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Guides and Outfitters on Federal Lands: Issues and Legislation in the 116th Congress in Brief

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SUMMARY

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Guides and Outfitters on Federal Lands: Issues and Legislation in the 116th Congress in Brief

Guides and outfitters play a role in facilitating recreational use of the country's public lands. Congress routinely considers issues related to these service providers, often in the context of broader recreation issues. Generally, these issues concern how best to balance opportunities for commercial activities on federal lands and waters with the general public's usage of and access to these lands.

Congress also has considered issues specific to commercial guides and outfitters operating on federal lands. It has focused particular attention on whether and how to simplify the current permitting framework for commercial guide and outfitting usage on lands 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).

Generally, commercial guides and outfitters are required to obtain a permit to operate on lands owned and administered by the FLMAs. Some stakeholders view the rules, regulations, and guidance across the four FLMAs as disparate and see it as an administrative and financial hindrance to guide and outfitting operators—particularly small businesses and entities whose operations cross multiple federal jurisdictions. Opponents of adjusting permitting requirements assert that doing so would open federal lands to additional guide and outfitter operators, to the detriment of noncommercial visitor use.

In addressing these concerns and others, the 116th Congress has considered multiple bills that include provisions addressing the permitting process for guides and outfitters operating on land owned or administered by the FLMAs. These bills include the Simplifying Outdoor Access for Recreation Act (SOAR Act; S. 1665/H.R. 3879), the Recreation Not Red Tape Act (RNR Act; S. 1967/H.R. 3458), and the Guides and Outfitters Act (GO Act; H.R. 316). The specifics of the proposed amendments vary across bills, but generally the bills all provide for adjustments in permit fee and cost-recovery calculations, potential new categorical exclusions (CEs) under the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.) for certain recreation-related activities, and new multi-jurisdictional permits for activities that cross multiple federal lands.

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Introduction[1]

Guides and outfitters play a role in facilitating recreational use of the country's public lands.[2] These operators can provide specialized knowledge, skills, and expertise, as well as equipment, for people to recreate on public lands regardless of their skill level or prior experience.

As visitation to public lands has increased in recent years, various stakeholders have raised questions about the degree to which the federal government should allocate access to lands and resources to commercial guides and outfitters. Although guides and outfitters and their clientele generally represent a fraction of the total visitation to public lands, some stakeholders view any commercial access as infringing on the available use of these lands by do-it-yourself recreational users. Some stakeholders have raised particular concerns about issues of overcrowding at specific sites that allow commercial guides and outfitters. By contrast, some other stakeholders see guides and outfitters as a valuable resource for visitors and an asset to local economies, providing safe, reliable access to federal lands. In some cases, supporters of guides and outfitters have stated that federal agencies rely on the expertise of guides and outfitters to reduce incidents that involve search and rescue or to promote ethical use of federal lands and resources (i.e., Leave No Trace ethics).[3]

This report discusses some of these issues and other areas of congressional interest related to commercial guides and outfitters. The report pays particular attention to commercial guide and outfitting usage on lands 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). These issues include whether and how best to facilitate access to federal lands for existing or new recreational providers; whether to reauthorize or amend existing laws related to guides and outfitters; and whether and how to simplify the current permitting framework for commercial guides and outfitters operating on federal lands and waters. The report also provides an overview of certain legislation introduced in the 116th Congress that addresses some of the issues discussed.

Issues for Congress

Congress routinely considers issues related to guides and outfitters, often in the context of broader recreation issues. Generally, these issues concern how best to balance opportunities for commercial activities on federal lands and waters with the general public's usage of and access to

[1] For a more general overview of guide and outfitter activities on federal lands, see CRS Report R46380, *Guides and Outfitters on Federal Lands: Background and Permitting Processes*, 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] See, for example, Testimony of Aaron Bannon, National Outdoor Leadership School in U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, *Impediments to Public Recreation on Public Lands*, 113th Cong., 1st sess., May 7, 2013 (Washington: GPO, 2013). For examples of past agency perspectives, see Forest Service (FS) comments on agency need for outfitting and guiding services at FS, "Final Directives for Forest Service Outfitting and Guiding Special Use Permits and Insurance Requirements for Forest Service Special Use Permits," 73 *Federal Register* 53829, September 17, 2008.

these lands. Some specific issues deliberated by Congress include how best to facilitate access for existing or new recreational providers; whether to reauthorize or amend existing laws related to guides and outfitters, particularly the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814); and whether and how to simplify the current permitting framework. These and other issues are discussed below.

Access to Federal Lands and Waters

The abundance and diversity of outdoor recreation on federal lands have increased the challenge of balancing recreation—and, in turn, guide and outfitting operations—with other land uses for which the federal government manages lands and waters. Issues related to access, including the types of recreational activities permitted on federal lands and waters and the extent to which individuals have physical access to these areas to recreate, are of perennial concern to Congress.[4]

FLMAs have considered and implemented various permitting processes to provide commercial entities—including guide and outfitter operators—physical access to public lands in certain contexts (see "Permitting"). Some stakeholders see efforts to streamline and expedite these permitting processes as granting preferential access to commercial guides and outfitters at the expense of the unguided public.[5] These stakeholders contend that legislative and administrative proposals aimed at facilitating access to commercial guides and outfitters could prevent new visitors from accessing lands, as some proposals would prioritize private companies that primarily serve paying customers.[6] However, FLMA regulations typically specify that use permits do not grant exclusive use to commercial operators.[7] In addition, supporters of additional access for guides and outfitters on federal lands claim that these services allow many visitors to have a safer, more reliable experience on public lands than they could have individually. Supporters also state that guides and outfitters play a vital role in introducing public lands to diverse visitor segments.

Similarly, some stakeholders see attempts to facilitate additional access by guides and outfitters as an impediment to managing visitation and protecting valuable resources. Many federal lands across the country have experienced record-high visitation in recent years.[8] The effectiveness or extent to which FLMAs have policies in place to limit the amount of use by commercial operators in the event of overuse or resource degradation may be a subject of congressional interest.

[4] For more information on issues related to recreation, see CRS Report R43429, *Federal Lands and Related Resources: Overview and Selected Issues for the 116th Congress*, coordinated by Katie Hoover.

[5] For example, see public comments regarding updated FS permitting regulations at FS, "Final Directives for Forest Service Outfitting and Guiding Special Use Permits and Insurance Requirements for Forest Service Special Use Permits," 73 *Federal Register* 53824, September 17, 2008. ("A number of respondents opposed the proposed directives because they perceived them as granting exclusive access to National Forest System (NFS) lands to commercial outfitters and guides at the expense of the unguided public and without the opportunity for public input.")

[6] River Runners for Wilderness, "Kiss Your Federal Land Access Goodbye," September 18, 2019, at https://rrfw.org/node/886.

[7] For example, see FS regulations at 36 C.F.R. §251.55(b).

[8] The COVID-19 outbreak that began in early 2020 may affect visitation figures for the year. The degree to which the pandemic may increase or decrease visitation is still unclear, although some federal lands were closed to the public temporarily.

Reauthorizations

Congress often considers extensions and other amendments to programmatic authorities that directly or indirectly relate to guide and outfitting permits. In particular, ongoing deliberations encompass whether to let FLREA expire, to extend it, or to make it permanent, with or without modifications.[9] Among other provisions, FLREA provides the four FLMAs and the 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. FLREA also authorizes these agencies to retain certain fee revenues and use them for specified purposes that aim to benefit visitors directly. If FLREA were to expire, some FLMAs may still have other authority to set fees for commercial recreational use on federal lands; however, fees established under these other authorities generally would be directed to the Treasury rather than retained by agencies.[10]

Some stakeholders have suggested that should FLREA authority lapse, agency capacity to administer recreation programs would be diminished. According to these stakeholders, the loss of permit and amenity fee retention would "likely result in the elimination of outfitted services and recreation access" on FLMA lands.[11] In the FY2021 budget request, the Administration supported permanent reauthorization of FLREA and requested appropriations language to provide a two-year extension of FLREA "as a precaution" to ensure FLREA authorization does not lapse.[12] In the FY2020 Interior appropriations law, the authority in FLREA was extended through October 1, 2021.[13]

Permitting[14]

Generally, all commercial guides and outfitters are required to obtain a permit to operate on lands owned and administered by the FLMAs. Over the years, the various FLMA permitting processes for commercial recreation providers have been of interest to Congress, the Administration, and

[9] For more information on particularly the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814), see CRS In Focus IF10151, *Federal Lands Recreation Enhancement Act: Overview and Issues*, by Carol Hardy Vincent.

[10] For example, a number of statutes other than FLREA authorize FS to charge fees for the occupancy and use of NFS lands. A difference between FLREA and other fee authorities is that FLREA provides the agencies with the flexibility to test different types of fees and retain most of the revenue at the site where the fee was collected. The primary exception to this would be the National Park Service Concessions Management Improvement Act of 1998 (P.L. 105-391; 54 U.S.C. §§101911-101926), which is the authority the National Park Service (NPS) typically uses to issue permits to commercial guides and outfitters operating on agency lands. Similar to FLREA, the law allows 80% of fees to be retained at the park where they are collected and stipulates that these funds 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.

[11] Testimony of David L. Brown, Executive Director, America Outdoors Association, in U.S. Congress, Subcommittee on Public Lands and Environmental Regulation of the House Committee on Natural Resources, *Citizen and Agency Perspectives on the Federal Lands Recreation Enhancement Act*, 113th Cong., 1st sess., June 18, 2013.

[12] Department of the Interior (DOI), *Fiscal Year 2021, The Interior Budget in Brief*, p. DH-37, at https://www.doi.gov/sites/doi.gov/files/uploads/2021-highlights-book.pdf, and DOI, Bureau of Land Management (BLM), *Budget Justifications and Performance Information, Fiscal Year 2021*, p. XI-6, at https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-blm-budget-justification.pdf.

[13] P.L. 116-94, Division D, Title IV, §425.

[14] For a detailed discussion of the permitting process across federal land management agencies for commercial guides and outfitters, see CRS Report R46380, *Guides and Outfitters on Federal Lands: Background and Permitting Processes*, by Mark K. DeSantis.

the guide and outfitting industry. Certain stakeholders view the rules, regulations, and guidance across the four FLMAs as disparate and see them as an administrative and financial hindrance to guide and outfitting operators—particularly small businesses and entities whose operations cross multiple federal jurisdictions.[15] These stakeholders generally support increasing consistency and uniformity across agencies and limiting the administrative costs of applying for and issuing permits. Opponents of such changes assert that doing so would open federal lands to additional guide and outfitter operators, to the detriment of noncommercial visitor use.[16]

Some of the permitting issues recently considered by Congress include establishing more standardized permitting processes across FLMAs, implementing multi-jurisdictional permits for guide and outfitting operations that span multiple federal lands, reforming cost-recovery calculations for applicable permits, addressing possible staff or budget capacity issues for processing guide and outfitting permits, and controlling liability and insurance costs for permit holders. These issues are discussed below.

Streamlining Efforts and Multi-jurisdictional Permitting

Each FLMA has established its own regulations, policies, and guidance for permitting guide and outfitter operations. Some stakeholders in the outfitting community claim that these various authorities have created a system that is difficult to navigate for commercial operators that work with multiple FLMAs.[17] Some commercial guides operating trips that cross multiple federal lands contend the current system—which may require guides to apply for and maintain multiple permits with different agencies for a single trip—is overly time-consuming and costly.[18] Other stakeholders suggest the different permitting processes are necessary and tailored to the different legislative mandates under which each FLMA operates.[19] Several Members of Congress have introduced bills that would authorize the use of single joint permits for multi-jurisdictional trips, along with various amendments to FLREA that seek to improve the efficiency and reduce the cost of applying for and administering permits for commercial guides and outfitters (See "Legislation in the 116th Congress"). Agencies generally have expressed support for these efforts, although concerns have been raised regarding how single joint permits would ensure compliance with each agency's different statutory authorities and management mandates.[20]

[15] Testimony of Matt Wade, American Mountain Guides Association in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing*, 116th Cong., 1st sess., September 19, 2019. ("It is time consuming and costly for guides to apply for and maintain multiple permits with different agencies for just a single trip.")

[16] For example, see Brodie Farquhar, "Sweet Deal for Outfitters? Some Criticize Forest Service's Proposed Rule Change," *Casper Star-Tribune*, December 23, 2007.

[17] Coalition for Outdoor Access, "Comments on U.S. Department of the Interior Secretarial Order 3366, Issued on April 18, 2018," June 29, 2018.

[18] U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing*, 116th Cong., 1st sess., September 19, 2019.

[19] Testimony of Leah Baker, Acting Assistant Director for Resources and Planning, BLM, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing*, 116th Cong., 1st sess., September 19, 2019. Hereinafter, Testimony of Leah Baker, September 2019.

[20] Testimony of Leah Baker, September 2019. ("The Department supports delegating enforcement authorities among agencies, but would like to ensure that these delegations conform with the statutory authorities for each agency.... If an agency needs to withdraw from a single joint [special recreation permit (SRP)], presumably it is because the agency needs to issue a permit under terms different from the single joint SRP, whether due to differing management concerns or other circumstances.").

Permit Fee Calculations

Guides and outfitters pay various permitting fees to FLMAs to operate on federal lands. Although FLREA and other permitting and fee retention authorities provide general guidance as to how these fees shall be applied, the FLMAs have established specific regulations and policies that dictate permit costs. Two issues related to permit fees have attracted Congress's attention in recent years: *gross revenue* permit fee calculations and *cost-recovery* formulas.

Among the permitting fees established by FLMAs, commercial guides and outfitters generally are required to pay annual, nonrefundable land-use rental fees. These fees—primarily in the cases of FS and BLM—are set at 3% of the permit holder's *adjusted gross revenue*. However, FS and BLM differ in detail as to how to calculate adjusted gross revenue. BLM generally excludes the pre-trip and post-trip costs (e.g., for client transportation and lodging) incurred by the permittee outside federal land boundaries,[21] whereas FS fee policy requires revenue calculations to be based on the total cost of the trip, including services delivered outside the boundaries of public lands.[22] Congress has debated whether revenue generated on nonfederal land should be included in gross revenue calculations, with some Members introducing legislation to prohibit FLMAs from including such costs in future permitting fee calculations (see "Legislation in the 116th Congress").

In addition, some FLMAs may charge a fee for cost recovery as a means to fund the costs incurred in issuing permits, including necessary environmental documentation, on-site monitoring, and permit enforcement.[23] For example, FS and BLM have cost-recovery requirements for commercial recreation permits if more than 50 hours of staff time are required to process and administer the permit.[24]

In instances where extensive analysis is required (e.g., new permitted recreational uses, increases in resource capacity), cost-recovery fees can reach into the tens of thousands of dollars. Some industry stakeholders and some Members of Congress have suggested that in such cases, recovery costs are prohibitive to small businesses, which may be shut out of federal lands as a result.[25] Some Members have introduced legislation that would adjust the cost-recovery process, seeking

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[21] BLM, H-2930-1, *BLM Recreation Permit and Fee Administration Handbook*, 2014, p. 1-31, which states that, "For commercial use, deductions from gross receipts are allowed for actual transportation and lodging costs incurred by the permittee before the client's arrival at the beginning of a trip, and after departure at the end of a trip." Hereinafter referred to as BLM, H-2930-1.

[22] FS, FSH 2709.11, *Special Uses Handbook*, Section 37.05, 2008. The FS handbook definition of *gross revenue* specifically includes "Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded."

[23] See 36 C.F.R. §251.58 for FS regulations related to cost recovery and 43 C.F.R. §2932.31(e) for BLM regulations.

[24] 36 C.F.R. §251.58(g)(4) and 43 C.F.R. §2932.31(e)(2). This policy has, at times, been referred to as a 50-hour "credit" for commercial recreation permits. However, in practice, the policy operates more as a threshold in which permit holders are subject to complete cost-recovery fees when administrative costs surpass 50 hours. For example, a permit that takes 60 hours to process would be subject to all 60 hours of cost recovery, as opposed to 10 hours.

[25] For example, see U.S. Congress, House Committee on Natural Resources, *Guides and Outfitters Act*, Report to accompany H.R. 289, 115th Cong., 1st sess., September 21, 2017, H.Rept. 115-320, p. 6. See also U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, 113th Cong., 2nd sess., April 4, 2014, H.Hrg. 113-68 (Washington: GPO, 2015). In the publication of its final rule on cost-recovery fees, FS acknowledged the potential negative economic impact of cost recovery on small entities: "The Forest Service has prepared a cost-benefit analysis of the final rule, which concludes that the final rule could have an economic impact on small businesses if their application or authorization requires a substantial amount of time and expense to process or monitor." FS, "Recovery of Costs for Processing Special Use Applications and Monitoring Compliance with Special Use Authorizations," 71 *Federal Register* 8897, February 21, 2006.

to limit the potential burden placed on small businesses and other guide and outfitting operators. For example, legislation in the 116th Congress would provide FS and BLM with authority to waive cost recovery on a case-by-case basis if such costs "would impose a significant economic burden on any small business."[26] FS and BLM have suggested that such cost-recovery reforms likely would have little impact on most small service providers, as permits for these entities topically require few administrative hours to process and rarely exceed the existing 50-hour threshold for cost-recovery fees. Instead, the agencies assert that the proposed new exemptions generally would benefit large recreation service providers and would result in processing delays for new and existing permits.[27] Other legislative proposals regarding cost recovery would prorate aggregate recovery costs for multiple applications for similar services in the same area and provide categorical exclusions for certain agency actions subject to the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.) review, thereby reducing administrative costs (see "Legislation in the 116th Congress").

Agency Capacity and Funding

Some Members of Congress have shown interest in reducing the backlog and processing time for guide and outfitter permit applications. According to FS, that agency alone has a backlog of more than 5,000 applications for new special-use permits and renewals of existing special-use permits that are awaiting environmental analysis and decision.[28] Industry groups have raised concerns regarding the processing times, and agencies have pointed to their limited staff capacity as a main reason for permit backlogs. Some estimates suggest that nearly 87% of all FS permitting work is conducted as a collateral duty by agency employees, meaning the employees have other primary job assignments that may not include processing permits.[29] Other FLMAs also have indicated that processing special-use permits is largely a collateral duty for staff. In 2010, DOI officials testified that fewer than 20 national park units had staff dedicated to managing the special park uses program and processing permit requests.[30]

Insurance and Liability Requirements

All guide and outfitter permits issued by FLMAs require the operator to possess commercial general liability insurance.[31] Commercial general liability is a type of insurance policy that, broadly speaking, provides coverage to a business for bodily injury, personal injury, and property damage caused by the business or its products. The level of coverage provided under commercial general liability typically depends on a given insurance policy's provisions.

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[26] See, for example, H.R. 316 in the 116th Congress.

[27] Testimony of Chris French, Deputy Chief, NFS, FS, in U.S. Congress, Senate Committee on Energy and Natural Resources, 116th Cong., 1st sess., October 31, 2019.

[28] These numbers reflect total special-use authorization applications under review, some of which are for activities conducted by commercial guides and outfitters. FS, "National Environmental Policy Act (NEPA) Compliance," 84 *Federal Register* 27544, June 13, 2019.

[29] The 87% figure reflects a FS estimate from December 2019 (FS, "Working with Federal Agencies," presentation at 2019 America Outdoors Conference, Salt Lake City, UT, December 2019).

[30] Testimony from Marcilynn A. Burke, Deputy Director, BLM, in U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands and Forests, 112th Cong., 2nd sess., April 28, 2010, S.Hrg. 111–744, p. 35.

[31] Depending on the activity in question and the facilities used, operators also may be required to carry additional insurance coverage, such as automobile insurance, property insurance, and/or umbrella policies that provide liability coverage higher than the limits set under individual policies held by the operator.

Requirements for operators to possess commercial general liability insurance vary across FLMAs. Some FLMAs have issued agency-wide guidance or policies that set minimum coverage limits—based on either aggregate or per occurrence policies—whereas others evaluate guide and outfitter permits on a case-by-case basis.[32] These various policies have been the subject of congressional interest in recent years. For instance, concerns about increasing insurance minimums were raised in 2012, when Grand Teton National Park increased general liability requirements for rafting guides and outfitters from a minimum of $500,000 to a minimum of $5 million in coverage. Following this decision, concessioners and permit holders testified before Congress that such a change would increase premium costs and place a substantial burden on their ability to continue offering services to park visitors.[33] NPS testified that these increases were the result of insurance experts' recommendations to the agency and were in line with industry standards.[34]

Some agencies also have established policies that either allow or prohibit the use of liability waivers and/or visitor acknowledgment-of-risk (VAR) forms by commercial guides and outfitters operating by permit on lands managed by FLMAs. Liability waivers are exculpatory contracts that may excuse a party from responsibility when the other contracted party is injured by either known or unknown risks in a particular activity. The enforceability of a liability waiver may vary depending on the provisions within the waiver, as well as any statewide insurance laws that may limit or prohibit the effect of such waivers. As a result, agencies such as NPS have prohibited the use of liability waivers, instead permitting only the use of VAR forms. Unlike liability waivers, VAR forms simply inform visitors of the inherent risk of the activity and provide a means for visitors to declare in writing that they understand the risks of the activities they are to engage in and possess certain prerequisite skills or experience.

Some Members and stakeholders contend that FLMAs could limit the need for high insurance minimums, which have caused concern among some permit holders, by generally permitting guides and outfitters to require trip participants to sign liability waivers.[35] Some industry advocates have asserted that this would be particularly beneficial for small-scale operators that may not be able to afford the premium costs associated with coverage required by a given agency.[36] Since liability waivers may be unenforceable depending on the state in which an operator is licensed or operating, it is not clear whether this would be the case generally.

[32] Insurance policies may be issued on a *per occurrence* (or *per claim*) basis, in which the limit refers to the amount the insurer pays per incident during the policy term. *Aggregate* policies establish the limit the insurer will pay for multiple claims over the course of a single policy term.

[33] For stakeholder perspectives, see Testimony of David L. Brown, Executive Director, America Outdoors Association, 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., August 2, 2012 (Washington: GPO, 2012).

[34] Testimony 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: GPO, 2012).

[35] See Sen. Martin Heinrich, "Heinrich, Capito Introduce Simplifying Outdoor Access for Recreation Act," May 23, 2019, at https://www.heinrich.senate.gov/press-releases/heinrich-capito-introduce-simplifying-outdoor-access-for-recreation-act.

[36] Testimony of Rick J. Lindsey, Prime Insurance Company, U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, *Impediments to Public Recreation on Public Lands*, 113th Cong., 1st sess., May 7, 2013 (Washington: GPO, 2013).

Legislation in the 116th Congress

Multiple bills have been introduced in the 116th Congress that address permitting issues for commercial guides and outfitters on federal lands. These bills include the Simplifying Outdoor Access for Recreation Act (SOAR Act; S. 1665/H.R. 3879), the Recreation Not Red Tape Act (RNR Act; S. 1967/H.R. 3458), and the Guides and Outfitters Act (GO Act; H.R. 316). See **Table 1** for a list of issues covered in these bills. Versions of these bills, as well as broader legislation on some of the issues addressed within them, have been introduced in prior Congresses. This section does not address all prior versions or similar legislation introduced prior to the 116th Congress.

Simplifying Outdoor Access for Recreation Act

S. 1665/H.R. 3879, the SOAR Act, would make various changes to the administration of special recreation permit programs authorized under FLREA and the commercial use authorization (CUA) program administered by NPS under the authority of the National Park Service Concessions Management Improvement Act of 1998 (P.L. 105-391; 54 U.S.C. §§101911-101926). Among its various provisions, the bill would adjust permit fee and cost-recovery calculations, authorize the establishment of potential new categorical exclusions (CEs) under NEPA for certain recreation-related activities, and codify a temporary permit program for BLM and FS lands. The bill also would create new multi-jurisdictional permits for activities that cross multiple federal lands and would allow guides and outfitters to share unused service days. The House Committee on Natural Resources held subcommittee hearings in September 2019, and the Senate Committee on Energy and Natural Resources held a full committee hearing in October 2019. For a section-by-section analysis of the SOAR Act, see **Table 1**.

Recreation Not Red Tape Act

S. 1967/H.R. 3458, the RNR Act, would support the creation of state offices of outdoor recreation, facilitate and support outdoor recreation programs for servicemembers and veterans, and establish a National Recreation Area System. The RNR Act contains the provisions in the SOAR Act addressing permitting language. The House Committee on Natural Resources held subcommittee hearings in September 2019, and the Senate Committee on Energy and Natural Resources held a full committee hearing in October 2019.

Guides and Outfitters Act

The GO Act (H.R. 316) also would address recreation-related permitting and fee programs. The GO Act includes provisions similar to those in the SOAR and RNR Acts, with some distinctions. For example, some provisions in the GO Act—specifically, the multi-jurisdictional permit authority—would apply only to FS and BLM, whereas the SOAR Act and the RNR Act would apply such provisions across the four FLMAs and the Bureau of Reclamation. Similarly, the GO Act would not specifically apply to CUAs issued by NPS under P.L. 105-391, whereas the SOAR and RNR Acts would apply to these CUAs, unless otherwise specified. The GO Act also would expand the authority of the Secretary of the Interior (and, in the case of FS, the Secretary of Agriculture) to waive cost-recovery fees on a categorical or case-by-case basis. This provision would include instances in which costs would impose a "significant economic burden" on small

businesses or would threaten an applicant's ability to provide recreational services, as well as cost-recovery fee waivers in times of "unfavorable" economic conditions.[37]

The GO Act also differs from the SOAR and RNR Acts in the application of CEs for outfitter permits intended to streamline the NEPA process. Whereas the SOAR and RNR Acts would direct the agencies to *consider* whether additional CEs could be adopted to improve the permitting process, the GO Act would explicitly create a statutory CE for new permits if the proposed use is similar to previously authorized uses.[38]

Table 1. Bills Addressing Permitting Issues for Guides and Outfitters on Federal Land, 116th Congress

(issues by Title/Section in S. 1665, S. 1967, and H.R. 316)

Provision	SOAR Act (S. 1665)	RNR Act (S. 1967)	GO Act (H.R. 316)
Limits permit fee calculations to revenue generated on federal lands, unless otherwise specified	§3(b)	Title I, §102b	§4(a)
Authorizes use of permit fee revenue for expenses associated with processing permits and/or improving recreation permit system	§3(c)	Title I, §102c	§5
Permanently authorizes FLREA for guides and outfitters	§3(d)	Title I, §102d	—
Requires applicable Secretary to eliminate duplicative processes and identify opportunities for cost reduction	§4(a)	Title I, §103a	§2
Authorizes use of programmatic environmental reviews and evaluation of categorical exclusions under NEPA or certain recreation-related activities	§4(b)-(c)	Title I, §103b-c	§2[a]
Limits use of needs assessments	§4(d)	Title I, §103(d)	—
Establishes online application for permits	§4(e)	Title I, §103(e)	§9(b)
Authorizes the use of existing permits for substantially similar activities	§5(a)	Title I, §102(b)	—
Provides for voluntary return of unused service days for shared use among operators	§5(b)	Title I, §104(a)	—
Establishes temporary permit program for FS and BLM	§5(c)	Title I, §104(b)	§7
Requires the agencies to notify the public when new recreation permits are available and requires the agencies to provide timely responses to permit applicants	§6	Title I, §105	—
Creates new multi-jurisdictional permits for activities that cross multiple federal lands	§7	Title I, §106	§3
Revises FS permit use review process to provide for additional use capacity should a permit holder meet certain performance requirements and waives such use reviews in extraordinary circumstances	§8	Title I, §107	§6
Authorizes use of liability waivers by permit holders	§9	Title I, §108	§8

[37] H.R. 316, §10.

[38] The Secretary would still be required to determine that such new proposed uses have no "significant environmental effects" for a categorical exclusion to apply. See H.R. 316, §2.

Implements cost-recovery reform (i.e., 50-hour credit, group applications, use of existing studies and analysis)	§10	Title I, §109	§10
Establishes five-year permit extension limit for delayed processing on long-term permit renewals	§11	Title I, §110	§11

Source: CRS, with information from S. 1665, S. 1967, and H.R. 316, as introduced.

Notes: BLM = Bureau of Land Management; FLREA = Federal Lands Recreation Enhancement Act, 16 U.S.C. §§6801-6814; FS = Forest Service; GO Act = Guides and Outfitters Act (H.R. 316); NEPA = National Environmental Policy Act (42 U.S.C. §§4321 et seq.); RNR Act = Recreation Not Red Tape Act (S. 1967/H.R. 3458); SOAR Act = Simplifying Outdoor Access for Recreation Act (S. 1665/H.R. 3879). Issue area is for categorization purposes only; language may differ among bills.

a. Whereas the SOAR Act and RNR Act would direct the agencies to *consider* whether additional categorical exclusions (CEs) could be adopted to improve the permitting process, the GO Act would explicitly create a legislative CE for new permits if the proposed use is similar to those previously authorized.

H.R. 316 includes additional language authorizing the Secretary (of the Interior and Agriculture) to waive cost-recovery fees in certain instances, including if economic conditions were unfavorable or if such costs would impose a burden on a small business or would threaten an applicant's ability to provide recreational services.

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