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## Superior National Forest Invitation for Public Input on the Management of Commercial Towboat Operations

The Superior National Forest (“SNF” or “the Forest”) is starting to gather input from tribes, local communities, interested parties, and the broader public regarding management of commercial towboat services on the Forest, including within the Boundary Waters Canoe Area Wilderness (“BWCAW” or “the Wilderness”) management area. We are considering making amendments to Forest Plan direction for the Boundary Waters Canoe Area Wilderness in order to address management of towboats on the Forest.

This document includes information designed to help you understand the background and current status of commercial towboats operating on the Forest. At the end of the document, we identify management issues that we expect to address, and provide specific questions for your consideration to guide you in engaging and providing input on these issues.

Our proposed action will incorporate input gathered during this process, as well as information from on-going collaborative processes, and our government-to-government consultation with the tribal bands, signatories to the 1854 Treaty.

### 1. Background Information and Frequently Asked Questions

Providing recreational opportunities and facilities is central to the mission of the Forest. For a variety of reasons, Forest visitors may desire or need assistance to experience the array of recreational opportunities that national forests offer. A recreational commercial service, also known as an “outfitter guide service,” can help to further the agency’s mission by providing an escorted recreational experience, specialized equipment, or both to Forest visitors.

Some commercial outfitters and guides are authorized to provide towboat services which include livery services (dropping off or picking up supplies, equipment or clients on National Forest System lands) and tow services (using a motor-propelled watercraft to facilitate the transport of additional canoes, boats, camping supplies and associated equipment and people to designated drop-off points). Towboats may be permitted to operate both inside and outside of the BWCAW.

To be authorized to provide commercial outfitting and guiding services within the National Forest, federal regulations require the business to obtain a special use permit. Applications for commercial services special use permits are subject to National Environmental Policy Act regulations and analysis.

#### [Frequently Asked Questions](#)

##### **Q: What does the law say about motorboat and towboat use in the BWCAW?**

Permissible motorboat use within the BWCAW has always been subject to legal limits set by Congress. The 1964 Wilderness Act, section 4b, requires that agencies preserve wilderness character, which includes the Undeveloped Quality related to the use of mechanical transport and motorized equipment. The requirement to preserve wilderness character guides all management of designated wilderness, including towboats.

The Wilderness Act initially provided that motorboat use could continue in the Wilderness at its already-established levels. That changed with the 1978 BWCAW Act, which prohibits motorboat use within the

Wilderness except on a few specific lakes. On those lakes, Congress limited the size of allowable motors and ordered the Secretary of Agriculture to develop and implement entry-point quotas to restrict all motorboat use (commercial or not) to comply with an upper limit.<sup>1</sup> Specifically, Congress limited all motorboat use in the Wilderness to “the average actual annual motorboat use of the calendar years 1976, 1977, and 1978 for each lake.” Pub. L. 95-495. Today, now that all phase-outs required under the BWCAW Act have occurred, the overall Wilderness-wide base period use 12,059 motorboat permits – broken into 10,542 day-use permits and 1,517 overnight permits.

The 1978 BWCAW Act also limits motorboats, including towboats, in the BWCAW (except for one lake and one river) to motors with no more than 10 or 25 horsepower, depending on the lake.

**Q: What does the Forest Plan say about commercial towboat services?**

The Superior National Forest Land and Resource Management Plan (Forest Plan) allows towboats within the BWCAW within the Semi-Primitive Motorized Management Area. Under the current Forest Plan, towboat use inside the BWCAW is limited to 1992 levels for numbers of boats, trips, operators, and specific lakes; increased use is not permitted beyond these limits.<sup>2</sup> This standard does not preclude the Forest Service from implementing changes to prevent that use from negatively affecting wilderness character.

Outside the BWCAW, the Forest Plan allows towboats in the General Forest, Recreation Use in a Scenic Landscape, and Semi-Primitive Motorized Recreation Management Areas as long as the uses do not detract from the semi-primitive environment or remote character in specific locations.

The current Forest Plan incorporated and updated information from the 1993 BWCAW Plan (Wilderness Plan). The Wilderness Plan affirmed that commercial towboats are allowed and set forth data and limits that have informed management of this use ever since. As described in this Notice, the Forest Service is gathering input regarding these limits and what changes to managing commercial towboat operations (if any) should be proposed.

The Wilderness Plan set limits on the number of visitors who could enter the BWCAW, regardless of whether they used motorboats during their visit. The Wilderness Plan also set the current day use motor quotas, both per week and per lake. Prior to this, towboats were required to compete for recreational day-use motor permits to provide commercial tow services. Since 1995 with the implementation of the Wilderness Plan, all towboat operations require a recreation outfitter-guide towboat operator special use permit.

The potential management change under consideration could affect any and all aspects of the 1993 Wilderness Plan and 2004 Forest Plan as to commercial towboat operations.

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<sup>1</sup> This limit is sometimes informally referred to as the “statutory cap” for motorboat use in the BWCAW; the United States Court of Appeals for the Eighth Circuit has more accurately referred to it as the “base period use.” *See Friends of Boundary Waters Wilderness v. Bosworth*, 437 F.3d 828-29 (8th Cir. 2006).

<sup>2</sup> The Forest Plan also limits the number of day motorboat use permits and overnight use motorboat permits. These limits are sometimes informally referred to as “day use motor quota” and “overnight motor quota.”

**Q: What areas of the Forest could be affected by management changes to commercial towboat services?**

Subject to statutory limits, all aspects of the management of commercial towboat activities in the Superior National Forest, both outside and inside the BWCAW, may be reconsidered in connection with this review. Within the BWCAW, this management change could affect the following specific lakes where motorized use is allowed in the BWCAW per the 1978 BWCAW Act on parts of the LaCroix, Kawishiwi and Gunflint Ranger districts:

- Clearwater, North Fowl, South Fowl, and Seagull (no motors west of Three Mile Island) Lakes, and sections of Island River on the Tofte District (up to 10 hp limit).
- Basswood (except that portion north of Jackfish Bay and Washington Island), Saganaga (except that portion west of American Point), Fall, Newton, Moose, Newfound, Sucker, Snowbank, East Bearskin, South Farm, and Trout Lakes (up to 25 hp limit).
- Little Vermilion and Loon Lakes, and Lac La Croix (not beyond the south end of Snow Bay in the U.S.A.).
- Loon River (no hp limit).

**Q: What are the conditions, trends, and issues driving the need to revisit management of commercial towboats?**

The Forest must ensure compliance with the statutory cap/base period use established by Congress. That limit has always been measured in terms of motorboat quota. In addition, as part of its ongoing efforts to preserve Wilderness character, especially in certain high-use areas in the BWCAW, the Forest has recently been updating its processes for monitoring commercial towboat use, including asking operators to report the number of towboat trips they provide each season.<sup>3</sup> Data from before 2015 cannot be used in a trend analysis, however, because collection protocols before that year were too different.

Visitation to the wilderness has increased since the development of the 1993 Management Direction for the BWCAW (the “1993 BWCAW Plan”) and since the adoption of the [2004 Land and Resource Management Plan for the Superior National Forest \(the “2004 Forest Plan”\)](#), which carries forward the 1993 BWCAW Plan in Chapter 3 – Management Area Direction. Addressing commercial towboat use and recreation special use permitting will help maintain or improve the Forest-wide recreational experience and social and physical resource conditions in the BWCAW. Table 1 below shows data reported by commercial towboat operators regarding their towboat operations from 2015 to 2020 (the most recent compiled year of data).

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<sup>3</sup> “Trip” is defined for current purposes as one use of a towboat on a BWCAW lake, across the lake and back. At different times and in other contexts (such as court opinions) the term has been used differently.

Table 1: Towboat Data 2015-2020

Drop-off / Pick-up Location	Year / Total Trips					
	2015	2016	2017	2018	2019	2020
Moose Lake Entry Points	3,224	3,263	3,201	2,933	3,089	2,316
Fall Lake Entry Points	44	58	56	55	50	61
Snowbank Lake Entry Points	3	5	12	19	7	16
Trout Lake Entry Points	0	5	0	0	0	0
Clearwater Lake Entry Points	38	41	23	41	32	45
Seagull Lake Entry Points	18	19	64	58	64	124
Saganaga Lake Entry Points	766	826	939	905	922	863
South Farm Lake Entry Points	0	0	0	0	0	0
Outside BWCAW	58	69	47	56	64	96
Total Trips	4,151	4,286	4,342	4,067	4,228	3,521
<b>Total Trips Inside BWCAW</b>	<b>4,093</b>	<b>4,217</b>	<b>4,295</b>	<b>4,011</b>	<b>4,164</b>	<b>3,425</b>

**Q: Has the Forest prepared a recreational commercial services needs assessment?**

A needs assessment is an evaluation of public and agency need for authorized outfitting or guiding activities. Prior to a full environmental analysis for outfitting and guiding activities, forests may conduct a needs assessment and an analysis of resource capacity, or the amount of overall use an area can sustain without detrimental social or physical resource impacts. These findings inform the proper allocation of use which is the amount of use allocated to a permit holder (measured in service days or quotas and enumerated in a programmatic or project decision consistent with the Forest Plan). The [Superior National Forest Recreational Commercial Services Needs Assessment](#) was released in 2019 and ranked 25 recreation activities across general forest and 17 recreation activities in wilderness. A Needs Assessment is not an analysis conducted under the National Environmental Policy Act (NEPA); rather, it provides support for agency proposals under the NEPA. Refer to the linked report for more details.

**Q: What are special use authorizations and how do they impact management of commercial towboats?**

Since 1995 with the implementation of the Wilderness Plan, all towboat operations require a recreation outfitter-guide towboat operator special use permit. A special use authorization is a legal document such as a permit, term permit, lease, or easement, that allows occupancy, use, rights, or privileges of agency land. The authorization is granted for a specific use of the land for a specific period of time. In this case, recreational special use permits are required for towboat services and tows that operate on the National Forest System. Towboats may be permitted to operate both inside and outside of the BWCAW. Prior to the current moratorium, if a towboat operator terminated its special use permit, an assessment would be completed to determine if a permit should be issued to another individual or business, consistent with existing law, regulation, and policy.

In 2018, the Forest Service chose to impose a moratorium on new recreation special use permits for commercial activity, including towboats. This moratorium has since been lifted for recreational commercial uses other than towboats. With the moratorium on new towboat special use permits still in place, the total number of commercial operators and towboats currently in operation cannot increase. On June 6, 2023, a federal district court ordered the Forest Service to continue its moratorium on new special use permits for towboat operations until current litigation concludes or upon further order from the court.

**Q: How will management changes potentially impact social and ecological resources?**

Following scoping, an environmental analysis under NEPA will be prepared by the Forest interdisciplinary team to evaluate impacts from the proposed action on the social and ecological environment. The anticipated level of analysis for this project is an environmental assessment (EA). The public will be provided an opportunity to review and comment on the analysis.

## **2. Potential Issues to Address**

### Potential Issue 1. Extent to which Commercial Towboats are Necessary for Wilderness Purposes

In developing the 1993 BWCAW Plan, the Forest Service determined the extent to which commercial towboats were necessary and proper for realizing the recreational and other wilderness purposes of the BWCAW. Likewise, the Superior National Forest Recreational Commercial Services Needs Assessment described above found a low agency need for commercial towboat services, a high public need for them, and a moderate overall need for them.

#### Questions related to this issue:

- Question 1.1: Are commercial towboat operations necessary for activities that realize the recreational or other wilderness purposes of the BWCAW? If so, what activities?
- Question 1.2: At what level, if any, should commercial towboat operations be allowed so that visitors can engage in activities that realize the recreational or other wilderness purposes of the BWCAW?

### Potential Issue 2. Impacts of Commercial Towboats on Wilderness Character

As briefly discussed above, towboat usage at certain levels could negatively impact wilderness character. The Forest Service must consider management efforts for preserving wilderness character per law and policy. This includes analyzing commercial use capacities, visitor encounters, crowding, campsite availability, noise, and physical resource damage in the Wilderness.

As noted above, recreational special use permits are required for towboat operations on National Forest System lands. These permits include terms and conditions which are used to minimize the impacts of an authorized use and include limitations, requirements, or other criteria that constrain the when, where, and how of a given use.

#### Questions related to this issue:

- Question 2.1: Should commercial towboat operations be managed differently within the Wilderness compared to general forest recreational areas outside designated wilderness? If so, how?
- Question 2.2: What are the impacts of commercial towboat use on Wilderness character?
- Question 2.3: Are there ways to minimize impacts that commercial towboats may have on wilderness character?

### Potential Issue 3. Commercial Service Operations

As noted previously, with the moratorium on new towboat permits still in place, the total number of towboats and operators currently in operation cannot increase.

#### Questions related to this issue:

- Question 3.1: Would increasing commercial towboat operations outside of wilderness help dilute or divert impacts that may be associated with commercial towboat operations inside the wilderness? If so, how?
- Question 3.2: Should commercial towboat operations be made more or less available in the BWCAW?

### Potential Issue 4. Adhering to the Forest Motorboat Quota, and base period use

Recreational motorboats and commercial towboats have legal and practical differences, and though Congress provided for both uses in the 1978 BWCAW Act, it did not specify a method to compare the two use types for determining whether base period use has been exceeded each year. All motorboat use all year round must be included in calculations used to compare to base period use and Forest quota. However, there are various ways to measure towboat use in the Wilderness to ensure overall motorized base period use is not exceeded.

#### Questions related to this issue:

- Question 4.1: How should commercial towboat “use” be defined, tracked, and tallied?
- Question 4.2: How should commercial towboat use be measured for purposes of staying within the statutory cap/base period use for all motorboat use established in the 1978 BWCAW Act?
- Question 4.3: Should the Forest allocate a portion of the current day use motor quota to commercial towboat operators to prevent competition with the general public? If so, what portion?
- Question 4.4: Should the Forest allocate to commercial towboat operators the difference between the statutory cap/base period use and the current combined total of day use motor quota and overnight use motor quota?
- Question 4.5: Given that commercial use is guided by different laws and policies than recreational use, should authorizations for motor use issued to commercial towboat operators be under the same terms and conditions? For instance, should 1 towboat be allocated per permit, unlike recreational users who are allowed up to 4 boats with 1 day use motor quota visitor permit?

## **3. Getting Involved and Providing Comments**

For more information on this project, please visit the project website at

<https://www.fs.usda.gov/project/superior/?project=64312>

This is your opportunity to get involved early in the planning process, to identify potential issues and concerns, ideas for addressing issues raised above, and to comment on potential management opportunities for our consideration. Comments with sufficient detail and rationale are the most useful.

We are emphasizing electronic correspondence for this project to reduce paper use and increase efficiency. To submit comments, please use the online comment form by clicking on “Comment on Project” on the right-hand side of the project website at <https://www.fs.usda.gov/project/superior/?project=64312>. Provide site-specific comments about the proposed project, along with supporting information you believe will help the Forest Service

identify issues, develop the project design, or guide the environmental analysis. If you provide comments, we will add you to the mailing list for ongoing stages of this project.

### Providing Comments

Electronic form submission through the project webpage is preferred as described above, however hardcopy comments concerning this project may be submitted to *RE: Commercial Towboats Management on the Superior National Forest Superior National Forest, 8901 Grand Ave. Place, Duluth, MN 55808*. Hand delivered comments may be delivered at the same location during regular business hours of 8 a.m. to 4:30 p.m. Central Time, Monday-Friday, excluding holidays.

For hardcopy comments, please include the following:

- Your name and postal address (email address is recommended but not required)
- The title of the proposed project: Superior National Forest Towboat Management
- Signature or other verification of identity upon request and identification of the individual or entity who authored the comment(s). Note, for comments listing multiple entities or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each entity and for each individual in the case of multiple names. A scanned signature or other means of verifying the identity of the individual or entity representative may be used for electronically submitted comments

All comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record will be available for public inspection. It is the responsibility of all individuals and entities to ensure that their comments are received in a timely manner. We will notify those people who comment or otherwise express interest when a proposed action is available for review at the scoping stage. **Comments should be submitted through the end of calendar year 2023 to ensure their consideration at the pre-scoping stage.**

## 4. Next Steps

Based on public comments and input, as well as applicable law, regulation, policy, and guidance, the Superior National Forest will develop a proposal to address the purpose and need for action. We will then notify stakeholders and partners of the proposed project and initiate the public involvement process under the National Environmental Policy Act (NEPA). Formal public scoping for this project is anticipated in spring 2024.