



December 2, 2021

The Honorable Joe Manchin  
Chair, Senate Committee on Energy and Natural Resources  
304 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable John Barrasso  
Ranking Member, Senate Committee on Energy and Natural Resources  
304 Dirksen Senate Office Building  
Washington, DC 20510

**Re: December 2, 2021 Full Committee Hearing to Consider Legislation**

Dear Chair Manchin and Ranking Member Barrasso:

On behalf of the Coalition for Outdoor Access (COA), thank you for holding a hearing on bills to enhance and improve outdoor recreation on Federal public lands. We respectfully submit testimony on the following bills:

- 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. 3266, to improve recreation opportunities on, and facilitate greater access to, Federal public land, and for other purposes (Outdoor Recreation Act)

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.

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

COA is invested in the success of this legislation, and we have undertaken work on this issue, because we believe the agencies' permitting systems need to be improved 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.

## Description of the Problem to be Solved

In general, the Federal land management agencies require outdoor leaders to apply for, and obtain, special recreation permits 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 outdoor leaders to have permits to lead trips outdoors. For purposes of this requirement, "outdoor leaders" includes outdoor businesses, non-profit organizations, volunteer-based clubs, college and university recreation programs, and individual guides.

Despite being essential to outdoor leaders, permits are not readily available in many locations. When outdoor leaders and businesses are told by land management agencies that there are no permits available, they are unable to take people out on public lands. While there may be some circumstances in which it is necessary to deny a permit because of environmental impacts, 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 the carrying capacity of the resource or adverse environmental impacts of the activity. They occur because the agencies—particularly the U.S. Forest Service—do not have the staff capacity to administer the complex permitting system that has developed over the years.

This situation is, in part, the result of staff losses in the agencies. The U.S. Forest Service has reported to us that 70% of the permit administrators in the National Forest System are administering special recreation permits as a collateral duty to another job assignment. However, this situation is mostly the result of a gradual increase in the complexity of the permitting process, making it much more labor intensive. When agencies are unable to complete the permit application review process, they have no choice but to deny the permit application – and in turn, deny Americans the ability to enjoy their public lands.

## 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, some of our recommendations have been implemented and others have not. For example, in June 2016, Forest Service Chief Tom Tidwell issued a memorandum in which he acknowledged that “the scope and complexity of [the permitting] program continues to increase.” He encouraged Forest Service staff to use their existing flexibility and reconsider permit moratoriums. Unfortunately, the Chief’s guidance was non-binding because it did not formally revise existing agency policy. As a result, this guidance 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 leaders from providing people with outdoor experiences on public lands.

## 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 require 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 leaders face with Federal land management agency permitting.

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. Section 4 would also require the agencies to make permit applications available on-line. These steps will make it easier for outdoor leaders to acquire permits and easier for the agencies to manage the permitting system.

Section 5 increases flexibility for outfitters, guides, and other outdoor leaders by allowing 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: for example, a kayak outfitter cannot offer canoeing under an existing permit. Section 5 would also provide the Forest Service and Bureau of Land Management with the authority to issue a temporary permit for up to two years. This authority would save precious administrative time for the agencies and permit holders by reducing the frequency with which permit applications need to be re-submitted and processed. For example, under current Forest Service policy a temporary permit must be re-issued every six months. Section 5 would also establish a program that would allow permit holders to temporarily return unused service days so they could be made available to other permit holders and the general public.

Section 6 directs agencies to notify the public of when and where new recreation permits are available. It also requires the agencies to provide timely responses to permit applications. This would increase transparency and address the common occurrence of permit applications going unacknowledged.

In the case of activities that cross multiple agency boundaries, Section 7 authorizes the agencies to issue a single joint permit covering the lands of all the managing agencies. Currently, outdoor leaders 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 and costly.

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 leaders do not lose access because of wildfire, unusual weather events, or other natural disasters.

Section 9 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. It would also 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. Currently, the requirement to indemnify the U.S. government imposed by the agencies is an insurmountable barrier for many 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 an all-too-common situation in which a long-term permit expires before the agency is able to finish processing the permit holder's renewal application, causing uncertainty for both the permit holder and the agency. Section 11 would toll the expiration of the permit for up to five years. However, the tolling period does not affect the agency's ability to prescribe new terms and conditions when the reauthorization is completed.

As a group of outdoor organizations and companies that have worked to improve the permitting systems of Federal land management agencies, the Coalition for Outdoor Access enthusiastically supports the SOAR Act and hopes to see this legislation move swiftly through committee and into law.

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

Our comments on the Outdoor Recreation Act pertain to Section 101, Permit Relief. The Coalition for Outdoor Access appreciates the Chair and Ranking Member's interest in improving the permitting processes of the Federal land management agencies. We share your interest, and that is why we have worked for years with many stakeholders and Members of Congress to craft the permitting improvements included in the Simplifying Outdoor Access for Recreation Act. We believe Section 101 of the Outdoor Recreation Act can be highly complementary of the permitting improvements in the SOAR Act, but several targeted changes are needed. Our recommendations to improve the Outdoor Recreation Act are described below.

With regard to Sec. 101(b), which waives the permit requirement to access an existing picnic area for outfitters and guides serving fewer than 40 clients, we recommend that one component of this subsection be expanded and another component be clarified.

First, the waiver of the permit requirement for picnic areas should be expanded to include youth groups as well as guides and outfitters. This will promote equity in access among the many different types of outdoor leaders who serve the public.

Second, we believe it is absolutely imperative to clarify this section by specifying what exactly is meant by serving fewer than 40 clients. Without clarification, section 101(b) could be interpreted to allow an outfitter, guide, or youth group to bring 40 clients per day to a picnic area. This could result in significant user conflict and unacceptable adverse resource impacts. We recommend that the permit waiver be limited to a "de minimis" level of use that is unlikely to have significant impacts. This could be accomplished by capping the waiver so that it allows an outfitter, guide, or youth group to serve 40 clients per year (40 service days) at any given picnic area.

Section 101(c) requires the agencies to conduct a study on access to Federal lands and permits for youth groups. While we strongly support the intent of this section, we believe it must be expanded to include outfitters and guides as well as youth groups. Since both youth groups and outfitters and guides access the permitting systems of Federal land management agencies, they both experience similar barriers and impediments to accessing public lands. The benefit and impact of such a study would be much greater if all users of the Federal permitting systems are included.

Additionally, we believe the study should focus on the creation of a new type of guided recreational permit that would quickly and easily grant access for occasional recreational uses that are not likely to have a significant impact on natural resources or other users. For example, the permit could be for a maximum of 40 service days annually at a specific unit of Federal land and limited to locations where there are no access constraints for the unguided public (e.g., permits). A “de minimis use” use permit such as this could be issued online, for a flat fee, and permit holders could be required to self-certify that they meet the stated agency requirements.

In summary, the changes we recommend to Sec. 101(b) and (c) will bring balance to Section 101 of the Outdoor Recreation Act by making it applicable to all user groups who serve the public in the outdoors. This, in turn, will ensure that all segments of the American population will be provided with opportunities to recreate on America’s public lands. Additionally, by focusing the study in Section 101(c) on the creation of a new “de minimis use” permit, Congress would provide new, streamlined opportunities for the public to access Federal lands with an outfitter, guide, or youth group within reasonable limits that ensure resources are protected.

## **Conclusion**

We are grateful to Senator Heinrich, his staff, and the staff of the Senate Energy and Natural Resources Committee for dedicating hundreds of hours to craft the SOAR Act in such a way as to make sure every user group benefits. As a result, S. 1229 is strongly bipartisan and supported by hundreds of organizations, businesses, trade associations, and outdoor clubs. We encourage the Members of the Senate Energy and Natural Resources Committee to apply these same principles of balance and equity to Section 101 of the Outdoor Recreation Act.

Again, thank you for your interest in improving the permitting systems of Federal land management agencies to improve recreational access to these lands and waters. We appreciate the opportunity to submit testimony for the legislative hearing on December 2, 2021 in the Senate Energy and Natural Resources Committee.

Sincerely,

The Coalition for Outdoor Access Steering Committee:

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