COALITION FOR OUTDOOR ACCESS

TESTIMONY
on the
Simplifying Outdoor Access for Recreation Act (S. 1665) ["SOAR Act"]
Submitted for
Senate Energy and Natural Resources Committee
Legislative Hearing
Thursday, October 31, 2019

I. Introduction

The Coalition for Outdoor Access (COA) respectfully submits this testimony on the Simplifying Outdoor Access for Recreation ("SOAR") Act, S. 1665, which is the subject of a legislative hearing scheduled for Thursday, October 31, 2019 in the Senate Energy and Natural Resources Committee.

The Coalition for Outdoor Access is an alliance of organizations with an interest in the outfitter-guide permitting systems of the federal land management agencies. The Coalition came together in 2014 to improve the operation of these systems for the benefit of the agencies, the recreational landscapes they support, the organizations who provide guided recreational experiences on federal lands and waters, and for the members of the public who use these services. The Coalition is made up of organizations that represent for-profit outfitters and guides, nonprofit outfitters and guides, university recreation programs, volunteer-based clubs, the outdoor industry, and the conservation advocacy community.

COA is invested in the success of this legislation, and we undertook work on this issue because we believe the agencies' permitting systems need to be improved in order to provide the public with more opportunities for recreation and education experiences on public lands. Providing more outdoor experiences on public lands is good for the people who have those experiences. It is also good for the lands and the agencies that administer them.

II. Background

A. Description of the Problem to be Solved

In general, the federal land management agencies require outdoor programs to apply for, and obtain, special recreation permits in order to take people out on public lands and waters. The federal land management agencies have different names for these permits, but they all generally require outdoors leaders to have permits to lead trips outdoors.

The permit requirement applies to any activity where money changes hands, including trips where the participants pay a participation fee, or the leader is paid compensation for his or her leadership services. This requirement applies to any outdoor leader, whether they are working for a for-profit business, non-profit organization or for themselves as an individual sole proprietor. As such, outdoor businesses, non-profit organizations, volunteer-based clubs,

college and university recreation programs, and individual guides are all required to obtain permits.

Despite being essential to outdoor programming, permits are not readily available in many locations. Numerous outdoor leaders and outfitter-guide businesses have reported to us that when they contact the land management agencies to inquire about the availability of permits, they have been told that no permits are available. As a result, they are unable to take people out on public lands.

We acknowledge that there are some circumstances in which it is necessary to deny a permit application. When an activity could have significant adverse environmental impacts, or when existing use in an area exceeds the area's carrying capacity, the agencies should limit the number of permits issued.

However, in many cases, the agencies deny permit applications because they do not have the administrative capacity to process the permit application and administer the resulting permit. These denials have nothing to do with limitations on the carrying capacity of the landscape, or on the potential for adverse environmental impacts. Instead, outdoor programs are being denied permits because the permitting system has become too complicated and labor intensive for the agencies to administer. The agencies – particularly the U.S. Forest Service – simply do not have the staff capacity to administer the complex permitting system that has developed over the years. When the agencies do not have the capacity to process permit applications, they stop issuing permits. That means fewer opportunities for people to have outdoor experiences on public lands.

B. The Need for Legislation

For several years, the Coalition for Outdoor Access has encouraged the agencies to use their own authority to improve their permitting processes. To date, our recommendations have not been implemented.

However, the U.S. Forest Service has acknowledged that simplification of its permitting procedures is needed. In June 2016, Forest Service Chief Tom Tidwell issued a memorandum entitled "Modernization of Special Uses to Enhance Visitor and Community Benefits" in which he acknowledged that "the scope and complexity of [the permitting] program continues to increase." Chief's Memorandum at 1. Chief Tidwell envisioned a transition away from using the permitting system to regulate recreational activities to a future in which the permitting program enhances the outdoor experiences and benefits people receive when they visit the National Forests. *Id.* Chief Tidwell went on to say:

> *I recognize agency capacity impacts how quickly we can act on requests for [special recreation permits]. Yet if we simplify our processes, we can do a better job of responding to requests for hosted outdoor activities, especially school groups and organizations introducing young people to the outdoors . . . . I encourage you to thoroughly review the attached guidance paper and associated FAQs to learn more*

about your existing flexibility. If there are [permit] moratoriums in place in areas for which you are responsible, I ask that you reconsider them where appropriate.

Chief's Memorandum at 2. The Chief's guidance contained detailed FAQs on how the permit application review process could be simplified. Unfortunately, the Chief's guidance was non-binding because it did not formally revise existing agency policy. As a result, this guidance does not have the force of law, and has not been adopted throughout the National Forest System.

For these reasons, legislation is needed to direct the agencies to review their permitting processes and identify areas for simplification and improvement. The complexity of the permitting process is limiting public access and preventing outdoor programs and local businesses from providing people with outdoor experiences on public lands.

III. Contents of the SOAR Act

The SOAR Act would require the agencies to evaluate the existing permitting system and identify ways to make improvements. It would then require the agencies to incorporate those improvements into their regulations and policy statements.

The Act was carefully formulated to strike a balance. It imposes a mandate upon the agencies to review their systems, but it does not prescribe a specific outcome. Instead, it respects and defers to the agencies' expertise on what changes should be made. Below, we outline key components of the SOAR Act that will address many of the issues outdoor businesses, leaders and organizations face with federal land management agency permitting.

As explained above, section 4 of the bill directs the agencies to evaluate the process for issuing recreational outfitter and guide permits and identify ways to eliminate duplicative processes, reduce administrative costs, and shorten processing times. The agencies would be required to revise agency regulations and policy statements to implement process improvements within 360 days. Section 4 would also require the agencies to make permit applications available on-line. This will help outdoor organizations and companies better plan for programming.

The SOAR Act would also directly address several other problems in the existing permitting system. Section 5 increases flexibility for outfitters, guides and other outdoor programs in three ways:

1. It would allow them to provide recreational activities that are substantially similar to the activity specified in their permit. Under existing policy, permit holders are often strictly limited to the activities specified in their permit. This section would, for example, allow a kayak outfitter to begin offering canoeing or stand up paddle board opportunities under an existing permit.
2. It would extend the terms of Forest Service and Bureau of Land Management temporary permits to up to two years, making them more usable. Currently, Forest Service temporary permits are limited to 180 days. Section 5 would also authorize the conversion of temporary permits into long term permits in some circumstances.

3. Section 5 would establish a program that would allow permit holders to temporarily return unused service days[1] so that they could be made available to other outdoor leaders. This would make more opportunities available and reduce the number of service days that go unused.

Section 6 increases the transparency of the permitting system by directing agencies to notify the public of when and where new recreation permits are available. Currently, there is no efficient way for outdoor leaders to find this information. This section would also require the agencies to provide timely responses to permit applications. This would address the common occurrence of permit applications going unacknowledged.

Section 7 simplifies the permitting process for activities that begin on land managed by one agency and cross into land managed by another agency. It would do so by authorizing the agencies to issue a single joint permit covering the lands of all the managing agencies. Currently, outdoor programs are required to obtain a separate permit from each of the agencies where their activity will take place, which makes the permitting process much more complicated. Under Section 7 of the bill, this process would be simplified.

Section 8 would protect Forest Service permit holders from losing service days as a result of seasonal fluctuations in demand or other circumstances beyond the permit holder's control. This ensures that outdoor programs do not lose access because of fire, weather or other natural disaster.

Section 9 has two components:

1. Sections 9(a) and (b) would help control liability insurance costs for permit holders by allowing them to use liability release forms with their clients. Currently, the rules on the use of liability release forms vary by agency and even between different regions of the same agency. This inconsistency causes problems for permit holders and conflicts with state law in states where the use of release forms is allowed.
2. Section 9(c) would reduce barriers to access for state universities, city recreation departments, and school districts by waiving the requirement imposed on permit holders to indemnify the U.S. government. The waiver would apply to entities that are prohibited from providing indemnification under state law. Currently, the requirement to indemnify the U.S. government imposed by some agencies is a significant barrier for state entities.

Section 10 reduces permit application costs for outdoor leaders by establishing a flat 50-hour cost recovery exemption for permit processing.

Section 11 addresses situations in which a long-term permit expires before the agency finishes processing the permit holder's renewal application. This is a common occurrence. Section 11 would toll the expiration of the permit for up to five years so long as the permit holder is in full

[1] The agencies generally allocate use to permit holders by assigning them a specified number of "service days" or "user days." One person on federal lands for one day equals one service day. One person on federal lands for five days equals five service days.

compliance with the terms and conditions of the permit and has submitted a timely permit renewal application.

The legislation has received extensive input from stakeholders to strike a carefully calibrated balance between mandating the agencies to review their permitting processes while leaving them the discretion to craft the most effective solutions for the unique attributes of the landscapes they are charged with stewarding.

IV. Conclusion

As a group of outdoor organizations and companies that have worked to improve the permitting systems of federal land management agencies to improve recreational access to federal lands and waters, the Coalition for Outdoor Access enthusiastically supports the SOAR Act and applauds the bill's introduction in both the House and Senate.

We appreciate the opportunity to submit testimony for the legislative hearing on October 31, 2019 in the Senate Energy and Natural Resources Committee. We hope to see this bi-partisan legislation move swiftly through committee and into law.

Sincerely,

The Coalition for Outdoor Access Steering Committee:

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