AMERICA OUTDOORS

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Subcommittee on National Parks, Forests, and Public Lands

Legislative Hearing for H.R. 3670, H.R. 3687, H.R. 3686, H.R. 3113

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America Outdoors Association (AOA) appreciates this opportunity to submit testimony concerning the House Subcommittee on National Parks, Forests, and Public Lands' legislative hearing on the Simplifying Outdoor Access for Recreation (SOAR) Act, H.R. 3670; the Environmental Justice in Recreation Permitting Act, H.R. 3687; the Ski Hill Resources for Economic Development (SHRED) Act, HR. 3686; and the Modernizing Access to Our Public Land Act, H.R. 3113. As people from every walk of life flock to the outdoors this summer at levels that may break many records, there is no better time to engage in a discussion of four bills that seek to increase access for all to the outdoors.

The great outdoors are enjoying a renaissance. Throughout the pandemic, Americans streamed out of cities to seek refuge in the outdoors, many for the first time. More than ever before, people from different walks of life and from diverse backgrounds found opportunities to enjoy America's public lands. And, with reservation trends as an indicator, this will continue in the summer of 2021. Facilitated outdoor experiences are in high demand.

As new visitors explore their public lands, outfitters and guides serve as early and accessible entry points who provide critical expertise, resources, and local knowledge for a particular outdoor experience. Whether renting kayaks, guiding horsepacking trips, running climbing camps, providing bike tours, or otherwise helping the public enjoy the myriad outdoor recreation opportunities available across the nation, outfitters are making things happen. America's outfitting and guiding industry offer the public lasting memories and invigorating, authentic outdoor recreation experiences. Outfitters strive to keep the experiences they provide affordable and accessible. They face challenges, however, which some of the legislation being considered today can alleviate.

AOA will in the following pages focus primarily on the Simplifying Outdoor Access for Recreation Act, and will also briefly discuss the other bills under consideration, as they all have an impact on the outfitting and guiding industry.

The Simplifying Outdoor Access for Recreation (SOAR) Act, H.R. 3670

AOA is proud to continue supporting the SOAR Act as the 117th Congress takes it under consideration. This bill has enjoys broad support from numerous outdoor programs, associations, and organizations and has historically accumulated numerous democratic and republican co-sponsors in both the

House and the Senate. AOA hopes that it can continue to move forward in its original inclusive and broad spirit, which passed this Committee by unanimous consent in the 116th Congress.

AOA convened with representatives from the Coalition of Outdoor Access to reach consensus on a bill based on the Guides and Outfitters Act, which had previously passed the House, that would improve the permitting process not only for established operators and new outdoor recreation experience providers, but also for federal land management agencies. By giving agencies more opportunities to streamline processes, more flexibility to amend existing permits, and more dynamic approaches to managing use, the final compromise reached was agreed to by over 100 unique associations, organizations, outfitters, and programs.

The SOAR Act is designed to provide better opportunities for nonprofit and for-profit programs alike, including those focused on underserved communities, outdoor education programing, wilderness therapy, and traditional outfitting and guiding. A few sections, specifically Permit Flexibility – Similar Activities (Section 104(a)), Additional Capacity (Section 107(b)), Special Recreation Permit and Fee (Section 102(b)), Cost Recovery Reform (Section 109), and Enhancing Outdoor Recreation through Public Lands Service Organizations (Section 302), deserve additional focus.

Section 104(a), Permit Flexibility – Similar Activities

There are many examples of why the ability to authorize similar activities under an existing permit is so important. In Montana, an outfitter has seen his operation culled significantly due to the absence of this authority. This operator had acquired hunting days in an area adjacent to the National Forest that had priviously transferred from private land to the National Forest. The acquired days maintained an agreement this outfitter had made with the private landholder. To formalize this agreement, the outfitter's permit was amended to reflect the adjustment. When their ten-year permit came up for renewal, however, the Forest informed the outfitter that the amendment would not be sustained, as the Forest had not done the necessary environmental review of the permit to renew it with the increased use (NEPA is a necessary component of the land acquisition process). The Forest also informed this outfitter that there were not sufficient resources to conduct an internal environmental analysis, and the operator would have to identify and pay an external contractor to conduct the review. This outfitter is now operating in a much more constrained area than they had historically been authorized to use. Overall, however, there has been no net change in the level of use or in hunting activities and a decrease in commercial hunting in the ranger district.

Section 104(a), Similar Activities, would help in this situation. By establishing a clear protocol to incorporate a substantially similar recreational activity, the permit administrator would be liberated to determine If the permitted activity:

(1) is comparable in type, nature, scope, and ecological setting to the specific activity authorized under the special recreation permit;

(2) does not result in a greater impact on natural and cultural resources than the authorized activity;

(3) does not adversely affect any other permittee issued a special recreation permit for a federal land unit under that subsection;

(4) does not involve the use of a motor for a previously non-motorized use; and

(5) is consistent with any laws and regulations (including land use or management plans) applying to a federal land unit.

In the case of this Montana outfitter, all of the above tests would be easily met and the permit administrator would have a path forward to maintain the historic activity that had been previously approved by the National Forest.

In a separate circumstance, a permittee in Idaho sought to renew its river permit. As this outfitter had an outdoor education component to its facilitated experience, it was approved through the land management plan to take two more days to complete its river trip than authorized for other commercial operators. And, although local outfitters association supported the exception for outdoor education to manage risk, the exception was not supported by the new permit administrator for the Forest. With turnover at the local district and at the Forest level, with reduced resources, and with burdensome processes, the district did not have the capacity to manage special circumstances. Under the SOAR Act, the outfitter in question would be able to meet the test in section 104(a), above, giving the administrator a path to approval. Without permit flexibility, however, two days of outdoor education were cut from this outfitter's previously authorized use.

In addition to what is provided within the SOAR Act, agencies have other important tools to reduce these burdens that we encourage the use of whenever possible. For instance, agencies have the authority to conduct programmatic environmental reviews, assessing the environmental impact of a particular activity (or activities) throughout a site rather than conducting a unique and separate environmental review for each individual operator. Programmatic environmental reviews assess the impact of the total use, by private and commercially-led trips alike, significantly reducing the level of analysis necessary compared to what would be required to conduct site-specific reviews for each individual permit application. Agencies should also make a practice of adopting or incorporating material from previous environmental reviews.

Section 107(b), Additional Capacity

AOA strongly supports section 107(b) of the Act, which would specifically authorize the agencies to assign additional unused capacity to qualified recreation service providers when additional use capacity becomes available. Although there has been some concern that this provision will shift private use to commercial use, this is not the case. In fact, the availability of additional capacity for permitted commercial use has no impact on the availability of permitted days for private use.

If there are no capacity constraints on unguided public use, the availability of additional capacity for the unguided public is unlimited in most areas, and only permitted commercial use is limited to a use pool. If the public is also required to obtain a permit to access an area, then the availability of both public and commercial permits, and the appropriate ratios of each, are set by the agency. The site reaches an appropriate percentage based upon historic use levels and public input. Section 107(b), Additional Capacity, therefore, only applies to commercial use pools. It would not take use away from private users.

Section 102, Special Recreation Permit and Fee

Section 102(b), Special Recreation Permit and Fee, authorizes agencies to charge a special recreation permit fee of up to three percent of gross income for all authorized activities, excluding revenue from activities not related to the permit, including retail sales, external costs including transportation and lodging, and fees paid on separate special recreation permits. Section 102(c) ensures that the revenues generated are set aside for the administration and issuance of special use permits along with traditional purposes of the fee revenues.

These sections address persistent challenges that permittees face with regard to the calculation and payment of fees to the agencies. Interpretation and implementation of the current guidance varies substantially from site to site. In many situations, especially when a commercial operator is crossing over multiple agency boundaries during a single trip, the layering of fees from multiple agencies will double or even triple the percentage of gross income across the permits. Thus, an operator is expected to pay out six or nine percent of gross due to the uniqueness of its trip, while their competitor is only paying three percent.

Agencies also often seek to include in the fee calculation aspects of a trip that are only tangentially connected to the on-agency experience and not actually part of the services requiring permit authorization. Off-agency activities, such as lodging and pre- or post-trip preparation and training, often are expected to be included in the fee calculation. Souvenirs and other retail purchases, which are not otherwise supplied by the outfitter for the experience, are also often included in the calculation. AOA strongly supports section 102(b)s exclusion of revenue from these goods and services from the fee calculation.

Section 109, Cost Recovery Reform

The SOAR Act provision regarding cost recovery reform eases a cost burden that is significant for outfitters, but insignificant for agencies. Currently, when an existing or potential permittee would like to apply for a new activity or an expansion of an existing activity, the agency must conduct an environmental review of the request. If the review takes more than 50 agency hours to complete, the entire cost of the process is charged to the applicant, regardless of outcome. If the agency concludes, therefore, that the request should not be approved as a result of the environmental review, the applicant is still expected to pay. This is an unreasonable burden to place on a business.

The SOAR Act would reduce this burden somewhat for outfitters by not charging them for the first 50 hours, which is only significant for relatively minimal environmental reviews. For significant environmental reviews requiring hundreds of hours, agencies could still seek to require the applicant to cover the vast majority of the cost through the cost recovery process. Already, agencies do not rely on cost recovery as a consistent source of income. Agency personnel are more likely to deny the request outright or recommend that the applicant pay a third-party contractor, as the agencies do not have the resources to conduct the necessary environmental review. Agencies will not lose significant revenue due to the changes in this section, but opportunities to expand outdoor recreation opportunities will increase significantly.

Section 302, Enhancing Outdoor Recreation through Public Lands Service Organizations

AOA continues to have concerns with the scope of "projects" encompassed by section 302 of the Act for which the agencies would be required to use youth or conservation corps or non-profit wilderness and trails stewardship organizations "to the maximum extent practicable." As currently drafted, this section would apply to *any* project on Federal recreational lands and waters "that would directly or indirectly enhance recreation." The scope of projects that could "directly or indirectly enhance recreation" is exceedingly broad. As just one example, a hydroelectric project could include features that could provide additional recreation opportunities. Depending upon how it is interpreted, it could also have implications for permitting of outfitting and guiding and other recreational services. AOA strongly urges that this section be amended and specifically limited to "stewardship projects."

Environmental Justice in Recreation Permitting Act, H.R. 3687

AOA and its members are intent on improving the diversity, equity, and inclusion (DEI) landscape within the outfitting and guiding industry. Many outfitters have been working on this issue for many years. Through scholarship programs, partner organizations, internal training and cultural awareness efforts, and external messaging, outfitters are shifting the outdoor recreation demographic.

In spite of significant resources invested, however, it has been historically difficult to move the needle significantly. The outfitting and guiding industry welcomes the opportunity to engage in a legislative effort that seeks to gain a better understanding of diversity in facilitated recreation activities, considers measures to increase diversity in the outdoors, and preserves the approved use established in existing special recreation permits.

AOA suggests that Congress initiate this effort by more fully identifying the underrepresented and underserved communities in outdoor recreation on our public lands. While this may include environmental justice communities as defined in H.R. 3687, limiting the identification of barriers and recommendations to improve access only to such communities as defined in the Act could inadvertently exclude other groups for whom access for recreation services should also be considered.

The SOAR Act itself is designed to increase accessibility to outdoor recreation for all and provide enhanced opportunities for diversity, equity, and inclusion in the outdoors. Currently, a significant roadblock for new programs is access to public lands and an inefficient and expensive permit approval process. For an otherwise qualified applicant working with a National Forest, acquiring any more that 200 service days through a temporary permit on a one-year term is most likely he only option. The SOAR Act breaks down this roadblock by improving the temporary permit program.

In addition to Sections 104(b) and (c), regarding permit flexibility mentioned above, the SOAR Act would authorize the Forest Service and the Bureau of Land Management to establish temporary special recreation permits in Section 104(c). Through this clause, the agencies may issue a permit for up to two years for new or additional services to a qualified applicant, and then begin the conversion process to a long-term permit after two years of satisfactory operation. Agencies who are resource constrained would have a viable avenue to consider new or additional uses before initiating the process of approving a long-term permit. While the Forest Service currently has a temporary permit, it is only for 200 service days and cannot be converted to a long-term permit, which the SOAR Act authorizes.

Ski Hill Resources for Economic Development (SHRED) Act, H.R. 3686

An excellent model for appropriately utilizing funds generated at a site, the SHRED Act directs the Forest Service to first use funds generated through fees at ski areas on administrative processes within the site, and sets aside 25 percent of funds generated for other recreational needs across the agency landscape, including outdoor recreation. AOA supports this Act and the targeted use of available funds.

Modernizing Access to Our Public Land Act, H.R. 3113

Especially for operators who cross multiple jurisdictions on dynamic trips, accurate maps depicting access opportunities and agency boundaries are extremely helpful. Rules and regulations change whether you are operating on Forest Service, Bureau of Land Management, National Park, or other federal lands, and the boundaries between these are not always marked. A universal map, with all available information, will be helpful to outfitters.

Conclusion

AOA would like to commend the House Subcommittee on National Parks, Forests, and Public Lands for taking up these bills and working to improve the outdoor recreational opportunity paradigm on public lands. AOA is happy to answer any questions or additional inquiries members of this Subcommittee may have.