

America Outdoors Association, Dude Ranchers Association, Grand Canyon River Outfitters Association, Idaho Outfitters and Guides Association, Montana Outfitters and Guides Association, Ocoee River Outfitters Association, Oregon Outfitters and Guides Association, Utah Guides and Outfitters, Wyoming Outfitters and Guides Association

Senate Energy and Natural Resources Committee

Full Committee Hearing to Consider Legislation

December 15, 2021

### **Testimony by Affiliated Outfitter Associations**

America's outfitters and guides sincerely appreciate an opportunity to provide testimony on the bills under consideration by the Senate Energy and Natural Resources (ENR) Committee in its December 2, 2021 hearing on a first-of-its-kind recreation package. This testimony is joined by Affiliated Outfitter Associations (AOA), including America Outdoors Association, Dude Ranchers Association, Grand Canyon River Outfitters Association, Idaho Outfitters and Guides Association, Montana Outfitters and Guides Association, Ocoee River Outfitters Association, Oregon Outfitters and Guides Association, Utah Guides and Outfitters, and Wyoming Outfitters and Guides Association, each of which has a stake in many of the bills under consideration, and each of which strives to simplify and engage more people with America's great outdoors. As folks from every walk of life flocked outside this past season at record-breaking levels, there is no better time to engage in a discussion of a recreation package that seeks to increase and simplify access for all.

In the years to come, Americans will continue to escape cities and seek refuge in the outdoors, many for the first time. 80% of outfitters in a recent poll reported positive growth, with many reporting significant growth in 2021 over 2020. Facilitated outdoor experiences have been, and will continue to be, 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 horse-packing 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 offers 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 much of the legislation being considered by this committee seeks to alleviate.

Of the bills under consideration, the AOA testimony will focus on the following:

- [S. 1229](#), to modify the procedures for issuing special recreation permits for certain public land units, and for other purposes (Simplifying Outdoor Access for Recreation Act).
- [S. 1269](#), to require the Secretary of the Interior and the Secretary of Agriculture to complete an interagency report on the effects of special recreation permits on environmental justice communities, and for other purposes (Environmental Justice in Recreation Permitting Act).
- [S. 1616](#), to provide exceptions from permitting and fee requirements for content creation, regardless of distribution platform, including digital or analog video and digital or analog audio recording activities, conducted on land under the jurisdiction of the Secretary of Agriculture and the Secretary of the Interior (Federal Interior Land Media Act).
- [S. 1874](#), to promote innovative approaches to outdoor recreation on Federal land and to increase opportunities for collaboration with non-Federal partners, and for other purposes (Recreation Not Red Tape Act).
- [S. 3266](#), to improve recreation opportunities on, and facilitate greater access to, Federal public land, and for other purposes (Outdoor Recreation Act).

### **S. 1229, the Simplifying Outdoor Access for Recreation Act**

The AOA are proud to continue supporting the Simplifying Outdoor Access for Recreation (SOAR) Act as the Senate ENR Committee takes it under consideration. This bill enjoys broad support from numerous outdoor programs, associations, and organizations and has historically accumulated bipartisan, bicameral sponsorship numerous Democratic and Republican members of both the Senate and the House. The AOA hopes that the Act can continue to move forward with its original inclusive and broad spirit, and is grateful to see Senate Energy and Natural Resources Committee give it careful consideration.

Members of the AOA convened with representatives from the Coalition of Outdoor Access, an affiliation of facilitated outdoor recreation providers for underserved groups and private users, to reach consensus on a bill that would improve the permitting process for all. A better process needed to work 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 expands opportunities, and was agreed to by over 100 unique associations, organizations, outfitters, and programs.

Contrary to some expressed concerns, the SOAR Act does not guarantee outfitting and guiding industry access at the expense of private users. The SOAR Act is carefully crafted to raise all ships. When there are additional days available for permit administrators to distribute among existing or potential permittees, this is done with the unguided public in mind. If a site is at

capacity, available days for guided trips would be made available from within the established allocation for commercial trips.

The SOAR Act is designed to provide better opportunities for nonprofit and for-profit programs alike, including those focused on underserved communities, outdoor education programming, wilderness therapy, and traditional outfitting and guiding. A few sections are focused on in this testimony, specifically Special Recreation Permit and Fee (Section 3(b)), Needs Assessments (Section 4(c)), Forest Service and Bureau of Land Management Temporary Special Recreation Permits (Section 5(c)), Additional Capacity (Section 8(b)), Extension of Special Use Permits (Section 11), and Programmatic Environmental Reviews.

### Section 3(b), Special Recreation Permit and Fee

Section 3(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. This section also ensures that the revenues generated are set aside for the administration and issuance of special use permits along with historic uses of fee revenues.

Included in this section is the authorization for a flat fee as an alternative the 3% of gross, which was at one time authorized by the Forest Service, but for some reason was eliminated in 2008 except for very small temporary permits commonly issued to institutional users.

These sections address persistent challenges that permittees face regarding 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. The

AOA strongly support the exclusion in this section of revenue from these goods and services from the fee calculation.

Section 3(b), Use of Special Recreation Permit Fee, ensures that fees generated by outfitters are available for all existing inclusion, and applicable exclusions, iterated in the Federal Lands Recreation Enhancement Act (FLREA), and expands the use of fees to cover “expenses

associated with processing applications for special recreation permits and incurred in the improvement of the operation of the special recreation permit system.” Fees may be applied to projects specified in FLREA Section 808(a):

- A. repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety;
- B. interpretation, visitor information, visitor service, visitor needs assessments, and signs;
- C. habitat restoration directly related to wildlife-dependent recreation that is limited to hunting, fishing, wildlife observation, or photography;
- D. law enforcement related to public use and recreation;
- E. direct operating or capital costs associated with the recreation fee program; and
- F. a fee management agreement established under section 6805(a) of this title or a visitor reservation service.

To reiterate, fees paid by outfitters are not excluded from these uses.

#### Section 4(c), Needs Assessments

Needs assessments are conducted by federal agencies where a particular designation, such as a Wilderness designation, requires it in statute. Section 4(c) directs agencies to conduct needs assessments only where they are required to do so. Outside of those designations, existing planning processes are sufficient to consider appropriate use on a landscape.

Section 4(d)5 of the Wilderness Act states that “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.” While a needs assessment is required to satisfy this clause for designated wilderness, it is not required elsewhere, and conducting needs assessments where they are unnecessary is both redundant and inefficient on the part of the agency.

This use of needs assessments is ineffective for forest lands outside of designated wilderness, unless a forest seeks to constrain non-wilderness use in the same manner that it constrains wilderness use. Rather, appropriate use of non-wilderness forest lands is best directed by existing forest land management and travel management planning processes, by programmatic Environmental Impact Statements for specific activities, and by additional considerations triggered by designated landscapes that are not wilderness. When considering an activity in a designated wilderness, the agency concerned should conduct a Needs Assessment. Outside of designated wilderness it is an unnecessary, cumbersome, and ineffective process that misdirects limited agency resources toward unnecessary processes.

#### Section 5(c), Forest Service And Bureau Of Land Management Temporary Special Recreation Permits

Currently permitting system does not work well for both permit administrators and permittees when new uses or proposals for new permits are submitted. Likewise, operators with established priority use permits on USFS lands see virtually zero opportunities to grow. Potential permittees, especially those who are attempting to establish new programs for underserved communities, face significant barriers to acquiring a permit, that would enable them to stand up a new operation. To resolve this, the SOAR Act reintroduces a more expansive use of temporary permits, a provision that USFS has used in the past to create opportunities for operations that would otherwise be stymied by cumbersome agency processes. The temporary permit is expanded to the BLM. One benefit of this authorization is that a categorical exclusion may apply to it, which will enable new uses to be authorized and tested prior to issuance of a longer term permit.

#### Section 8(b), Additional Capacity

The AOA strongly support section 8(b) of the SOAR 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, that 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 there are capacity constraints, and private parties are 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. Section 8(b), Additional Capacity only applies to commercial use pools. It would not take use away from private users.

#### Section 11, Extension of Special Recreation Permits

The AOA recommend that this section be omitted from future versions of this Act. Agencies currently have the ability to employ the Administrative Procedures Act. As long as a permittee continues to make payments on a permit, has met the conditions of the previous permit, and made a timely application for a new permit, the validity of a permit may extend past its printed expiration date. This provision, however, institutes a hard stop of five years past the conclusion of the permit to renew, constraining the ability of permit administrators to apply the APA. In many cases, such as when additional an environmental review is deemed necessary on an existing permit, it may take more than an additional five years to complete the necessary process and renew the permit. Agency personnel turnover and other disruptions add to these delays. While this provision aims to relieve permit administrators of hard deadlines, it may in practice have the opposite effect if limited to 5 years.

#### Programmatic Environmental Reviews

Encourage agencies, through the SOAR Act, to more frequently conduct programmatic environmental reviews. Though they rarely exercise it, agencies have the authority to conduct programmatic environmental reviews, assessing the environmental impact of a particular activity (or activities) across a site rather than conducting a unique and separate environmental (site specific) review for each individual proposal. 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.

Currently, when a permittee applies for a new permit to operate on public lands or waters, the permitting agency is compelled to conduct an expensive and lengthy permit review process, which the applicant must pay for if it takes more than 50 hours of the agency's time to process and evaluate. There are no assurances that the activity will be approved. Further, there are no assurances that the activity will be awarded to the paying applicant. Programmatic Environmental Reviews can reduce the risk and exposure to the applicant and improve the efficiency of environmental reviews.

#### SOAR Act in Conclusion

The SOAR Act is balanced in its approach to permitting. It neither favors or disfavors private tour companies regardless of whether they provide experiences for underserved communities, youth groups, or families. The SOAR Act simplifies and streamlines the permitting process, providing expanded opportunities and simpler processes to navigate for all.

By improving the permitting process through passage of the SOAR Act, Members of the Senate ENR Committee can ensure that authentic outdoor experiences are available to those who seek them. Many Americans choose to embark on their own. For many others, including those with disabilities or those with only a rudimentary understanding of the experience, the only viable option to access a landscape is a guided trip by a private tour company. The AOA members place a high value on providing these experiences.

#### **S. 1269, the Environmental Justice in Recreation Permitting Act**

The AOA and their 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.

The AOA suggest that Congress initiate this effort by including rural communities among the definitions, and by more fully identifying the underrepresented and underserved communities in outdoor recreation on our public lands. Limiting the identification of barriers and recommendations to improve access to only the communities as defined in the Act could

inadvertently exclude other deserving, but non-EJ groups for whom access for recreation services should also be studied.

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 than 200 service days through a temporary permit on a one-year term is most likely the only option. The SOAR Act breaks down this roadblock by improving the temporary permit program.

In addition to considering outdoor recreation opportunities, The AOA encourage this legislation to be inclusive of stewardship opportunities as well. Building connections with the outdoors through authentic experiences routinely fosters a powerful and lasting land use ethic among individuals. The barriers between underserved communities and stewardship organizations, such as friends groups, public lands advocacy organizations, and similar non-profit associations, should be understood and considered in this study.

Thank you for working to support environmental justice communities via facilitated outdoor recreation experiences. The AOA will continue our efforts to make America's great outdoors a diverse, inclusive, and equitable destination for all.

#### **S. 1616, the Federal Interior Land Media Act**

The AOA support flexibility when it comes to the generation of video or film content on public lands when it does not adversely affect other visitors, natural resources, or appropriate rule and regulations associated with a designation at a particular site. The permitting process for filming is cumbersome and slow, and is designed to deter individuals, both commercial and non-commercial, who seek to share experiences on America's public lands and waters.

Preserving individual rights to film and share experiences in the outdoors with others is the right step to take as Americans continue to seek new outdoor opportunities for personal healing and rejuvenation. Creating person-to-person content that is broadly shareable and viewable can catalyze individuals who traditionally do not spend time outside to spread their wings and try new outdoor experiences.

#### **S. 1874, the Recreation Not Red Tape Act**

The AOA appreciate the continuing inclusion of many SOAR Act provisions in the Recreation Not Red Tape Act, and supports passage of the bill. Where there are redundancies or deviations between similar provisions, the AOA recommend that language drafters give preference to the SOAR Act, as it has been recently and thoroughly vetted by impacted stakeholders.

#### **S. 3266, the Outdoor Recreation Act**

The provisions within the Outdoor Recreation Act (ORA) strive to understand historic access challenges to facilitated recreation providers, to resolve regulatory conflicts that impede climbing in National Forests, to ensure recreation is considered as a purpose in land management planning on par with other uses, and more. By striving to improve outdoor recreation for so many uses, the ORA can be a key catalyst for change.

The AOA look forward to enthusiastically supporting this bill when lingering language concerns that may have unintended consequences are resolved. The AOA remain concerned with Section 101, Permit Relief, which directs the Secretaries concerned to study impediments hindering youth groups to access and recreate on federal lands. The AOA ask that agencies also consider impediments to outfitters and guides, many of whom provide youth group opportunities but may not conform to the definition of youth groups in this section. As youth groups likely face some of the same barriers to permitting that outfitters and guides face, a broader consideration would provide a more complete picture.

In Section 302, Forest Service Conservation Finance Partnerships, the ORA establishes a program for private entities to fund works on Forest Service lands that will improve recreation opportunities. When applied properly, this program can do a great deal to create additional revenue streams to improve and establish recreation sites on Forest Service lands to the benefit of all. The AOA asks that section 302(e)(4), be strengthened to ensure that a recreation project does not undermine existing permitted outfitting activities. "Projects" could be construed by the agency to include permitted activities, and where these permitted activities are already provided by outfitters, the outfitter may be put at a competitive disadvantage.

The provision currently reads, "Before approving a project under this section, the Secretary of Agriculture shall consider and seek to avoid potential conflicts (including economic competition) with an existing authorization." The AOA asks that "seek to" be removed from the clause.

## **Conclusion**

The AOA would like to commend the Senate Energy and Natural Resources Committee for taking up these bills and working to improve the outdoor recreational opportunity paradigm on public lands. The AOA are happy to answer any questions or additional inquiries members may have.