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Guides and Outfitters on Federal Lands: Background and Permitting Processes

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SUMMARY

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Guides and Outfitters on Federal Lands: Background and Permitting Processes

Commercial guides and outfitters provide visitors to federal lands with a wide range of outdoor recreational and educational opportunities, such as river rafting, horseback trips, and hiking excursions. Annually, these businesses lead thousands of trips across federal lands, primarily those managed by the four major federal land management agencies (FLMAs): the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS)—all in the Department of the Interior (DOI)—and the Forest Service (FS) in the Department of Agriculture (USDA).

According to the Bureau of Economic Analysis, in real terms, guided tours and outfitted travel contributed approximately $11.1 billion in value added in 2017 and nearly $68.5 billion total value added from 2012 to 2017. The guide and outfitter industry is of particular importance to the economies of rural communities across the country. These operators provide economic opportunity in communities where tourism may be a job-creating industry. Such businesses rely heavily on federal lands to execute their work and provide services to clients. According to some industry estimates, of the roughly 40,000 small businesses nationwide who provide guide and outfitter services, approximately 15,000 operate under permit, contract, or other authorization from at least one of the FLMAs.

Various federal authorities apply to commercial guides and outfitters operating on federal lands, including laws, executive orders, agency policies and regulations, and other guidance. These authorities may apply broadly to an entire agency or land system, or they may be narrow in scope, applying only to specific units or regions. Generally, all commercial guides and outfitters are required to obtain a permit to operate on federal lands, and the laws, regulations, and policies that guide this permitting process vary across the FLMAs. For example, with the passage of the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814), Congress provided the four FLMAs and the U.S. Bureau of Reclamation with authority to issue special recreation permits for specialized recreation uses—including guide and outfitting operations—and to charge fees for those permits. However, permits for guides and outfitters still may be issued under other authorities, depending on the agency, the type of recreational activity, and the specific unit in question. In particular, NPS issues most of its permits for guides and outfitters under the National Park Service Concessions Management Improvement Act of 1998 (54 U.S.C. §§101911 et seq.), and both FS and FWS issue some permits for recreational activities under authorities other than those provided by FLREA.

The authority under which a permit is issued—as well as the agency issuing such a permit—may dictate the terms, fees, and requirements to which a permit holder is subject. For example, some permit terms require holders to pay annual fees based on a percentage of their revenue, and other terms set standard fee scales. In addition, requirements for commercial general liability insurance vary across agencies and on a case-by-case basis depending on the types of activities authorized under a permit. Given that the various FLMA permitting processes have been a focal point of interest for many in Congress, the Administration, and the outfitting industry, understanding these various requirements—as well as the broader role of commercial guides and outfitters on federal lands—may be helpful as Congress considers further legislative action. For more information regarding legislative issues related to commercial guides and outfitters on federal lands, see CRS Report R46381, *Guides and Outfitters on Federal Lands: Issues and Legislation in the 116th Congress in Brief*.

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Introduction[1]

Commercial guides and outfitters operate on federal lands across the United States, providing visitors with a wide range of outdoor recreational and educational opportunities.[2] Guide and outfitter activities include backpacking, hunting/fishing, educational excursions, float trips, canoe or horse rentals, shuttle services, ski touring, helicopter skiing, vehicle/boat tours, and fishing trips. Both for-profit and nonprofit entities engage in commercial guide and outfitting activities on federal lands.[3]

The authorities under which commercial guides and outfitters operate and provide recreational services on federal lands vary for each of the four major federal land management agencies (FLMAs): the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS)—all in the Department of the Interior (DOI)—and the Forest Service (FS) in the Department of Agriculture (USDA). This report discusses the role commercial guides and outfitters have in providing access to federal lands and the economic impact the industry has on the broader recreation economy and local communities. It provides an overview of some of the federal and state authorities that may apply to commercial guides and outfitters operating on lands owned and administered by the FLMAs. In particular, permitting authorities and requirements across all four FLMAs are explored. Fees or permits associated with noncommercial recreational activities are not included within this report.[4]

Guides and Outfitters in the Economy

As Congress considers issues related to outdoor recreation—including provision of federal resources, planning efforts, and funding—data on the size, distribution, and relative importance of guides and outfitters to the local and national economy may inform these debates. According to Bureau of Economic Analysis's (BEA's) Outdoor Recreation Satellite Account (ORSA), between 2012 and 2017 (the six-year period measured by ORSA), the outdoor recreation economy grew by approximately 7.1% in real terms, for a total of approximately $386.1 billion in *value added* (the value of goods and services purchased by end-users minus the value of the goods and services used up in production) in 2017.[5] During that time period, the "Guided Tours/Outfitted

[1] For a more detailed discussion about issues related to commercial guides and outfitters that may be of interest to Congress, see CRS Report R46381, *Guides and Outfitters on Federal Lands: Issues and Legislation in the 116th Congress in Brief*, by Mark K. DeSantis.

[2] Generally, an *outfitter* is considered a business that provides clients with various products and services (which may include food, shelter, horses, equipment, etc.) for a particular outdoor recreational activity. Outfitters often register and employ *guides* to lead clients in these activities. For example, an outfitter may supply clients wishing to engage in a fly-fishing trip with rods, flies, and waders, and it may engage a guide to lead clients to local fishing areas, advise on fishing techniques, and ensure clients' safety by monitoring local conditions. Guides also may operate independent of outfitters.

[3] Although *commercial* activities are defined differently depending on the federal land management agency (FLMA) in question, generally speaking, both for-profit and nonprofit entities engage in commercial guide and outfitting activities on federal lands. The determination of whether a given operation is commercial in nature typically depends on whether there is a charge in exchange for a provided good or service—not whether the entity operates primarily in a commercial capacity. For example, the Bureau of Land Management (BLM) defines *commercial use* in regulations at 43 C.F.R. §2932.5.

[4] Noncommercial recreational activities on federal lands that may require permits include large gatherings (such as weddings or church services), not-for-profit athletic events (such as regattas and races), and others. These activities are outside the scope of this report.

[5] Christian Awuku-Budu and Connor Franks, *Outdoor Recreation Satellite Account, U.S. and Prototype for States,*

Travel" sub-account decreased 7.6% in real terms and contributed a total of $68.5 billion in value added in the six years measured by ORSA.[6]

Between 2016 and 2017, guided tours and outfitted travel was one of the fastest growing activities within the overall outdoor economy, growing 9.8% for a total of approximately $11.1 billion in value added in 2017. This was faster than the 3.9% growth for the total outdoor economy and the 2.4% growth for the U.S. economy overall during this time period. [7]

The guide and outfitter industry is of particular importance to the economies of rural communities across the country. Many commercial guides and outfitters operate in rural areas and gateway communities.[8] These operators provide economic opportunity in communities where tourism may be a job-creating industry.[9] Guide and outfitter businesses located in these communities may rely heavily on access to federal lands to execute their work and provide services to clients. According to some industry estimates, of the roughly 40,000 small businesses nationwide that provide guide and outfitter services, approximately 15,000 operate under a permit, contract, or other authorization issued by one of the FLMAs.[10]

In evaluating legislation and current and proposed agency regulations related to commercial guides and outfitters, Congress and various Administrations have often considered the impact outfitting can have in contributing to rural economies. In particular, the federal government has, at times, looked to minimize the regulatory burden for small businesses operating in rural communities reliant on this source of economic input.[11]

Federal Authorities Related to Guides and Outfitters

Multiple federal authorities apply to commercial guides and outfitters operating on federal lands, including laws, executive orders, agency regulations and policies, and other guidance. These authorities may apply broadly to an entire agency or land system, or they may be narrow in scope, applying to specific units or regions.

2017, Bureau of Economic Analysis (BEA), BEA 19-45, 2019. Hereinafter, Awuku-Budu and Franks, *ORSA, U.S. and Prototype for States*. An explanation of the Outdoor Recreation Satellite Account can be found on the BEA website here: https://apps.bea.gov/scb/2018/03-march/0318-protytype-statistics-for-the-outdoor-recreation-satellite-account.htm.

[6] CRS calculation from BEA, *Outdoor Recreation Satellite Account, U.S. and Prototype for States, 2017, Tables-Real Outdoor Recreation Value Added by Activity*, September 20, 2019.

[7] Awuku-Budu and Franks, *ORSA, U.S. and Prototype for States*.

[8] U.S. Congress, Senate Committee on Energy and Natural Resources, Outfitter Policy Act of 1999, report to accompany S. 1969, 106th Cong., 2nd sess. S.Rept. 106-491 (Washington, DC: GPO 2000), p. 11. Hereinafter referred to as "S.Rept. 106-491."

[9] S.Rept. 106-491. See also Outdoor Industry Association (OIA), *The Outdoor Recreation Economy*, 2017, at https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf.

[10] America Outdoors, "AO Letter to Senate Leadership re: Coronavirus Relief," March 18, 2020, at https://www.americaoutdoors.org/assets/1/27/AO_letter_to_Senate_leadership_re_coronavirus_relief.pdf?6482.

[11] For example, in May 2018, President Trump issued Executive Order (E.O.) 13838, "Exemption from Executive Order 13658 for Recreational Services on Federal Lands" (E.O. 13838, "Exemption From Executive Order 13658 for Recreational Services on Federal Lands," 83 *Federal Register* 25341, May 25, 2018). This E.O. exempted commercial guides and outfitters operating on federal lands from minimum wage requirements originally set forth by President Obama in 2014 (E.O. 13658, "Establishing a Minimum Wage for Contractors," 79 *Federal Register* 9851-9854, February 20, 2014.). In response to the 2018 E.O., then-Secretary of the Interior Ryan Zinke commented that, "The order will have a positive effect on rural economies and American families.... "

The federal government owns approximately 640 million acres of federal land in the United States; the four FLMAs administer roughly 95% of this land.[12] These federal lands may be considered dominant-, dual-, or multiple-use lands, depending on the statutory authorities provided by Congress to a specific FLMA. For example, the dominant-use mission of FWS in administering the National Wildlife Refuge System (NWRS) is the conservation of fish, wildlife, and plant resources and associated habitats. NPS, by contrast, has a dual-use mission: to conserve unique resources and provide for their use and enjoyment by the public. BLM and FS have a statutory mission to balance multiple uses that may include grazing, timber, habitat and watershed protection, and energy production, among others. All of these statutory authorities provide for some level of outdoor recreation on the respective federal lands. Generally, the degree to which recreation is permitted—as well as the types or recreation allowed on federal lands—is guided by agency-specific management statutes for each FLMA.

- FS manages the 193 million acre National Forest System (NFS), in accordance with the Multiple Use and Sustained Yield Act of 1960 (MUSYA), which authorizes outdoor recreation as a use of NFS lands, among other uses and services.[13]
- BLM manages public lands for varied purposes relating to the preservation, use, and development of the lands and natural resources (including recreation), in accordance with the Federal Land Policy and Management Act of 1976.[14]
- NPS administers the National Park System for both recreational use and preservation of park resources, a mission defined within the agency's Organic Act of 1916.[15]
- FWS manages lands within the NWRS, in accordance with the National Wildlife Refuge System Administration Act, under which recreation is generally authorized and regulated.[16]

Although an FLMA may have broad authority to allow a particular type of recreational activity offered by a commercial guide and outfitter, individual land units or areas administered by the agency may prohibit such activities. This situation could arise due to the unit's establishing legislation or to specific policies, management plans, or other guidance developed at the unit or planning level. For example, although an FLMA may have the general authority to allow commercially guided whitewater rafting, the agency may choose to disallow it in areas determined to be environmentally sensitive or unsafe for that activity.

Authorities for Specific Recreation Activities and Services

As noted, each of the FLMAs has a primary statute governing uses of agency lands that may include recreational activities led by commercial outfitters and guides. However, additional authorities may apply to specific types of recreational activities offered by commercial operators.

[12] For more information on federal land ownership, see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent, Lucas F. Bermejo, and Laura A. Hanson.

[13] Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. §§528 et seq.). For more information on the National Forest System (NFS), see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent, Lucas F. Bermejo, and Laura A. Hanson.

[14] Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. §§1701 et seq.).

[15] National Park Service Organic Act of 1916 (54 U.S.C. §100101).

[16] National Wildlife Refuge System Administration Act (16 U.S.C. §§668dd-668ee).

These authorities can include specific laws, executive orders, agency policies and regulations, and/or any guidance developed at the unit or planning level.

For example, some commercial guides and outfitters offer clients guided off-highway vehicle (OHV) trips across federal lands. Motorized recreation—and particularly the use of OHVs—is largely defined and regulated pursuant to two executive orders:[17]

- Executive Order (E.O.) 11644 (February 8, 1972):[18] Directed agencies to develop and issue regulations managing the use of OHVs.
- E.O. 11989 (May 24, 1977):[19] Amended the 1972 order to exclude certain vehicles from the definition of an OHV and provided authority to immediately close areas if OHVs were causing or would cause considerable damage to a resource (or "the area").

Commercial guides and outfitters leading OHV trips would be subject to any guidance or regulations the agencies promulgated pursuant to these two orders.

Another example are federal laws pertaining to commercial guides and outfitters leading hunting and fishing excursions on federal lands and waters. Federal laws related to hunting and fishing can be specific to a particular FLMA (i.e., agency-specific authorizing statutes listed above), to a particular species (e.g., the Migratory Bird Treaty Act), to a particular region (e.g., the Alaska National Interest Lands Conservation Act), or a combination of those factors.[20]

State Requirements for Commercial Guides and Outfitters

Guides and outfitters operating on federal lands may be subject to state-specific laws and regulations in addition to federal ones. Generally, states have their own set of specific authorities that govern how outfitters conduct their businesses, whether or not their operations primarily take place on federal lands. Compliance with these state-level authorities is typically considered a prerequisite for any applicants applying for FLMA-issued commercial recreation permits.[21] For example, some states require operators to be members of a trade association or group in order to operate as a commercial guide and outfitter within the state. Other states have licensing requirements for guides that may include mandatory training or coursework. States that do have licensing requirements for guides and outfitters typically require a license for specific activities,

[17] For more information on motorized recreation on lands of FLMAs, see CRS Report R42920, *Motorized Recreation on Bureau of Land Management and Forest Service Lands*, by Carol Hardy Vincent and Katie Hoover; and CRS Report R42955, *Motorized Recreation on National Park Service Lands*, by Laura B. Comay, Carol Hardy Vincent, and Kristina Alexander.

[18] E.O. 11644, "Use of Off-Road Vehicles on the Public Lands," 37 *Federal Register* 2877, February 8, 1972.

[19] E.O. 11989, "Use of Off-Road Vehicles on the Public Lands," 42 *Federal Register* 26959, May 24, 1977.

[20] The Migratory Bird Treaty Act (16 U.S.C. §§703-712) provides the federal government with the authority to regulate the hunting of migratory birds in the United States, and the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3101 et seq.) establishes requirements for both recreational (sport) and subsistence hunting and fishing on federal lands and waters in Alaska.

[21] For example, Forest Service (FS) policy indicates that the agency will not issue a permit to a commercial guide or outfitter if the applicant "lacks the prerequisites to conduct outfitting and guiding (such as a State license, liability insurance, and equipment)." FS, Forest Service Handbook (FSH) 2709.14, *Recreation Special Uses Handbook*, Section 53.1c (FSH 2709.14_53.1c).

such as hunting. For example, in Montana, a commercial guide must be licensed to take people hunting or fishing for pay but not for taking clients on hikes or float trips.[22]

Commercial hunting and fishing guides may be subject to additional state authorities. Congress has generally given states the right and responsibility to manage hunting and fishing on federal lands when not in conflict with federal law.[23] Many federal statutes authorizing activities on federal lands clarify that agencies shall not impede upon state authority to manage fish and wildlife where it is not in conflict with federal law and align federal management with state fish and wildlife laws and management to the maximum extent practicable.[24]

Permitting Process for Guides and Outfitters Across Federal Land Management Agencies

Generally, commercial guides and outfitters are required to obtain a permit in order to operate on lands owned and administered by the FLMAs. Over the years, the FLMAs have used their individual authorities to issue permits to commercial guides and outfitters, leading to varying permitting procedures among agencies. In 2004, Congress standardized some of these processes with the passage of the Federal Lands Recreation Enhancement Act (FLREA).[25] Among other provisions, FLREA provided the four FLMAs (and the Bureau of Reclamation, also within DOI) with authority to issue *special recreation permits* for specialized recreation uses—including guide and outfitting operations—and to charge fees for those permits. Under FLREA, at least 80% of the revenue collected from those fees is to be retained and used at the site where it was generated, although the Secretaries (of DOI and USDA) can reduce that amount to not less than 60% for a fiscal year if collections exceed reasonable needs.[26] The remaining collections are to be used agency-wide, at the agency's discretion.[27] In practice, the agencies generally allow between 80% and 100% of fees to be used at the collecting sites.[28]

Although FLREA applies to all four FLMAs (and the Bureau of Reclamation), permits issued to guides and outfitters may be issued under other authorities depending on the agency, the type of recreational activity, and the specific unit in question.[29] For example, NPS issues most permits for guides and outfitters under the National Park Service Concessions Management Improvement Act

[22] Montana Outfitters and Guides Association, "FAQs for Board of Outfitters Issues," at https://www.montanaoutfitters.org/wp-content/uploads/2018-MBO-FAQ-Presentation.pdf, accessed on May 9, 2020.

[23] For more information, see CRS Report R45103, *Hunting and Fishing on Federal Lands and Waters: Overview and Issues for Congress*, by R. Eliot Crafton. For more information on the role of states in the management of federal lands, see CRS Report R44267, *State Management of Federal Lands: Frequently Asked Questions*, by Carol Hardy Vincent.

[24] For example, P.L. 109-13 includes §6036, titled "Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005," which states, "It is the policy of Congress that it is in the public interest for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries."

[25] Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814).

[26] 16 U.S.C. §§6806(c)(1)(A)-(B).

[27] 16 U.S.C. §§6806(c)(2).

[28] For more information, see CRS In Focus IF10151, *Federal Lands Recreation Enhancement Act: Overview and Issues*, by Carol Hardy Vincent.

[29] For example, some land units administered by FLMAs in Alaska may issue permits under the authority granted through ANILCA (16 U.S.C. §§3101 et seq.).

of 1998.[30] FS and FWS also issue some recreation permits under authorities other than those provided by FLREA.

The FLMAs have also established agency-specific regulations, policies, and other guidance pursuant to the authorities under which they permit guide and outfitter operations. These policies typically direct land managers to consider a variety of factors in determining how and whether a permit may be issued, such as the statutory and regulatory authorities of the FLMA administering the applicable area, the scale and type of the proposed activity, the applicable area's land and resource management plan(s), and other variables.

Below is a discussion of the agency-specific permitting processes for commercial guides and outfitters across the four FLMAs.

Table 1 provides a brief comparison of the topics discussed at length in the report's agency sections. Each section includes a discussion and summary of the types of permits issued by the agency, the authority under which they are issued, as well as any agency policies and guidance that have been established related to permit terms, applicable fees, and insurance requirements for guides and outfitters operating under these permits.

[30] National Park Service Concessions Management Improvement Act of 1998 (P.L. 105-391; 54 U.S.C. §§101911-101926).

Table 1. Permitting for Commercial Guides and Outfitters Across FLMAs

Agency	Permit Type	Primary Permitting Authority[a]	Permitting Regulations	Permit Policies/Guidance[b]	Standard Permit Fees[a]	Insurance Minimums	Liability Waiver
BLM	Special Recreation Permits (SRPs)[d]	16 U.S.C. §6802(h)	43 C.F.R. §2930	*2014 Recreation Permit and Fee Administration Handbook (H-2930-1)* *2007 Recreation Permits and Fees Manual* (MS-2930)	Land use rental fee Cost recovery	≥ $600,000 aggregate[e]	No national policy
FS	Special Use Authorizations (SUAs)[e] SRPs	16 U.S.C. §6802(h) Various additional statutes	36 C.F.R. §251, Subpart B	*Forest Service Manual (FSM) 2700* *Forest Service Handbook (FSH) 2700*	Land use rental fee Cost recovery	≥ $300,000 aggregate[e]	No national policy[e]
FWS	Commercial Activity Special Use Permits (CASUPs) SRPs	16 U.S.C. §6802(h) 16 U.S.C. §§668dd-ee 16 U.S.C. §§460k-460k-4	50 C.F.R. §25, Subpart D	—	Varies[i]	—[i]	No national policy
NPS	Concessions Contracts Commercial Use Authorizations (CUAs)	54 U.S.C. Ch. 1019 16 U.S.C. §6802(h)	36 C.F.R. §51	*2006 Management Policies* Chapter 10 *2018 NPS Commercial Services Guide* *Reference Manual (RM) #53* Interim Guidance[k]	Franchise fees CUA fees	≥ $1M aggregate[l]	Not permitted

Source: Congressional Research Service (CRS).

Notes: FLMA = federal land management agency; BLM = Bureau of Land Management; FS = Forest Service; FWS = Fish and Wildlife Service; NPS = National Park Service.

a. Generally, the authorizations and subsequent permitting requirements reflected here do not apply to federal lands in Alaska, which are largely subject to the authorities provided in the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. §§3101 et seq.).

b. The guidance referenced is either agency-wide or national guidance. It does not reflect any regional or unit-specific guidance that may be in place.

c. The permit fees reflected here are not comprehensive, but rather reflect the standard fees assessed by each agency for commercial guide and outfitting permits. For a discussion of the different types of fee terms reflected here, see the "Permitting Fees" heading for the individual agency sections below.

d. There are five different types of SRPs: commercial, competitive, group event, special areas, and vending uses. Activities by guides and outfitters are typically permitted under commercial SRPs.

e. BLM, H-2930-1, *BLM Recreation Permit and Fee Administration Handbook*, 2014, pp. 1-49 to 1-52. Under BLM guidance, a certificate of insurance that shows "per occurrence" and not "annual aggregate" coverage need only carry a minimum coverage of $300,000.

f. FS primarily authorizes commercial guides and outfitters through two types of SUAs: priority use permits and temporary use permits.

g. See FS, Exhibit 01 in *2713.1*, *Forest Service Manual.* Minimum requirement of $300,000 aggregate for low-risk activities, including backpacking, nature hikes, and Nordic skiing. Minimum coverage can be higher for high-risk activities, such as aerial activities and rafting.

h. Several FS regions have issued supplemental guidance preventing permit holders from requiring customers to sign liability forms.

i. Except in Alaska, fees for guide and outfitting permits vary on a case-by-case basis, depending on factors such as the activity permitted and the workload required for processing a permit. Some refuges may charge only amounts sufficient to recover costs, whereas others may charge both recovery costs and additional fees.

j. Some individual FWS units have established guidance on insurance minimums based on activity and perceived risk.

k. NPS issued proposed regulations for CUAs in 2002 but has not finalized them. In 2005, NPS issued interim CUA guidelines to assist superintendents in issuing and managing CUAs. Since 2005, NPS has issued additional guidance for specific components of CUA administration and permitting, which supplement and sometimes supersede the 2005 guidance.

l. NPS generally requires minimum general liability insurance in the amount of $1 million in aggregate and $500,000 per occurrence for low-risk activities (e.g., guided backpacking and hunting) under concessions contracts. Minimum requirements increase depending on the risk level of the associated activity. Interim guidance for guides and outfitters operating under CUAs list general liability insurance minimums only on a per occurrence basis. Similar to concessions contracts, minimum requirements for low-risk activities start at $500,000 per occurrence.

U.S. Forest Service

FS, within USDA, manages the 193 million acre NFS. MUSYA authorizes outdoor recreation as a use of NFS lands, among other uses and services.[31] Management goals for NFS lands are articulated in Section 1 of MUSYA, which specifies that the NFS "shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." In its FY2021 budget justification, FS reports nearly 150 million annual visits to NFS lands for recreational purposes, while managing about 25,000 permits for recreational uses.[32] Of those 25,000 recreation permits, roughly 9,600 are considered outfitting and guiding permits, with between 1,500 and 2,000 permits issued each year.[33]

Authorities and Mechanisms

FS uses a combination of special use authorizations (SUAs) and special recreation permits (SRPs) to authorize commercial recreational activities on NFS lands. FS administers guiding and outfitting primarily under SUAs. The authority to issue SUAs (which cover a wide variety of uses, including recreation activities) stems from several statutes, including FLREA (16 U.S.C. §§6801-6814). The authority to issue SRPs—a subset of SUAs—comes directly from FLREA.[34] FS also may authorize guiding and outfitting under the Term Permit Act of 1915, when the activity operates in connection with a commercial public service site (such as a resort or lodge).[35] In addition, FS has a number of concessioner-operated sites that are not included in the FLREA authority.[36]

FS promulgated permitting regulations for all types of SUAs.[37] FS also established policies and guidance specifically for the issuance of SUAs for commercial guides and outfitters.[38] Among other provisions, these regulations delegate to district rangers the authority to issue and revoke most SUAs and SRPs for outfitting and guiding.[39]

Planning Process

Any permit issued by an FS official for commercial guide and outfitting use must be consistent with the land and resources management plan for that NFS unit. Need, use, capacity, and allocation levels for specific guide and outfitting services must be established prior to the

[31] P.L. 86-517, 16 U.S.C. §§528 et seq.

[32] Visitation figures come from FS, *FY2021 Budget Justification*, p. 51. Permit figures provided to the Congressional Research Service (CRS) by FS Office of Legislative and Congressional Affairs, January 16, 2020.

[33] Data provided to CRS by FS Office of Legislative and Congressional Affairs, January 16, 2020.

[34] For a complete list of authorities that allow FS to issue special use authorizations (SUAs), see FS, Section 2710.1, "Special Uses Management," in *Forest Service Manual* (FSM), *2700*. Hereinafter, manual cited as FSM.

[35] 16 U.S.C. §497.

[36] For a complete list of federal laws that allow occupancy and use of NFS lands by entities other than FS, see FSM 2710.1.

[37] 36 C.F.R. §251, Subpart B.

[38] FS policy guidance can be found in FSH 2709.14_50.

[39] 36 C.F.R. §251.53. District rangers oversee individual districts within a national forest unit, whereas forest supervisors are responsible for an entire national forest unit.

issuance of new permits. FS policy outlines three approaches to assess and determine these levels: (1) needs assessment, (2) resource capacity analysis, and (3) allocation of use.[40]

To determine the public or agency need for authorized guide and outfitting activities at a given unit, the agency may conduct a *needs assessment*. Such an assessment may consider a variety of factors, such as accessibility, size of the area, difficulty of the terrain, current levels of outfitting and guiding, and demographics of visitors to the area.[41] Should, at any point, existing levels of commercial recreation use suggest an adverse impact on resource conditions, FS also may conduct a *resource capacity analysis* to assess "the amount of use and types of activities that may be conducted without detrimental environmental and associated impacts."[42] If FS identifies both a need and an ability to accommodate commercial guides and outfitters, managers are to determine the *allocation of use* for potential operators.[43] This pool of recreational use then may be allocated between nonoutfitted visitors and commercial guide and outfitting operators. Allocations for commercial guide and outfitting also may be further apportioned between *priority use* and *temporary use* permits.

Permit Terms

FS primarily authorizes commercial guides and outfitters through two types of SUAs: priority use permits and temporary use permits. Priority use permits typically are intended for ongoing commercial guide and outfitter operations and are issued for a period of up to 10 years, subject to noncompetitive renewal.[44] Temporary use permits typically are used for operators looking for one-time or short-term use of FS lands, and they are not eligible for renewal. FS allocates temporary use permits in increments of 50 service days, up to a maximum of 200 service days, with one temporary use permit issued per 180 days, per holder, per use area.[45] Temporary use permits are issued noncompetitively to qualified applicants on a first-come, first-served basis.

FS allocates guide and outfitting permits between priority and temporary use pools based on various factors, including visitor needs, agency goals, and current levels of use. New priority and temporary use permits for guides and outfitters may be issued when new or additional capacity is determined; an existing permit is revoked, terminated, or otherwise not reissued to the permit holder; or competitive interest in an area or activity arises.[46] If competitive interest exists, FS may issue a prospectus to potential applicants and select the guide or outfitter competitively. Selection criteria for competitive permits generally are based on the kind and quality of service proposed,

[40] FSH 2709.14_53.1f.

[41] FSH 2709.14_53.1f(1).

[42] FSH 2709.14_53.1f(2).

[43] FSH 2709.14_53.1f(3).

[44] FSH 2709.14_53.1e. Priority use permits were previously issued for a period of up to 5 years, but the agency adopted the 10-year permit term in 2005 to make outfitting and guiding permits consistent with the policies of the National Park Service (NPS) and BLM (FS, "Maximum Term for Outfitter and Guide Special Use Permits on National Forest System Lands," 70 *Federal Register* 19727, April 14, 2005). New priority use permits also may be issued for a period of two years with an option to extend for up to eight years based on satisfactory compliance with permit terms and existing land management plans. This interim permit is typically intended for new applicants with no or limited experience providing outfitting and guiding services authorized under the priority use permit.

[45] FSH 2709.14_53.1e. FS defines *service day* as "An allocation of use constituting a day or any part of a day on National Forest System lands for which an outfitter or guide provides services to a client. The total number of service days is calculated by multiplying each service day by the number of clients on the trip."

[46] FSH 2709.14_53.1h.

applicant experience, verification of financial resources, and potential fees returned to the federal government.[47]

Permitting Fees

With some exceptions, FS permitting fees for guides and outfitters vary on a case-by-case basis.[48] Generally, commercial guides and outfitters operating under a priority use permit pay FS a land-use rental fee of approximately 3% of their *adjusted gross revenue* (defined by FS as "gross revenue and revenue additions less applicable exclusions").[49] Such exclusions or adjustments may include specific revenue generated from operations on non-FS lands. However, not all revenue from goods or services provided on non-FS lands is excluded from the adjusted gross revenue calculation. For example, a commercial guide who led a multiday hunt on FS lands but provided lodging and meals off-site would be subject to a permitting fee based on the total revenue collected as part of the offered package; this is because such lodging and meals were provided in connection with the guided trip on FS lands. A flat land-use fee of $150 per 50 service days applies to temporary use permits.[50] Guide and outfitter permit fees for operations in Alaska are determined under a flat fee system.[51]

In addition to the land-use rental fee, FS also may charge a cost-recovery fee.[52] This cost-recovery fee covers the administrative and personnel costs associated with issuing recreation permits. These fees apply if the permit takes more than 50 hours to process or monitor.[53] Cost-recovery fees for guide and outfitter permits may, in some cases, be substantial—for example, in instances in which extensive environmental analysis or National Environmental Policy Act (NEPA) requirements apply.

In addition to the land-use fee and any applicable cost-recovery fees, FS may charge fees for a variety of other purposes, depending on the special use in question. These fees include assigned site fees for operators occupying specific sites on an annual basis, grazing fees when outfitting activities require animals to graze on FS lands, and transfer fees for when there is a change of ownership and a new authorization is issued.

Insurance and Liability

FS has issued policies on insurance requirements for SUA permitting generally, and these policies apply to guides and outfitters operating under SUAs.[54] The policies require general liability insurance for permittees based on the likelihood and severity of injury.[55] FS also established minimum coverage amounts for liability insurance for specific guide and outfitter activities. Minimum limits start at $300,000 aggregate coverage for low-risk activities (i.e., backpacking,

[47] FSH 2709.14_53.1h(1).

[48] FSH 2709.11.

[49] FSH 2709.11_37.21c.

[50] For a table of land-use fees by service days, refer to FSH 2709.11_37.21b. This flat fee structure places limits on maximum gross revenue for each bracket of service days. Should gross revenue exceed these amounts, the 3% fee model would be applied.

[51] FSH 2709.11 Region 10 (Alaska) Supplement.

[52] 36 C.F.R. §251.58.

[53] 36 C.F.R. §251.58(g). Additional guidance on cost recovery can be found at FSH 2709.11_31.31.

[54] *Forest Service Manual* (FSM), *2713.1*.

[55] FSM 2713.1(2)(d).

running and walking events, nature hikes).[56] FS regulations delegate the authority to issue and revoke most SUAs and SRPs to district rangers, who may require additional forms of insurance or higher minimum coverage, depending on the applicant.[57]

FS does not have a service-wide policy regarding the use of liability waivers for commercial recreation operators. However, several FS regions have issued supplemental guidance preventing permit holders from requiring customers to sign such a form.[58] For example, one FS region issued supplemental guidance specifically for guides and outfitters that reads, "The permit holder will not request or require persons served to sign a liability waiver for activities authorized by this permit."[59] This guidance allows permit holders to require visitor acknowledgement-of-risk (VAR) forms, so long as the issuing forest officer submits and approves those forms.[60] Some regions have prohibited liability waivers in most cases but allowed them for "high-risk recreation events," so long as the waivers "do not attempt to require participants to waive their rights to sue for any cause beyond ordinary negligence."[61]

Bureau of Land Management

BLM manages public lands for varied purposes relating to the preservation, use, and development of the lands and natural resources, in accordance with the Federal Land Policy and Management Act of 1976.[62] These purposes include livestock grazing, timber harvesting, fish and wildlife conservation, cultural resources protection, energy and mineral development, and recreational use. According to BLM, in FY2019, 70.7 million visitors recreated on BLM lands.[63] Currently, BLM manages more than 3,600 developed recreation sites and areas and administers more than 4,700 permits for commercial, competitive, and organized group activities. Of these 4,700 permits, BLM issued roughly 4,000 specifically for commercial use, the majority of which were for guide and outfitting purposes.[64]

[56] FSM 2713.1, Exhibit 01.

[57] 36 C.F.R. §251.53. FSM 2713.1(2)(d) clarifies that regional foresters may increase the minimum coverage amount "on the basis of the amount of use, likelihood and severity of injury, protection of forest visitors, potential liability of the United States, and cost of the insurance."

[58] Regional foresters, forest supervisors, and other authorized officials may, at times, supplement service-wide direction with additional guidance. Under FS policy, supplements may be more restrictive than parent material but cannot expand the authorities or relax restrictions unless approved in writing by the next higher official.

[59] FSH 2709.11_53, Region 3 Supplement, p. 23, at https://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?2709.11. The NFS is organized into administrative regions. FS Region 3, the Southwestern Region, includes Arizona, New Mexico, and parts of Oklahoma and Texas.

[60] If the visitor acknowledgment-of-risk form deviates from the standard preapproved language, the U.S. Department of Agriculture Office of the General Counsel must review the language prior to use.

[61] FSH 2709.11_10, Region 6 Supplement, p. 8, at https://www.fs.fed.us/im/directives/field/r1/fsh/2709.11/r1-2709.11_10.doc.

[62] FLPMA (43 U.S.C. §§1701 et seq.).

[63] BLM, *FY2021 Budget Justification*, p. V-60.

[64] Data provided to CRS by BLM Office of Legislative and Congressional Affairs, January 2020. According to BLM, these totals may include entities that would not be considered a commercial guide or outfitter; however, this reflects a small percentage of the overall total figure.

Authorities and Mechanisms

BLM typically authorizes the use of agency lands by commercial guides and outfitters through the use of SRPs under the authority provided in FLREA. Other BLM land uses are permitted under other authorities and processes.[65]

There are five different types of SRPs: commercial, competitive, group event, special areas, and vending uses. Activities by guides and outfitters typically are permitted as *commercial SRPs*.[66] BLM promulgated regulations regarding the administration of SRPs in 2002 and amended these regulations in 2007.[67] BLM also has established agency-wide policies and guidance specifically for the issuance of SRPs to commercial guides and outfitters.[68]

Planning Process

According to BLM policy, SRPs are issued as a means to control visitor use, protect recreational and natural resources, and provide for visitors' health and safety.[69] Any SRP issued by BLM for commercial guide and outfitting use must be consistent with the *resource management plan (RMP)* for that unit.[70] BLM manuals and handbooks provide additional guidance on planning for recreation resources and activities as part of the RMP process.[71]

Through the RMP process, BLM may establish allocation systems or desired use levels for commercial recreational activities for a given site or area. Various factors might influence whether BLM approves an SRP application, including whether a proposed activity complies with existing land-use plans or designations, the results of an environmental analysis, and/or an applicant's past performance.[72] Generally, BLM issues SRPs on a first-come, first-served basis until the desired use level is reached. However, if an authorized official determines there is sufficient interest for a limited number of available permits, BLM may issue commercial SRPs on a competitive basis. When an area's desired use level is reached, no additional permits are issued. New permits may be made available only when additional capacity is determined; an existing permit is revoked, terminated, or otherwise not reissued to the permit holder; or new areas for use become available.[73]

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[65] See, for instance, provisions of FLPMA at 43 U.S.C. §1732(b), which authorize BLM to regulate the use of land through leases, licenses, and "other instruments."

[66] In the past, BLM issued longer-term *concession recreation agreements* and concessions leases, citing authority under both FLREA (16 U.S.C. §§6801-6814) and FLPMA. However, a March 2015 report from the Department of the Interior's (DOI's) Office of the Inspector General (OIG) found BLM was incorrectly administering these agreements and did "not have a clear concession program authority" to issue such leases while retaining the associated permitting fees. DOI, OIG, *Review of Bureau of Land Management's Concession Management Practices*, March 2015, p. 1, at https://www.doioig.gov/reports/review-bureau-land-managements-concession-management-practices.

[67] See 43 C.F.R. §2932.

[68] BLM, MS-2930, *Recreation Permits and Fees*, 2007; and BLM, H-2930-1, *Recreation Permit and Fee Administration Handbook*, 2014.

[69] BLM, H-2930-1, p. vii.

[70] *Resource management plans* are land use plans that are developed through public engagement and establish goals and objectives to guide future land and resource management actions implemented by BLM.

[71] BLM, *MS-8320, Planning for Recreation and Visitor Services (Public)*, 2011; and BLM, *H-8320-1, Recreation and Visitor Services Planning Handbook*, 2014.

[72] To see a full list of factors considered in the issuance of special recreation permits (SRPs), see BLM, H-2930-1, p. 1-9.

[73] BLM, H-2930-1, p. 1-10.

Permit Terms

Permits may be issued for periods of up to 10 years, depending on such things as the type of outfitting activity proposed, the area in which the activity is to occur, existing and future resource conditions, and the potential permittee's past record.[74] BLM may issue one or more one-year permits prior to issuing a longer-term permit. These one-year permits often serve as an evaluation period wherein successful performance by the permit holder determines if the permit will be authorized for additional years.[75] BLM reserves the right to revoke or alter the terms and conditions of the permit.[76] Expiring commercial SRPs may be renewed at BLM's discretion, and BLM may offer preference to current permit holders seeking renewal when capacity is limited.[77]

Permitting Fees

As is the case with FS, commercial guides and outfitters operating under a BLM-issued SRP must pay an annual land-use rental fee. The use fee for commercial SRPs is approximately 3% of the permit holder's adjusted gross revenue or a minimum yearly fee of $110, whichever is greater. BLM published the most recent adjustments to the minimum fee schedule in November 2017 and transmitted them in a subsequent BLM instruction memorandum.[78] Like FS, BLM provides for adjustments in calculating the 3% gross revenue fee; such adjustments include deductions for specific revenue generated from operations on nonfederal lands and other travel and lodging costs.

BLM also may charge a fee for cost recovery if more than 50 hours of staff time are required to process and administer a commercial SRP.[79] Similar to commercial permits issued by FS, BLM may require additional fees (such as assigned site fees, exclusive use fees, or special area fees) based on the type of activity, area of use, or management objectives.

Insurance and Liability

BLM regulations require commercial SRP applicants to obtain liability insurance that the agency "judges sufficient to protect the public and the United States."[80] The regulations do not establish insurance minimums or risk classifications for guide and outfitter activities. BLM issued guidance in 2014 that set minimum requirements starting at $600,000 aggregate coverage for low-risk events or activities (i.e., group camping, orienteering, backpacking).[81] Moderate and

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[74] 43 C.F.R. §2932.42; BLM, H-2930-1, pp. 1-16 to 1-17. BLM promulgated regulations in 2004 that changed the maximum term of an SRP from 5 years to 10 years (69 F.R. 5706).

[75] BLM, H-2930-1, pp. 1-16 to 1-17.

[76] See 43 C.F.R. §2933.32 for when BLM may suspend or revoke an existing SRP.

[77] BLM, H-2930-1, p. 1-18.

[78] BLM, 82 *Federal Register* 55112, November 20, 2017, at https://www.govinfo.gov/content/pkg/FR-2017-11-20/pdf/2017-25101.pdf. See also BLM, "Automatic Adjustment of Minimum Special Recreation Permit Fees and Assigned Site Fees," Instruction Memorandum 2018-011, at https://www.blm.gov/policy/im-2018-011.

[79] 43 C.F.R. 2932.31(e). This regulation limits cost-recovery charges to "BLM's costs of issuing the permit, including necessary environmental documentation, on-site monitoring, and permit enforcement. Programmatic or general land use plan NEPA documentation are not subject to cost-recovery charges, except if the documentation work done was done for or provides special benefits or services to an identifiable individual applicant."

[80] 43 C.F.R. §2932.43.

[81] BLM, H-2930-1, pp. I-50 to I-51, at https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_H_2930_1.pdf. The handbook, on p. I-50, defines *riskiness* as follows: "Authorized uses are considered low risk when injuries generally associated with authorized activities are unlikely to result in death or permanent disability. Authorized uses are considered high risk when injuries generally associated with authorized

high-risk activities have annual aggregate minimums of $1 million and $2 million or greater, respectively.[82] Under these guidelines, BLM also requires permittees to obtain insurance that covers a minimum of $30,000 in property damage; however, this coverage may be included in an annual aggregate or per occurrence policy.[83] BLM guidance notes that additional coverage may be required, depending on special circumstances.

BLM does not have a formal policy regarding liability waivers for guides and outfitters operating under commercial SRPs (or other SRPs issued by the agency). According to BLM, some permittees require their customers to sign a liability form, others use VAR forms, and some do not require any acknowledgment-of-risk forms or liability waivers.[84]

National Park Service

NPS administers the National Park System for both recreational use and preservation of park resources, a mission that can be contradictory. The NPS Organic Act of 1916 directs the service to manage its lands so as "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." In calendar year 2018 (the most recent year of data), NPS reported 318 million visitors to national parklands.[85] NPS manages almost 500 concession contracts and over 6,000 commercial use authorizations (CUAs) with private sector operators to provide commercial visitor services. Of these, roughly 300 concessions contracts and 4,500 CUAs were specifically for commercial guide and outfitter purposes in FY2018.[86]

Authorities and Mechanisms

Like the other federal land management agencies, NPS has authority to issue special recreation permits under FLREA. However, NPS typically use different authorities to permit guides and outfitters. NPS handles most permits for guides and outfitters as either concessions contracts or CUAs under the National Park Service Concessions Management Improvement Act of 1998, which predates the authority provided by FLREA.[87] *Concessions contracts* are long-term agreements that are used to authorize lodges, restaurants, services, or other visitor services (including guide and outfitter services), typically operated by private companies using NPS-owned facilities and resources on park lands. By contrast, *CUAs* are short-term agreements between NPS and commercial service providers for activities that typically begin and end outside of park boundaries. The majority of guide and outfitter operators are authorized under CUAs;

activities may result in death or permanent disability."

[82] BLM identifies *moderate-risk activities* to include whitewater boating, mountain bike races, rock climbing (with ropes), and commercial hunting. *High-risk activities* include bungee jumping, unaided rock climbing, heli-skiing, or aerial or aviation-assisted activities.

[83] A certificate of insurance that shows damage *per occurrence* (including property damage, bodily injury, or death), and not *annual aggregate* coverage, need only carry a minimum coverage of $300,000.

[84] Personal communication between CRS and BLM Office of Legislative Affairs, May 31, 2019.

[85] NPS, *FY2021 Budget Justification*, p. Overview-2.

[86] NPS, *FY2021 Budget Justification*, p. ONPS-44. NPS has indicated that the number of commercial use authorizations (CUAs) will increase by 3,000-4,000 permits once a policy requiring CUAs for road-based commercial tours is finalized. NPS initially planned to implement this standardized policy starting October 1, 2019, but implementation has been delayed.

[87] P.L. 105-391; 54 U.S.C. Chapter 1019.

depending on the services offered and the operators' usage of park resources, a concessions contract may be more appropriate.

Several factors govern whether a CUA may be used for services such as guiding and outfitting or whether the more extensive requirements of a concessions contract must be used. CUA use is limited to commercial operations with annual gross receipts of not more than $25,000 resulting from services originating and provided solely within a park unit; the incidental use of park resources by operators that provide services originating and terminating outside of park boundaries; use by organized children's camps, outdoor clubs, and nonprofit institutions (including backcountry use); and such other uses as the DOI Secretary deems appropriate.[88] In addition, certain guiding and outfitting activities conducted by nonprofit entities for noncommercial purposes may be authorized under *special use permits* (SUPs) issued by NPS.[89]

NPS issued final regulations governing concessions contracts in 2000.[90] NPS issued proposed regulations for CUAs in 2002 but has not finalized these regulations.[91] Currently, NPS relies on interim guidance in administering CUAs. Agency manuals and orders provide further policy guidance for both concessions contracts and CUAs.[92] The DOI Secretary delegates the authority to issue and rescind permits to park superintendents and authorized officials at the unit level.

Planning Process

Similar to permits from FS and BLM, any permit issued by an NPS official for commercial guiding and outfitting use must be consistent with the management plan for that park unit. Under both a CUA and a concessions contract, the activity must have a minimal impact on park resources and values, and it must be consistent with the purposes for which the unit was established. Both CUAs and concessions contracts must be determined to be *appropriate* uses of the park, and concessions must be both *necessary* and *appropriate*.

Increased recreation on NPS lands has fueled disagreements over the extent to which national park lands should be used for recreational activities under NPS's dual mission of resource protection and recreational use. In situations where authorized officials determine that continued commercial use poses potential impairments to the visitor experience and to park resources and values, NPS may limit commercial activities. For CUAs, NPS may establish operational requirements that limit use and impacts. Alternatively, NPS may choose to limit the number of issued CUAs. If NPS opts to limit the number of issued CUAs, a competitive proposal and selection process is to be required and repeated at least every two years. The decision to limit the number of CUAs must accord with park enabling legislation, NPS management policies, and existing planning documents. In addition, the decision must be reviewed through appropriate compliance processes.[93]

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[88] 54 U.S.C. §101925(c).

[89] Under the 1998 concessions law (54 U.S.C. §101925(d)), nonprofit institutions are required to obtain CUAs—not special use permits (SUPs)—only when they generate taxable income from the authorized use.

[90] 36 C.F.R. §51.

[91] NPS, "Commercial Use Authorizations," 67 *Federal Register* 70899, November 27, 2002.

[92] For NPS guidance on concessions contracts and CUAs, see NPS, Chapter 10, "Commercial Visitor Services," in *Management Policies 2006*. See also, NPS, "Director's Order #53: Special Park Uses," 2010; NPS, "Reference Manual #53," 2009. NPS, Section 8.6, "Special Park Uses," in *Management Policies 2006*.

[93] NPS, "Limiting CUAs," in *Commercial Use Authorizations (CUA)*, June 7, 2017, at https://www.nps.gov/subjects/concessions/upload/Limiting-CUAs-Guidance.pdf.

Permit Terms

For guiding and outfitting activities authorized under a concessions contract, NPS regulations set out the process and timeline for awarding the contracts.[94] A concessions contract generally must go through a public solicitation process, but under the 1998 concessions law, concessions contracts for guides and outfitters may qualify for a preferential right of renewal at the end of a contract's term.[95] Concessions contracts typically are awarded for a term of 10 years or less.

For guiding and outfitting activities authorized under a CUA, NPS has issued interim guidance (in the absence of finalized regulations) that establishes the process and guidelines for issuing CUAs. CUAs do not need to go through a public solicitation process but may be issued by NPS upon request (at NPS's discretion and with reference to the factors discussed above). NPS issues CUAs for a term of no more than two years, and provides no preferential right of renewal.

Permitting Fees

For guiding and outfitting activities authorized under a concessions contract, NPS establishes a concessions franchise fee as part of the contract. The 1998 concessions law and NPS regulations govern the establishment of the franchise fees.[96] Under the law, 80% of the fees are retained at the park, where they are collected and may be used for visitor services and high-priority resource management activities. The remaining 20% of the fees are deposited in a special account to support activities throughout the park system.[97]

For guiding and outfitting activities authorized under a CUA, the 1998 concessions law and agency guidelines require the superintendent to charge a "reasonable fee" for the CUA.[98] The fees remain available for expenditure by the superintendent to recover, at a minimum, associated management and administrative costs. Under the interim guidelines, NPS uses fee establishment guidance for an earlier type of permit (*incidental business permits*, now replaced by CUAs) to set the fees. Under this guidance, a *reasonable fee* is defined as either the fee to recover the full cost of providing the benefit or the market price.[99] Parks may choose one of these two methods to establish a reasonable fee, so long as the market price fee complies with the statutory requirement of covering, at a minimum, the management and administrative costs of issuing the CUA. Park visitors who are transported into the park by a CUA holder must also pay the same entrance and other fees as other park area visitors, unless otherwise stated in the CUA.

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[94] 36 C.F.R. §51.

[95] 54 U.S.C. §101913(7)-(8).

[96] 54 U.S.C. §101917. Regulations can be found at 36 C.F.R. §51, Subpart I. Under NPS regulations, the director determines franchise fees upon consideration of "the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract" (36 C.F.R. §51.78(a)).

[97] 54 U.S.C. §101917(c). Although the 80:20 retention formula for franchise fees under the NPS concessions law is similar to the retention requirements under FLREA, the provisions of FLREA differ in a number of ways. For example, under FLREA, the Secretaries (of DOI and USDA) can reduce the retention amount to not less than 60% for a fiscal year. In addition, FLREA includes more specific requirements and limitations on the usage of retained fees as compared to the NPS concessions law (see 16 U.S.C. §6807 for information on eligible FLREA expenditures).

[98] 54 U.S.C. §101925(b)(2). The law requires that the fee, at a minimum, "recover associated management and administrative costs."

[99] NPS, "Commercial Use Authorizations: Interim Guidance," November 12, 2016, p. 6, at https://www.nps.gov/subjects/cua/upload/Directive-for-Charging-Fees-for-CUAs-11-12-15.pdf.

Insurance and Liability

For concessions contracts, NPS develops insurance requirements on a contract-by-contract basis. NPS works with a contracted insurance consultant who "uses detailed information on the specific activity, as well as current industry data and practices, to identify appropriate levels of insurance based on the risk associated with the particular concession operation."[100] The 2018 *NPS Commercial Services Guide* establishes commercial liability insurance minimums for certain Category III concessions contracts based on high-, medium-, and low-risk activities.[101] (NPS considers Category III contracts as those entered into by small-scale concessioners with no contractual agreement to construct capital improvements on park lands or to conduct primary business operations on NPS-assigned land or in government buildings. Most guide and outfitter operators are authorized under Category III contracts.) For example, under these guidelines, NPS regional directors must require a minimum of $1 million aggregate insurance coverage for low-risk activities (e.g., guided backpacking and hunting) for certain Category III guide and outfitter operations.[102] Higher minimums apply for some activities classified as medium-risk (e.g., guided horse rides) and high-risk (e.g., guided mountaineering).

NPS does not have formal policies regarding insurance requirements for guides and outfitters operating under CUAs. However, in 2017, NPS issued additional interim guidance regarding minimum insurance requirements for CUA holders; this guidance generally followed the policies in place for concessions contracts.[103] As with concessions contracts, CUA insurance minimums may be adjusted on a case-by-case basis depending on the activity and park unit in question.

NPS has a policy prohibiting concessioners from requiring customers to sign a liability waiver form. However, NPS policy authorizes concessioners to use VAR forms.[104] NPS indicates that the same prohibition on the use of liability waivers by concessions contractors applies to CUA holders.[105] However, NPS has not explicitly formalized a policy to prevent guides and outfitters operating under CUA permits from requiring customers to sign liability waivers.

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[100] Statement of Peggy O'Dell, Deputy Director, NPS, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, *Concession Contract Issues for Outfitters, Guides and Smaller Concessions*, 112th Cong., 2nd sess., August 2, 2012 (Washington, DC: GPO, 2012), at https://www.doi.gov/ocl/hearings/112/Special-Use-Permits-08-02-12.

[101] NPS, *Commercial Services Guide*, October 1, 2018, pp. 45-46, at https://www.nps.gov/subjects/concessions/upload/CS-Guide-Final-Ver-3-FINAL-Updated-04-09-19.pdf. Hereinafter referred to as 2018 NPS Commercial Services Guide.

[102] The guidelines clarify that discretion is afforded to individual park units to require minimum coverage that is higher than those outlined for Category III contracts. For a more detailed discussion of how NPS liability insurance minimums compare with those of the other FLMAs, see James Lynch, "Pushing the Limits: An Examination of Liability Insurance Limits for National Park Service Concessioners," America Outdoors Association, December 28, 2011, at https://www.americaoutdoors.org/assets/1/27/12-28-11_AOA_Whitepaper_on_NPS_Liability_Insurance_Limits.pdf?5609.

[103] NPS, "Commercial Use Authorizations (CUA) Insurance Guidance and Limiting CUAs Guidance," at https://www.nps.gov/subjects/cua/upload/CUA-Insurance-Guidance.pdf.

[104] 2018 NPS Commercial Services Guide, §6.9.5, pp. 95-96.

[105] NPS, "Acknowledgment of Risk Policy," last updated August 10, 2018, at https://www.nps.gov/subjects/concessions/arp.htm. Confirmation of this policy was provided via personal communication between CRS and NPS Office of Legislative and Congressional Affairs, June 20, 2019.

U.S. Fish and Wildlife Service

FWS administers land for a variety of purposes. The majority of FWS lands are within the National Wildlife Refuge System (NWRS).[106] On lands within the NWRS, recreation is generally authorized and regulated through the National Wildlife Refuge System Administration Act.[107] The Refuge Recreation Act also authorizes recreation within the NWRS, in national fish hatcheries, and in certain other conservation areas.[108]

Recreation on NWRS lands generally is allowed only when compatible with the mission and purpose for which the lands were set aside. For the NWRS, "the mission of the system is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." When compatible, wildlife-dependent recreation is considered a priority use of the NWRS.[109] FWS does not uniformly report the number of commercial recreation permits it issues across the NWRS; however, generally, the agency has issued fewer permits for guide and outfitting operations than the other FLMAs.[110]

Authorities and Mechanisms

FWS uses a combination of SUPs and SRPs to permit guides and outfitters operating on lands within the NWRS. Most often, FWS issues *commercial activity special use permits* (CASUPs) for guiding and outfitting services. These permits are issued under several authorities.[111] However, specific refuges are approved to collect entrance and special use fees (including recreation fees) under FLREA. At those refuges, refuge managers use the FLREA authority to issue SRPs for guiding and outfitting services.[112]

FWS treats SRPs as being essentially the same as CASUPs, and the application processes are similar. However, FWS treats the SRP permit fees differently than the CASUP permit fees (see "Permitting Fees," below). FWS has promulgated regulations for the issuance of both types of permits.[113] Among other things, the regulations give individual refuge managers the authority to issue and revoke permits.

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[106] U.S. Fish and Wildlife Service (FWS), "Statistical Data Tables for Fish & Wildlife Service Lands (as of 9/30/2019)," at https://www.fws.gov/refuges/land/PDF/2019_Annual_Report_Data_Tables(508-Compliant).pdf.

[107] National Wildlife Refuge System Administration Act (16 U.S.C. §§668dd-668ee).

[108] Refuge Recreation Act (16 U.S.C. §§460k-460k-4).

[109] 16 U.S.C. §668dd(a).

[110] Personal communication between CRS and the FWS Office of Legislative and Congressional Affairs, January 2020. FWS indicated that it issued at least 900 commercial permits for the activities of hunting, fishing, and/or trapping in the National Wildlife Refuge System from FY2014 to present. These may include guide and outfitter activities, but FWS does not have a way to identify the number of permits issued specifically for these purposes.

[111] Commercial activity special use permits are issued under authority of the National Wildlife Refuge System Administration Act (16 U.S.C. §§668dd-668ee, as amended); the Refuge Recreation Act (16 U.S.C. §§460k-460k-4); and, in Alaska, the ANILCA (16 U.S.C. 3101 et seq.).

[112] 16 U.S.C. §6802(h). According to the 2015 triennial report to Congress, the DOI reported that of the roughly 560 national wildlife refuges, approximately 140 charge fees under FLREA.

[113] 50 C.F.R. Part 25, Subpart D.

Planning Process

When compatible with the NWRS's mission and an individual unit's purpose, *wildlife-dependent recreation*—defined as "hunting, fishing, wildlife observation and photography, or environmental education and interpretation"—is considered a legitimate, priority public use.[114] FWS policy guides how a compatibility determination should be made for specific recreational uses on a refuge.[115] Commercial use (including commercial recreational use) at or on a refuge may be considered compatible if it directly supports a priority general public use, if it is specifically authorized by statute, or if it is a "refuge management economic activity."[116]

Permit Terms

Generally, FWS issues permits for a specific period as determined by the type and location of the use or service provided. Refuge-specific special conditions also may be required for the issuance of a permit. For refuges in Alaska, FWS may award permits competitively when the number of available permits is limited. A prospectus with an invitation-to-bid system is the primary competitive method used for selecting commercial visitor services. Both competitive and noncompetitive permits issued in Alaska are limited to up to five years.[117]

Permitting Fees

Except in Alaska, fees for guide and outfitting permits vary on a case-by-case basis, depending on factors such as the activity permitted and the workload of the permit processing. Unlike FS, BLM, and NPS, FWS does not have a specific policy for how to assess fees for commercial recreation permits. Instead, FWS relies on a broad policy that requires the agency to consider cost recovery and fair market value when providing goods, resources, or services to a non-FWS entity.[118] In accordance with this policy, some refuges may charge only amounts sufficient to recover costs, whereas others may charge both recovery costs and additional fees when issuing permits for commercial recreation services. Permit fees in Alaska are based on a standard fee schedule, and permits issued for commercial uses in Alaska are subject to a $100 administrative fee.[119]

Insurance and Liability

FWS does not have formal general liability requirements for commercial guide and outfitter operators. However, individual refuges have, at times, identified minimum liability requirements for guides and outfitters for their station, based on the type of use and local conditions. For

[114] 16 U.S.C. §668dd(a)(3).

[115] FWS, Manual 603, *National Wildlife Refuge System Uses,* Section 2.6(A), 2000, at https://www.fws.gov/policy/603fw2.html.

[116] FWS Manual 603 Section 1.10(D)(8). 50 C.F.R. §25.12 defines a *refuge management economic activity* as "a refuge management activity on a national wildlife refuge which results in generation of a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: Farming, grazing, haying, timber harvesting, and trapping."

[117] 50 C.F.R. §36.41(e)(2) and §36.41(e)(10).

[118] FWS Manual 264 Section 1. This broad policy is in accordance with the Office of Management and Budget (OMB) Circular No. A-25, which established federal policy for executive agencies regarding fees assessed for government services and for sale or use of government goods or resources (OMB, "Circular A-25 Revised, Transmittal Memorandum #1, User Charges," July 8, 1993).

[119] 50 C.F.R. §36.41(f).

example, the Okefenokee National Wildlife Refuge requires all guides to furnish proof of liability insurance, with a minimum of $300,000 general liability/occurrence for day-use guides and $500,000 general liability/occurrence for overnight guides.[120] Similar requirements have previously been established at the regional level for FWS lands within Region 7 (Alaska Region).[121] However, no Service-wide policy exists that defines either minimum policy limits for commercial guides and outfitters or risk-level assessments for the activity in question.

FWS does not have a Service-wide policy regarding the use of liability waivers for commercial recreation operators. According to FWS, the Service neither generally requires nor generally prohibits the use of waiver forms or acknowledgement-of-risk forms.[122]

Concluding Thoughts and Further Reading

The four major FLMAs issue permits to commercial guides and outfitters under multiple authorities. Depending on the authority, a permit holder may be subject to different terms, fees, and requirements to operate on federal lands. The processes established by the agencies to determine the amount and type of commercial use authorized under such a permit must accord with the multiple other existing statutes or authorities that guide federal land management. In addition, since the FLMAs often manage lands that are close or adjacent to one another, some guide and outfitter operators may be subject to multiple permitting processes should their operations cross agency jurisdictions. These factors and others can make it difficult to determine how and when commercial guides and outfitters may operate in our nation's forests, parks, and waterways.

The various FLMA permitting processes have been a focal point of interest for many in Congress, the Administration, and the outfitting industry. As a result, understanding the considerations and requirements outlined in this report—as well as the broader role of commercial guides and outfitters on federal lands—may be helpful should Congress consider further legislative action.

For more information regarding legislative issues related to commercial guides and outfitters on federal lands, as well as other issues related to commercial recreation on federal lands addressed within this report, see CRS Report R46381, *Guides and Outfitters on Federal Lands: Issues and Legislation in the 116th Congress in Brief*.

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[120] FWS, Okefenokee National Wildlife Refuge, "Guidelines for Commercial Guide Services" at https://www.fws.gov/uploadedFiles/2019Guiding_Guidance.pdf.

[121] FWS, "Liability Insurance Requirements for Special Use Permits, Region 7," at https://www.fws.gov/uploadedFiles/sup_insurance.pdf.

[122] Personal communication between CRS and FWS Office of Legislative and Congressional Affairs, June 24, 2019.

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