agencies to assess the agency and public need for a service. Under current practice, these studies are frequently conducted in areas outside of wilderness, significantly slowing down the permitting process, and, in some cases, preventing permits from being issued altogether. Section 4(d) of the bill will support the use of needs assessments in areas where they are required by statute while ensuring needs assessments are not unnecessarily delaying the permitting process in areas where they are not required. Also of note, Section 4(e) directs the agencies to make applications for recreation special use permits available online unless

¹ <https://www.fs.fed.us/emc/nepa/revisions/includes/docs/SpecialUsesCEsSupportingStatement.pdf>

doing so would not improve the efficiency of the permitting process. To provide context for the purpose of Section 4, it would address the situations described earlier in which opportunities for veterans to receive workforce training are being stifled on the Okanogan-Wenatchee National Forest and local youth in Southwest Montana are unable to attend outdoor enrichment programs on the National Forest closest to their home.

In Section 5, *Permit Flexibility*, the bill directs the agencies to allow a new activity to occur under an existing permit, without doing additional analysis, when the new activity is substantially similar to the already permitted activity. As an example, this would allow a permit holder who conducts backpacking trips to also offer day hikes.

In Section 5(c), the bill authorizes the Forest Service and Bureau of Land Management to issue a temporary special recreation permit for a term up to two years in length. This will bring significant new efficiencies in the form of less frequent permit processing, especially for Forest Service temporary permits which are currently limited to a term of 180 days. In practical terms, the effect of Section 5(c) will be to minimize the repetitive reissuance of short-term permits as described previously in the example from the Colorado Mountain School and the Arapaho-Roosevelt National Forest.

In Section 7, *Permits for Multijurisdictional Trips*, the agencies are authorized to offer a single joint special recreation permit for guided trips that cross agency boundaries. Outdoor trips typically follow natural features such as rivers, canyons, and high mountain ridges for ease of travel and maximum scenic value. Often times, agency boundaries are not perfectly aligned with these landscape features and in some cases a group may cross an agency boundary (or multiple agency boundaries) in the course of a single trip. Under the current system, this requires a permit from each agency. It is time consuming and costly for guides to apply for and maintain multiple permits with different agencies for just a single trip. It is also inefficient for the agencies to issue two separate permits to the same outfitter for a single activity. Section 7 of the bill would establish the necessary authorities to allow a single permit to be issued for trips that cross agency boundaries.

In Section 8(b), *Forest Service Permit Use Reviews*, the Forest Service is authorized to assign, at the time of a use review, additional use beyond the amount allocated when the permit was originally issued (provided capacity for the use exists). This is currently a common practice on some Forests although it is not technically allowable under current law. Section 8(b) of the SOAR Act will establish new policy to support existing common-sense practices for the allocation of additional use.

As Congress is considering the measures in the bill that increase efficiency and improve access, we would like to note the bill does not direct the agencies to make changes to existing carrying capacity determinations or changes to allocations between different user groups. Rather, the bill seeks to ensure that outfitters and guides are able to access existing capacity that has already been deemed appropriate for outfitting and guiding use, but which has previously been inaccessible due to administrative roadblocks.

In Section 9, *Liability*, the bill authorizes the agencies to allow special recreation permit holders to use liability waivers to the extent they are authorized by applicable State law. Presently, there is inconsistency among land management agencies, and even within individual agencies, on the use of liability release forms. The Bureau of Land Management generally allows them, the U.S. Forest Service allows them in some locations but not others, and the National Park Service does not allow them at all. The bill would resolve these inconsistencies and establish the principle that State law controls the validity of liability waivers. We are aware there may be concerns with the wording of this section of the bill. We support additional discussion among interested parties to identify alternative language and make the necessary amendments at markup.

In Section 9(c), *Indemnification by Government Entities*, the bill directs the agencies to waive the existing indemnification requirement for State-based institutions that are prohibited by state or local law from providing indemnification to the United States provided they carry the minimum required amount of liability insurance. Under current law, state-based institutions such as colleges, universities, and municipalities are unable to hold special recreation permits due to their inability to fulfill the indemnification requirement. Section 9(c) of the bill would remedy this situation and enable college outdoor recreation programs and municipal recreation districts, many of which offer low-cost outdoor courses and trips, to provide outdoor programs on public lands.

The Recreation Not Red Tape Act contains a number of provisions beyond those enumerated in the SOAR Act that will improve access to public lands, increase agency attention to outdoor recreation, and bolster the outdoor recreation economy. Section 201, *Access for Service Members and Veterans*, will provide veterans with valuable resources to help them learn about, and gain access to, outdoors-based careers. Section 302, *Recreation Performance Metrics*, will establish metrics to evaluate and advance recreation tourism goals. Section 303, *Recreation Mission*, will direct the Army Corps of Engineers, Bureau of Reclamation, Federal Energy Regulatory Commission and Department of Transportation to consider how land and water management decisions can enhance recreation opportunities and the recreation economy.

The issues related to outfitter-guide permitting that are being discussed in this hearing are truly bipartisan in nature. This is evidenced by the wide range of Democrats, Republicans, and outdoor industry stakeholders who support the bill. The broad array of support is not by accident. The SOAR Act has been developed over a period of 5 years with extensive input from the outdoor recreation community and in consultation with conservation groups and land management agencies. The bill has been carefully written to strike a thoughtful balance between the interests of diverse parties while facilitating change that is much needed and long overdue. The SOAR Act presents a wonderful opportunity for Congress to come together around a set of common interests and enact positive change that will truly enhance the recreational benefits of public lands and empower the American people to enjoy them.

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Thank you for the opportunity to share our perspective on ways in which Congress can improve access for guided outdoor recreation on America's public lands. We look forward to working with Congress to implement improvements that will increase agency efficiency, grow the outdoor recreation economy, and expand opportunities for the public to experience the legacy of America's public lands.

Sincerely,



Matt Wade
Advocacy and Policy Director
American Mountain Guides Association