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106TH CONGRESS, *2d Session* | SENATE | REPORT 106–491

OUTFITTER POLICY ACT OF 1999

OCTOBER 5 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1969]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1969) to provide for improved management of, and increased accountability for, outfitted activities by which the public gains access to and occupancy and use of Federal land, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "Outfitter Policy Act of 1999".

SEC. 2. FINDINGS.

Congress finds that—

(1) the experience, skills, trained staff, and investment in equipment that are provided by authorized outfitters are necessary for members of the public that need or desire commercial outfitted activities to facilitate their use and enjoyment of recreational or educational opportunities on Federal land;

(2) such activities constitute an important contribution toward meeting the recreational and educational objectives of resource management plans approved and administered by agencies of the Department of Agriculture and the Department of the Interior.

(3) an effective relationship between those agencies and authorized outfitters requires implementation of agency policies and programs that facilitate—

(A) quality outfitting services to the public, and

(ii) the authorized outfitter having a reasonable opportunity to engage in a successful business venture;

(B) a return to the United States through appropriate fees;

(C) renewal of outfitter permits based on a performance evaluation system that rewards outfitters that meet required performance standards and withdraws authorizations for outfitters that fail to meet those standards; and

(D) transfer of an outfitter permit to the qualified purchaser of the operation of an authorized outfitter, an heir or assign, or another qualified person or entity; and

(4) the provision of opportunities for outfitted visitors to Federal land to engage in fishing and hunting is best served by continued recognition that the States retain primary authority over the taking of fish and wildlife on Federal land.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to establish terms and conditions for occupancy and use of Federal land by an authorized outfitter; and

(2) to establish a stable regulatory climate that encourages a qualified person or entity to provide, and to continue to invest in the ability to conduct outfitted activities on Federal land.

to facilitate opportunities for recreational use of public lands by that segment of the public that needs or wants to use the services of outfitters and guides.

SEC. 4. DEFINITIONS.

In this Act:

(1) ACTUAL USE.—The term "actual use" means the portion of a principal allocation of outfitter use that an authorized outfitter uses in conducting commercial outfitted activities during a period, for a type of use, in an area or based on some other measurement.

(2) ALLOCATION OF USE.—

(A) IN GENERAL.—The term "allocation of use" means a measurement of use that—

(i) is granted by the Secretary to an authorized outfitter for the purpose of facilitating the occupancy and use of Federal land by an outfitted visitor;

(ii) takes the form of—

(I) an amount or type of commercial outfitted activity resulting from an appointment of the total recreation capacity of a resource area; or

(II) in the case of a resource area for which recreation capacity has not been apportioned, a type of commercial outfitted activity conducted in a manner that is not inconsistent with or incompatible with an approved resource management plan; and

(iii) is calibrated in terms of amount of use, type of use, or location of a commercial outfitted activity, including user days or portions of user days, seasons or other periods of operation, launch dates, assigned camps, hunt, gun or fish day or other formulations of the type or amount of authorized activity.

(B) INCLUSION.—The term "allocation of use" includes the designation of a geographic area, zone, or district in which a limited number of authorized outfitters are authorized to operate.

(3) AUTHORIZED OUTFITTER.—The term "authorized outfitter" means a person or entity that conducts a commercial outfitted activity on Federal land under an outfitter authorization.

(4) COMMERCIAL OUTFITTED ACTIVITY.—The term "commercial outfitted activity" means an authorized outfitted activity conducted on federal lands—

(A) that is available to the public;

(B) that is conducted under the direction of compensated individuals; and

(C) for which an outfitted visitor is required to pay more than a strict sharing of actual expenses (including payment to an authorized outfitter that is a nonprofit organization).

(5) FEDERAL AGENCY.—The term "Federal agency" means—

(A) the Forest Service;

(B) the Bureau of Land Management;

(C) the United States Fish and Wildlife Service; and

(D) the Bureau of Reclamation.

(6) FEDERAL LAND.—

(A) IN GENERAL.—The term "Federal land" means all land and interests in land administered by a Federal agency.

(B) EXCLUSION.—The term "Federal land" does not include—

(i) land held in trust by the United States for the benefit of an Indian tribe or individual; or

(ii) land held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(7) TEMPORARY OUTFITTER AUTHORIZATION.—The term "temporary outfitter authorization" means an outfitter authorization under section 6(f).

(8) LIVERY.—The term "livery" means the dropping off or picking up of visitors, supplies, or equipment on Federal land.

(9) OUTFITTED ACTIVITY.—The term "outfitted activity" means an activity—

(A) such as outfitting, guiding, supervision, education, interpretation, skills training, assistance, or livery operation conducted for a member of the public in an outdoor environment; and

(B) that uses the recreational, natural, historical, or cultural resources of Federal land.

(10) OUTFITTED VISITOR.—The term "outfitted visitor" means a member of the public that engages an authorized outfitter to facilitate occupancy and use of Federal land.

(11) OUTFITTER.—The term "outfitter" means a person or entity that conducts a commercial outfitted activity, including a person who, by local custom or tradition, is known as a "guide".

(12) OUTFITTER AUTHORIZATION.—The term "outfitter authorization" means—

(A) an outfitter permit;

(B) a temporary outfitter authorization; or

(C) an authorization to use and occupy Federal land that references this Act as its authority.

(13) OUTFITTER PERMIT.—The term "outfitter permit" means an outfitter permit under section 6.

(14) PRINCIPAL ALLOCATION OF OUTFITTER USE.—The term "principal allocation of outfitter use" means a grant by the Secretary in an outfitter permit for an allocation of use to an authorized outfitter in accordance with section 9.

(15) RESOURCE AREA.—The term "resource area" means a management unit that is described by or contained within the boundaries of—

(A) a national forest;

(B) an area of public land;

(C) a wildlife refuge;

(D) a congressionally designated area;

(E) a hunting zone or district; or

(F) any other Federal planning unit (including an area in which outfitted activities are regulated by more than 1 Federal agency).

(16) SECRETARY.—The term "Secretary" means—

(A) with respect to Federal land administered by the Forest Service, the Secretary of Agriculture, acting through the Chief of the Forest Service or a designee;

(B) with respect to Federal land administered by the Bureau of Land Management, the Secretary of the Interior, acting through the Director of the Bureau of Land Management or a designee;

(C) with respect to Federal land administered by the United States Fish and Wildlife Service, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service or a designee; and

(D) with respect to Federal land administered by the Bureau of Reclamation, the Secretary of the Interior, acting through the Commissioner of Reclamation or a designee.

(17) TEMPORARY ALLOCATION OF USE.—The term "temporary allocation of use" means an allocation of use to an authorized outfitter in accordance with section 9.

SEC. 5. NONOUTFITTER USE AND ENJOYMENT.

Nothing in this Act is intended to diminish any right or privilege of occupancy and use of federal land by the public including the non-outfitted visitor.

SEC. 6. OUTFITTER AUTHORIZATIONS.

(a) IN GENERAL.—

(1) PROHIBITION.—No person or entity, except an authorized outfitter, shall conduct a commercial outfitted activity on Federal land.

(2) CONDUCT OF OUTFITTED ACTIVITIES.—An authorized outfitter shall not conduct an outfitted activity on Federal land except in accordance with an outfitter authorization.

(3) SPECIAL RULE FOR ALASKA.—With respect to a commercial outfitted activity conducted in the State of Alaska, the Secretary shall not establish or impose a limitation on special access by an authorized outfitter that is inconsistent with the access ensured under subsections (a) and (b) of section 1110 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3170).

(b) TERMS AND CONDITIONS.—An outfitter authorization shall specify—

(1) the rights and privileges of the authorized outfitter and the Secretary; and

(2) other terms and conditions of the authorization.

(c) CRITERIA FOR GRANT OF AN OUTFITTER PERMIT.—The Secretary shall establish criteria for grant of an outfitter permit that—

(1) recognize skill, experience, knowledge of the resource area and financial capability of the persons or entity under consideration;

(2) consider any or all of the following: safety, quality recreational experience, educational opportunities and conservation of resources for the outfitted visitor;

(3) offer a reasonable opportunity for an authorized outfitter to engage in a successful business venture;

(4) create a stable regulatory climate that encourages an authorized outfitter to provide and invest in the ability to provide quality services to the outfitted visitor;

(5) assure revenue paid to the United States provided this consideration is subordinate to the criteria of this subsection.

(d) GRANT.—

(1) IN GENERAL.—The Secretary may grant an outfitter permit under this Act if—

(A) the commercial outfitted activity to be authorized is not inconsistent with or incompatible with an approved resource management plan applicable to the resource area in which the commercial outfitted activity is to be conducted; and

(B) the authorized outfitter meets the criteria established under subection (c)(1).

(2) USE OF COMPETITIVE PROCESS.—

(A) IN GENERAL.—Except as otherwise provided by this Act, the Secretary shall use a competitive process to select an authorized outfitter.

(B) EXCEPTION FOR CERTAIN ACTIVITIES.—The Secretary may grant an outfitter permit to an applicant without conducting a competitive selection process if the Secretary determines that—

(i) the applicant meets criteria established by the Secretary under subsection (c); and

(ii) there is no competitive interest in the commercial outfitted activity to be conducted.

(C) EXCEPTION FOR RENEWALS AND TRANSFERS.—The Secretary shall grant an outfitter to an applicant without conducting a competitive selection process if the authorization is a renewal or transfer of an existing outfitter permit under section 11 or 12.

(e) PROVISIONS OF OUTFITTER PERMITS.—

(1) IN GENERAL.—An outfitter permit shall provide for—

(A) the health and welfare of the public;

(B) conservation of resource values;

(C) a return to the United States through an authorization fee in accordance with section 7;

(D) a term of 10 years except as provided in (3) below;

(E) the obligation of an authorized outfitter to defend and indemnify the United States in accordance with section 8;

(F) a principal allocation of outfitter use, and, if appropriate, a temporary allocation of use, in accordance with section 9;

(G) a plan to conduct performance evaluations in accordance with section 10;

(H) renewal or revocation of an outfitter permit in accordance with section 11;

(I) transfer of an outfitter permit in accordance with section 12;

(J) a means of modifying the terms and conditions of an outfitter permit to reflect material changes in facts and conditions;

(K) notice of a right of appeal and judicial review in accordance with section 14; and

(L) such other terms and conditions as the Secretary may require.

(2) EXTENSIONS.—The Secretary may award not more than 3 temporary 1-year extensions of an outfitter permit, unless the Secretary determines that extraordinary circumstances warrant additional extensions.

(3) TENURE.—The Secretary shall generally issue an outfitter authorization for 10 years, with an initial probation period of two years for a new authorized outfitter, except that he may, in extraordinary circumstances, award an outfitter permit with a term of less than 10 years when—

(A) foreseeable amendments in resource management plans will create conditions that would materially impact and necessitate changes in permit terms and conditions in less than 10 years; or

(B) an authorized outfitter and the Secretary agree to a permit term of less than 10 years.

(f) TEMPORARY OUTFITTER AUTHORIZATIONS.—

(1) IN GENERAL.—The Secretary may issue a temporary outfitter authorization for the purpose of conducting a commercial outfitted activity on a limited basis.

(2) TERM.—A temporary outfitter authorization shall have a term not to exceed 2 years.

(3) RENEWAL.—A temporary outfitter authorization may be reissued or renewed at the discretion of the Secretary.

SEC. 7. AUTHORIZATION FEES.

(a) AMOUNT OF FEE.—

(1) IN GENERAL.—An outfitter permit shall provide for payment to the United States of an authorization fee, as determined by the Secretary.

(2) FEE DETERMINATION.—(a) In determining the amount of an authorization fee, the Secretary shall take into consideration—

(A) the obligations of the outfitter under the outfitter permit;

(B) the provision of a reasonable opportunity to engage in a successful business; and

(C) the fair market value of the use and occupancy granted by the outfitter authorization.

(b) CONSISTENCY.—The federal agencies shall use consistent methodologies to determine the outfitter authorization fee.

(c) PAYMENT OF OUTFITTER AUTHORIZATION FEE.—

(1) IN GENERAL.—The amount of the fee paid to the United States for the term of an outfitter permit shall be specified in that outfitter permit.

(2) REQUIREMENTS.—The amount of the authorization fee—

(A)(i) shall be expressed as—

(I) a simple charge per day of actual use; or

(II) an annual or seasonable flat fee;

(ii) if calculated as a percentage of revenue, shall be determined based on adjusted gross receipts; or

(iii) with respect to a commercial outfitted activity conducted in the State of Alaska, shall be based on a simple charge per user day;

(B) shall be subordinate to the objectives of—

(i) conserving resources;

(ii) protecting the health and welfare of the public; and

(iii) providing reliable, consistent performance in conducting outfitted activities; and

(C) shall be required to be paid by an authorized outfitter to the United States on a reasonable schedule during the operating season; and

(D) shall set a minimum fee.

(3) ADJUSTED GROSS RECEIPTS.—For the purpose of paragraph (2)(A)(ii), the Secretary shall—

(A) take into consideration revenue from the gross receipts of the authorized outfitter from commercial outfitted activities conducted on Federal land; and

(B) exclude from consideration any revenue that is derived from—

(i) fees paid by the authorized outfitter to any unit of Federal, State, or local government for—

(I) hunting or fishing licenses;

(II) entrance or recreation fees; or

(III) other purposes (other than commercial outfitted activities conducted on Federal land);

(ii) goods and services sold to outfitted visitors that are not within the scope of authorized outfitter activities conducted on Federal land; or

(iii) operations on non-Federal land.

(4) Substantially similar services in a specific geographic area.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if more than 1 outfitter permit is granted to conduct the same or similar commercial outfitted activities in the same resource area, the Secretary shall establish an identical fee for those outfitter permits.

(B) EXCEPTION.—The terms and conditions of an existing outfitter permit shall not be subject to modification or open to renegotiation by the Secretary because of the grant of a new outfitter permit in the same resource area for the same or similar commercial outfitted activities.

(5) ACTUAL USE.—

(A) IN GENERAL.—For the purpose of calculating an authorization fee for actual use under paragraph (2)(A)(i)(I),

(i) multiple outfitted activities with separate charges shall count as one actual use day when conducted in one day; and

(ii) an activity conducted across agency jurisdictions over the course of one day shall not exceed one actual use day.

(B) RECONSIDERATION OF FEE.—The authorization fee may be reconsidered during the term of the outfitter permit in accordance with paragraph (6) or section 9(c)(3).

(6) ADJUSTMENT OF FEES.—The amount of an authorization fee—

(A) shall be determined as of the grant date of the outfitter permit; and

(B) may be modified to reflect—

(i) changes relating to the terms and conditions of the outfitter permit, including 1 or more outfitter permits described in paragraph (5);

(ii) extraordinary unanticipated changes affecting operating conditions, such as natural disasters, economic conditions, or other material adverse changes from the terms and conditions specified in the outfitter permit;

(iii) changes affecting operating or economic conditions determined by other governing entities, such as the availability of State fish or game licenses;

(iv) the imposition of new or higher fees assessed under other law; or

(v) authorized adjustments made to an allocation of outfitter use.

(d) ESTABLISHMENT OF AMOUNT APPLICABLE TO A TEMPORARY OUTFITTER AUTHORIZATION.—The Secretary shall determine the amount of an authorization fee under a temporary outfitter authorization.

(e) OTHER FEES AND COSTS.—Fees for processing applications for outfitter permits or monitoring compliance with permit terms and conditions shall not seek to recover costs of agency activities that benefit broadly the general public or are not directly related to or required for processing applications or monitoring of an authorization.

SEC. 8. LIABILITY AND INDEMNIFICATION.

(a) LIABILITY.—An authorized outfitter shall be liable to the United States for costs and expenses associated with damages to property of the United States caused by the authorized outfitter's—

(1) negligence,

(2) gross negligence, or

(3) willful and wanton disregard for persons or property,

arising directly out of the authorized outfitter's conduct of a commercial outfitted activity under an outfitter authorization.

(b) INDEMNIFICATION.—An authorized outfitter shall defend and indemnify the United States for costs or expenses associated with injury, death, or damage to any person or property caused by the authorized outfitter's—

(1) negligence,

(2) gross negligence, or

(3) willful and wanton disregard for persons or property.

arising proximately from the authorized outfitter's conduct of a commercial outfitted activity under an outfitter authorization.

(c) NO LIABILITY.—An authorized outfitter shall have no responsibility to pay to or defend or indemnify the United States, or its agents, employees, or contractors, for costs or expenses associated with injury, death, or damage to any person or property to the extent the injury, death, or damage was caused by the acts, omissions, negligence, gross negligence, or willful and wanton misconduct of the United States, its agents, employees, or contractors; or third parties.

(d) FINDING OF LIABILITY.—Before presenting any claim for costs and expenses associated with damage to any property allegedly caused by the authorized outfitter, the Secretary, after providing due process, shall make a finding of negligence, gross negligence, or willful and wanton disregard for persons or property on the part of the authorized outfitter and present the finding to the authorized outfitter.

(e) AGREEMENTS.—An authorized outfitter may enter into agreements with outfitted visitors, including for (i) assumption or allocation or risk, and (ii) release or waiver related to inherently dangerous activities or conditions, if the agreement also runs in favor of the United States and its agents, employees, or contractors. Copies of any such agreements shall be provided to the Federal agency before being presented to outfitted visitors by an authorized outfitter.

SEC. 9. ALLOCATION OF USE.

(a) IN GENERAL.—

(1) an outfitter permit shall include within its terms and conditions a principal allocation of outfitter use; and

(2) a temporary outfitter permit may include a principal allocation of outfitter use.

(b) RENEWALS, TRANSFERS AND EXTENSIONS.—Except as provided in (d), upon renewal, transfer or extension of an outfitter permit, the same principal allocation of use shall be included within the terms and conditions of the permit.

(c) WAIVER.—

(1) IN GENERAL.—At the request of an authorized outfitter, the Secretary may waive any obligation of the authorized outfitter to use all or part of the amount of allocation of use provided under the outfitter permit, subject to section 7(b), if the request is made in sufficient time to allow the Secretary to temporarily reallocate the unused portion of the allocation of use in that season or calendar year.

(2) RECLAIMING OF ALLOCATION OF USE.—Unless the Secretary has reallocated the unused portion of an allocation of use in accordance with paragraph (1), the authorized outfitter may reclaim any part of the unused portion in that season or calendar year.

(3) NO FEE OBLIGATION.—Subject to section 7(b), an outfitter permit fee may not be charged for any amount of allocation of use subject to a wavier under paragraph (1).

(d) AJUSTMENT TO ALLOCATION OF USE.—The Secretary—

(1) may adjust an allocation of use to reflect—

(A) material change arising from approval of an amendment in the resource management plan for the area of operation; or

(B) requirements arising under other law; and

(2) shall provide an authorized outfitter with documentation supporting the basis for any adjustment in the principal allocation of outfitter use, including new terms and conditions that result from the adjustment.

(e) TEMPORARY ALLOCATION OF USE.—

(1) IN GENERAL.—A temporary allocation of use may be provided to an authorized outfitter at the discretion of the Secretary for a period up to 2 years.

(2) TRANSFERS AND EXTENSIONS.—A temporary allocation of use may be, transferred, or extended at the discretion of the Secretary.

SEC. 10. EVALUATION OF PERFORMANCE UNDER OUTFITTER PERMITS.

(a) EVALUATION PROCESS.—

(1) IN GENERAL.—The Secretary shall develop a process for annual evaluation of the performance of an authorized outfitter in conducting a commercial outfitted activity under an outfitter permit.

(2) EVALUATION CRITERIA.—Criteria used by the Secretary to evaluate the performance of an authorized outfitter shall—

(A) be objective, measurable, and attainable; and

(B) include as deemed appropriate by the Secretary—

(i) standards generally applicable to all commercial outfitted activities;

(ii) standards specific to a resource area or an individual outfitter operation; and

(iii) such other terms and conditions of the outfitter permit.

(3) REQUIREMENTS.—In evaluating the level of performance of an authorized outfitter, the Secretary shall—

(A) appropriately account for factors beyond the control of the authorized outfitter, including conditions described in section 7(b)(6)(B) and 9(c); and

(B) ensure that the effect of any performance deficiency reflected by the performance rating is proportionate to the severity of the deficiency, including any harm that may have resulted from the deficiency.

(b) LEVELS OF PERFORMANCE.—The Secretary shall define 3 levels of performance, as follows:

(1) Good, indicating a level of performance that fulfills the terms and conditions of the outfitter permit.

(2) Marginal, indicating a level of performance that, if not corrected, will result in an unsatisfactory level of performance.

(3) Unsatisfactory, indicating a level of performance that fails to fulfill the terms and conditions of the outfitter permit.

(c) PERFORMANCE EVALUATION.—

(1) EVALUATION SYSTEM.—The Secretary shall establish a performance evaluation system that assures the public of continued availability of dependable commercial outfitted activities and suspends or revokes an authorization for an authorized outfitter that fails to meet the required standards.

(2) PROCEDURE.—An authorized outfitter shall be entitled—

(A) to be present, or represented, at inspections of operations or facilities, which inspections shall be limited to the operations and facilities of the authorized outfitter located on Federal land;

(B) to receive written notice of any conduct or condition that, if not corrected, might lead to a performance evaluation of marginal or unsatisfactory, which shall include an explanation of needed corrections and provide a reasonable period in which the corrections may be made without penalty; and

(C) to receive written notice of the results of the performance evaluation not later than 60 days after the conclusion of the authorized outfitter's operating season, including the level of performance and the status of corrections that may have been required.

(d) MARGINAL PERFORMANCE.—If an authorized outfitter's annual performance is determined to be marginal, and the authorized outfitter fails to complete the corrections within the time specified under subsection (c)(2)(B), the level of performance shall be determined to be unsatisfactory for the year.

(e) DETERMINATION OF ELIGIBILITY FOR RENEWAL.—

(1) IN GENERAL.—The results of all annual performance evaluations of an authorized outfitter shall be reviewed by the Secretary in the year preceding the year in which the outfitter permit expires to determine whether the authorized outfitter's overall performance during the term has met the requirements for renewal under section 11.

(2) FAILURE TO EVALUATE.—If, in any year of the term of an outfitter permit, the Secretary fails to evaluate the performance of the authorized outfitter by the date that is 60 days after the conclusion of the authorized outfitter's operating season, the performance of the authorized outfitter in that year shall be considered to have been good.

(3) NOTICE.—Not later than 60 days after the end of the year preceding the year in which an outfitter permit expires, the Secretary shall provide the authorized outfitter with the cumulative results of performance evaluations conducted under this subsection during the term of the outfitter permit.

(4) UNSATISFACTORY PERFORMANCE IN FINAL YEAR.—If an authorized outfitter receives an unsatisfactory performance rating under subsection (d) in the final year of the term of an outfitter permit, the review and determination of eligibility of renewal of the outfitter permit under paragraph (1) shall be revised to reflect that result.

SEC. 11. RENEWAL REVOCATION OR SUSPENSION OR OUTFITTER PERMITS.

(a) RENEWAL AT EXPIRATION OF TERM.—

(1) IN GENERAL.—On expiration of the term of an outfitter authorization, the Secretary shall renew the authorization in accordance with paragraph (2).

(2) DETERMINATION BASED ON ANNUAL PERFORMANCE RATING.—The Secretary shall renew an outfitter authorization under paragraph (1) at the request of the authorized outfitter and subject to the requirements of this Act if the Secretary determines that the authorized outfitter has received not more than 1 unsatisfactory annual performance rating under section 10 during the term of the outfitter permit.

(b) REVOCATION.—An outfitter permit may be revoked only if the Secretary determines that—

(1) the authorized outfitter has failed to correct a condition for which the authorized outfitter received notice under section 10(c)(2)(B) and the condition is considered by the Secretary to be significant with respect to permit terms and conditions;

(2) the authorized outfitter is in arrears in the payment of fees under section 7; and

(A) has not entered into a payment plan with the agency; or

(B) has not sought relief subject to section 14.

(3) the authorized outfitter's conduct demonstrates willful disregard for—

(A) the health and welfare of outfitted visitors; or

(B) the conservation of resources on which the commercial outfitted activities are conducted.

(c) SUSPENSION.—

(1) IN GENERAL.—All or part of the outfitter permit may be suspended, subject to findings made under subsection (b).

(2) ADMINISTRATIVE REVIEW.—Subject to Section 17 the Secretary shall provide for an expedited review of suspension cases.

SEC. 12. TRANSFERABILITY OF OUTFITTER PERMITS.

(a) IN GENERAL.—An outfitter permit shall not be transferred (including assigned or otherwise conveyed or pledged) by the authorized outfitter without prior written notification to, and approval by, the Secretary.

(b) APPROVAL.—

(1) IN GENERAL.—The Secretary shall approve a transfer of an outfitter permit unless the Secretary finds that the transferee is not qualified or able to satisfy the terms and conditions of the outfitter permit.

(2) QUALIFIED TRANSFEREES.—Subject to section 6(d)(1), the Secretary shall approve a transfer of an outfitter permit—

(A) to a purchaser of the operation of the authorized outfitter;

(B) at the request of the authorized outfitter, to an assignee, partner, or stockholder or other owner of an interest in the operation of the authorized outfitter; or

(C) on the death of the authorized outfitter, to an heir or assign.

(c) TRANSFER TERMS.—The terms and conditions of any outfitter permit shall not be subject to modification or open to renegotiation by the Secretary because of a transfer described in subsections (1) and (b) unless—

(1) it is at the request of the transferee; or

(2) the terms and conditions of the outfitter permit proposed to be transferred have become inconsistent or incompatible with an approved resource management plan for the resource area.

(d) CONSIDERATION PERIOD.—

(1) THRESHOLD FOR AUTOMATIC APPROVAL.—Subject to paragraph (2), if the Secretary fails to approve or disapprove the transfer of an outfitter permit within 90 days after receiving a complete application containing the information required with respect to the transfer, the transfer shall be deemed approved unless the transferee requests a modification of terms and conditions of the outfitter authorization and such modifications require environmental analysis under the National Environmental Policy Act.

(2) EXTENSION.—The Secretary and the authorized outfitter applying for transfer of an outfitter permit may agree to extend the period for consideration of the application.

(e) CONTINUANCE OF OUTFITTER PERMIT.—If the transfer of an outfitter permit is not approved by the Secretary or if the transfer is not subsequently made, the outfitter permit shall remain in effect.

SEC. 13. RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—An authorized outfitter shall keep such reasonable records as the Secretary may require to enable the Secretary to determine that all the terms of the outfitter authorization are being met.

(b) OBLIGATIONS OF THE SECRETARY AND AUTHORIZED OUTFITTER.—The recordkeeping requirements established by the Secretary shall incorporate simplified procedures that do not impose an undue burden on an authorized outfitter.

(c) ACCESS TO RECORDS.—The Secretary, or an authorized representative of the Secretary, shall for purposes of audit and performance evaluation have access to and the right to examine for five years following the effective date of an outfitter authorization any books, papers, documents and records of the authorized outfitter relating to each outfitter authorization held by the authorized outfitter during the business year.

SEC. 14. APPEALS AND JUDICIAL REVIEW.

(a) APPEALS PROCEDURE.—The Secretary shall be regulation—

(1) grant an authorized outfitter full access to administrative remedies, and

(2) establish an expedited procedure for consideration of appeals of Federal agency decisions to deny, suspend, fail to renew, or revoke an outfitter permit.

(b) JUDICIAL REVIEW.—An authorized outfitter that is adversely affected by a final decision of the Secretary under this Act may commence a civil action in United States district court.

SEC. 15. LACK OF EFFECT ON EXISTING RIGHTS OF THE UNITED STATES.

Nothing in this Act limits or restricts any right, title, or interest of the United States in or to any land or resource.

SEC. 16. REGULATIONS.

Not later than 2 years after the date of enactment of this Act, the Secretary shall promulgate such regulations as are appropriate to carry out this Act.

SEC. 17. RELATIONSHIP TO OTHER LAW.

(a) NATIONAL PARK OMNIBUS MANAGEMENT ACT OF 1998.—Nothing in this Act supersedes or otherwise affects any provision of title IV of the National Park Omnibus Management Act of 1998 (16 U.S.C. 5951 et seq.)

(b) STATE OUTFITTER LICENSING LAW.—This Act does not preempt any outfitter or guide licensing law (including any regulation) of any State or territory.

SEC. 18. TRANSITION PROVISIONS.

(a) OUTFITTERS WITH SATISFACTORY RATINGS.—An outfitter that holds a permit, contract, or other authorization to conduct commercial outfitted activities (or an extension of such a permit, contract, or other authorization) in effect on the date of promulgation of implementing regulations under section 16 shall be entitled, on expiration of the authorization, to the issuance of an outfitter permit under this Act if the outfitter's aggregate performance under the permit, contract, or other authorization was good or was the equivalent of good, satisfactory, or acceptable under a rating system in use before the date of enactment of this Act.

(b) OUTFITTERS WITH NO RATINGS.—For the purpose of subsection (a), if no recent performance evaluations exist to determine the outfitter's aggregate performance its aggregate performance shall be deemed to be good.

(c) EFFECT OF ISSUANCE OF OUTFITTER PERMIT.—The issuance of an outfitter permit under subsection (a) shall not adversely affect any right or obligation that existed under the permit, contract, or other authorization (or an extension of the permit, contract, or other authorization) on the date of enactment of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 1969 is to establish a uniform policy regarding permits issued to guides and outfitters operating on lands managed by the Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, and public land agencies other than the National Park Service in a manner that will facilitate the provision of quality services to the public and create a stable business environment that will enable guides and outfitters to provide such services.

BACKGROUND AND NEED

Thousands of guides and outfitters provide recreational services assuring the public safe and enjoyable use of millions of acres of public lands. These outfitters operate under special use permits and other agreements granted and overseen by Federal agencies. Currently there is a lack of consistency in the administration of guide and outfitter special use permits on lands administered by the U.S. Forest Service, BLM, the U.S. Fish and Wildlife Service, and public land agencies other than the National Park Service. This lack of consistency has adversely impacted the provision of quality services to the public. A primary reason for this inconsistency has been the lack of legislative guidance on this subject which stands in marked contrast to the specific direction Congress has provided the National Park Service for the administration of the same kind of permit and contracts on park lands.

Legislative guidance is needed for the issuance and administration of outfitter permits. Specific issues include the objectives to be served by the granting of permits, the standards for determining to whom permits will be awarded, the specific terms and conditions of permits, evaluation of performance, along with programmatic issues associated with guide and outfitter permits. Notwithstanding the existence of policies and handbooks used by the agencies to establish stable consistent permit administration, there is a wide disparity in the application of these guidelines. Due to the nature of outfitting the guiding, it is not uncommon for a single outfitter to deal with two agencies or two district offices within one

agency and have to comply with different rules, forms and policies. The bill systematically addresses these issues and provides clear and consistent, but flexible, guidance to the land managers.

S. 1969 does not allocate use or ensure that guides and outfitters are entitled to any particular share of approved use on public land units. Allocation determinations will continue to be made by the agencies pursuant to existing authorities. Similarly the bill does not impact or diminish the right of the general public to use their public lands.

The primary objective of this legislation is to establish a stable regulatory climate to encourage qualified operators to remain in business and be willing to make needed capital investments, which will in turn lead to the provision of high quality services to the public. Rural communities also stand to benefit from this bill. As commodity enterprises have suffered, tourism has been the only option available to many rural towns. Providing stability and opportunity to outfitters, virtually all of whom operate in rural areas, will help provide an important economic opportunity to help offset the loss of extractive activities.

In addition to assisting rural communities, the public, and the guiding and outfitting sector, there is a need to provide the land agencies sufficient flexibility to manage a stable consistent permit system and deal with on-the-ground circumstances. The legislation will enable the Federal agencies to modify permit terms and conditions to reflect changed environmental or resource conditions. In addition, the agencies will continue to be able to enforce corrective measures, including suspension or revocation of a permit. The fundamental principles of land and resource conservation are not diminished by the bill.

LEGISLATIVE HISTORY

S. 1969 was introduced by Senators Craig, Murkowski, and Thomas on November 18, 1999 and referred to the Committee on Energy and Natural Resources. Senators Grams, Hatch, and Smith of Oregon were later added as cosponsors. The Subcommittee on Forests and Public Land Management held a hearing on March 29, 2000. At the business meeting on September 20, 2000 the Committee on Energy and Natural Resources ordered S. 1969 favorably reported, with an amendment.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a voice vote of a quorum present recommends that the Senate pass S. 1969 if amended as described herein with Senator Bingaman being recorded in opposition to passage.

COMMITTEE AMENDMENTS

During consideration of S. 1969, the Committee adopted an amendment in the nature of a substitute. In addition to making numerous technical and clarifying changes, the amendment addressed several issues raised at the Subcommittee hearing on the bill. The amendment is explained in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title.

Section 2 presents findings.

Section 3 states the purposes of the Act.

Section 4 defines key terms used in the Act.

Section 5 specifies that the Act is not intended to enlarge or diminish the rights of non-outfitted individuals or user groups on Federal lands.

Section 6(a)(1) directs that no person or entity except an authorized outfitter shall conduct an outfitted activity on Federal land and an authorized outfitter shall not conduct an outfitted activity on Federal land except in accordance with an outfitter authorization.

Paragraph (3) is a special rule for Alaska to recognize special access rights granted to guides and outfitters, as well as others, by section 1110(a) of the Alaska National Interest Lands Conservation Act (P.L. 96–487).

Subsection (c) establishes criteria for award of an outfitter a permit and specifies that an outfitter authorization shall provide a reasonable opportunity for an outfitter or guide to engage in a successful business venture.

Subsection (d) specifies that the Secretary may grant an outfitter permit if the outfitted activity is not inconsistent with or incompatible with resource management plans for the area and meets the criteria established by this Act.

Subsection (e) outlines the provisions of an outfitter permit; obligates outfitters to defend and indemnify the United States; specifies a system for performance-based renewals, transfers, and revocations of permits; modification procedures for permits if unanticipated material changes occur; right of appeals and judicial reviews. This subsection also authorizes a term of 10 years, establishes conditions which would allow the Secretaries to grant shorter terms, and makes provisions for trial terms for new outfitters.

Subsection (f) provides that a temporary outfitter authorization for a term of no more than 2 years may be granted and reissued or renewed at the discretion of the Secretary.

Section 7 establishes terms and conditions for the payment of fees for outfitter permits and requires Federal agencies to use consistent methodologies to determine fees.

Section 8 establishes liability requirements for outfitters and the United States related to permitted outfitter activities on public land.

Section 9 governs allocation of use and provides that an outfitter permit shall provide a principal allocation of outfitter use and specifies that upon renewal, transfer or extension of an outfitter permit, the same principal allocation of use shall be included unless an adjustment is required in accordance with this Act.

Subsection (d) allows the Secretary to adjust an allocation of use along with related terms and conditions of the permit to reflect changes in resource management plans or requirements arising under other law.

Section 10 directs the Secretary to develop a process for annual evaluation of the performance of an authorized outfitter.

Subsection (e) addresses eligibility for renewal and requires the Secretary to provide the outfitter with the cumulative results of performance evaluations during the term of the permit.

Section 11 addresses renewal, revocation or suspension of outfitter permits by establishing a performance-based renewal system.

Section 12 authorizes the transferability of outfitter permits and the conditions required for such transfers.

Section 14 establishes procedures for appeals and judicial review rights of an outfitter.

Section 15 is a savings closure to assure that nothing in the Act limits or restricts any right, title, or interest of the United States in or to any land or resource.

Section 16 authorizes and directs the promulgation of regulations within two years of enactment of this Act.

Section 17 clearly specifies that S. 1969 will not supersede or otherwise affect new National Park Service concessions law passed by Congress in 1998, nor preempt any outfitter or guide licensing law of any State or territory.

Section 18 sets forth transition provisions for outfitter authorized to conduct commercial outfitted activities on the date of enactment.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1969.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1969, as ordered reported.

EXECUTIVE COMMUNICATIONS

On September 20, 2000, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1969. These reports had not been received at the time the report on S. 1969 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management and the Forest Service at the Subcommittee hearing on S. 1969 follows.

STATEMENT OF ELAINE F. BRONG, DEPUTY ASSISTANT DIRECTOR FOR RENEWABLE RESOURCES AND PLANNING, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify regarding S. 1969, the Outfitter Policy Act. The Department of the Interior recognizes the important contributions outfitters and guides can make toward visitors' enjoyment of the public lands. In partnership with the Department, outfitters and guides offer tours that make back-country areas more accessible. Outfitters may provide interpreters who can inform and educate visitors about the history of the public lands, explain how multiple-use management is implemented, and foster greater appreciation for the conservation efforts of past generations that allow today's visitors to use and enjoy the abundant resources on our Nation's public lands.

The approach represented by S. 1969 is unacceptable. The effect of S. 1969, though it may be unintended, is to grant an apparent right to authorized commercial outfitters to use specific allocations of public land or water resources. This apparent "right" does not square with the bill's disclaimer in Sec. 16 that "* * * Nothing in this Act limits or restricts any right, title, or interest of the United States in or to any land or resource * * *" Until this inconsistency is resolved to make explicit that an outfitter and guide permit, like all other permits to use the resources of our nation's public lands, is a privilege and not a right, the Department strongly opposes the bill as written.

Specifically, we are concerned that S. 1969:

Grants and apparent monopoly right to authorized commercial outfitters to use public land or water resources;

Endangers the safety of visitors to public lands;

Endangers the protection of fish, wildlife, and other natural resources on public lands; and

Improperly inserts the government into business decisions affecting outfitter profitability.

BACKGROUND

S. 1969 affects three bureaus within the Department of the Interior: the Bureau of Land Management (BLM); the Fish and Wildlife Service (Service); and the Bureau of Reclamation (Reclamation). Each bureau's mission is unique, as are the resources under its administration and public expectations of recreation opportunities.

Bureau of Land Management

The BLM is the Nation's leading steward of open space. Its multiple-use mandate is to administer 264 million acres of America's public lands, located primarily in 12 western states, in a way that sustains the health, diversity, and productivity of the public lands for the use and

enjoyment of today's and future generations. In the past, the agency was focused primarily on a handful of programs: range, cadastral surveying, minerals, and lands. Today, BLM also has recreation specialists, wildlife biologists, archaeologists, and others who help the BLM meet the public's evolving needs and desires for use of the public lands.

The BLM-managed lands offer visitors a vast array of recreational opportunities. These include hunting, fishing, camping, hiking, boating, hang gliding, off-highway vehicle driving, mountain biking, birding, and visiting natural and cultural heritage sites. The BLM administers 205,498 miles of fishable streams, 2.2 million acres of lakes and reservoirs, 6,600 miles of floatable rivers, over 500 boating access points, 69 National Back Country Byways, and 300 Watchable Wildlife sites. The BLM also manages 4,500 miles of National Scenic, Historic, and Recreational Trails, as well as thousands of miles of trails used by motorcyclists, hikers, equestrians, and mountain bikers. With over 20 million people now living within 25 miles of BLM-managed lands, access to outdoor recreational opportunities on public lands enhances the quality of life in areas facing increasing urbanization.

Fish and Wildlife Service

The Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting and enhancing fish, wildlife, and plants in their habitats for the continuing benefit of the American people. The Service manages the 93-million-acre National Wildlife Refuge System of more than 520 national wildlife refuges and thousands of small wetlands and other special management areas. It also operates 66 national fish hatcheries, 64 fishery resource offices and 78 ecological services field stations.

Refuges are a place where all wildlife species can be observed in natural settings. More than 30 million visitors come to national wildlife refuges each year. To enhance their experience, a variety of wildlife-oriented recreational activities are offered. Recreational activities vary with each refuge and the season and may include hiking, auto tours, bicycling, photography, wildlife observation, hunting, and fishing. The National Wildlife Refuge System Act of 1966, other laws, and the Service's policy permit hunting on a national wildlife refuge when it is compatible with the purposes for which the refuge was established and acquired. The decision to permit hunting, trapping, and fishing on national wildlife refuges is made on a case-by-case basis that considers biological soundness, economic feasibility, effects on other refuge programs, and public demand.

Bureau of Reclamation

The Bureau of Reclamation was created to help develop and sustain the economy, improve the environment, and improve the quality of life in the 17 western states by pro-

viding reliable supplies of water and energy. Since 1902, Reclamation has been developing an infrastructure of dams, hydroelectric powerplants, and water conveyance facilities to help accomplish this task. This infrastructure also provides flood protection fish and wildlife habitat, river regulation, water quality protection and improvement, and recreation.

More than 300 recreation areas have been created at Reclamation projects, including popular areas such as Lake Mead. Of these, nearly 200 are managed by non-federal agencies such as state and county parks departments. The recreation areas include almost 2 million acres of water surface and about 13,000 miles of shoreline. Commercial recreation is handled through about 225 commercial concessions operations, offering public marinas, campgrounds, and swimming beaches. More than 90 million visits occur each year to these developed recreation areas. In addition, Reclamation projects have created new recreation opportunities for fishing on the rivers downstream of the dams.

OBJECTIONS

A general note: numerous internal inconsistencies in S. 1969 lead to confusion about what the bill would actually do. Key sections appear to be mutually exclusive. For example, Sec. 5 states:

> Nothing in this Act enlarges or diminishes the right or privilege of occupancy and use of Federal land under any applicable law (including planning process rules and any administrative allocation), by a commercial or non-commercial individual or entity that is not an authorized outfitter or outfitted visitor.

Sec. 6(a)(1) states:

> PROHIBITION: No person or entity, except an authorized outfitter, shall conduct a commercial outfitted activity on Federal land.

So does a commercial outfitter who wants to continue doing business using public lands need to get an authorization permit under this Act? Sec. 5 seems to say, you can continue your business even if you don't receive an authorization permit. Sec. 6. seems to say, no, you can't.

Specifically, the Department has four main objectives to S. 1969:

S. 1969 grants an apparent monopoly right to selected commercial outfitters to use public land or water resources

S. 1969 advances the notion of a commercial outfitter's indefinite right to use the allocated amount of the resource. The bill appears to require an agency to grant an authorized commercial outfitter an allocation of public land or water resources to conduct its business for an indefinite number of renewable 10-year terms. Once out-

fitted use is allocated, it is largely controlled by the outfitter rather than by the managing agency. An authorized commercial outfitter would have the right to exclude other commercial outfitters from use of the allocated amount of the public land or water resource, to renew its allocation indefinitely, and to control the transfer or sale of the allocation. These effects of S. 1969 are fundamentally inconsistent with existing law governing the BLM's management of public lands (the Federal Land Policy and Management Act 1976, P.L. 94–579)(FLPMA) and with BLM's implementing policies and practices.

Recreation, like all other public land uses, is subject to land use planning under FLPMA. As of December 1998, all BLM lands in the contiguous United States are covered by land use plans. The process of developing land use plans includes many opportunities for public review and input. "Carrying capacity" is a determination made through the land use planning process that to permit more than a certain amount of resource use during a specific time period—irrespective of who the permittee is—would cause damage to the resource.

In implementing the recreation component of land use plans, BLM generally does not make allocations of resource use unless resource's carrying capacity is exceeded. If there is no competing use or ceiling on the amount of use in a particular geographic area, the BLM allows the outfitter to use as much of the resource as it needs to operate it business. This is the case for over 90 percent of the BLM's outfitter and guide special use permits.

The bill grants an apparent right to outfitters and guides to force the agencies to allocate use to them, regardless of the resource condition or carrying capacity. S. 1969 would require an agency to allocate a specific amount of resource use to a specific commercial outfitter for the purpose of making that outfitter's business profitable, rather than for the purpose of protecting the resource from overuse.

S. 1969 endangers the safety of visitors to public lands

With any permit, FLPMA authorizes an agency to order an immediate temporary suspension prior to hearing if the agency determines that such a suspension is necessary to protect health or safety or the environment. S. 1969 would prevent an agency from revoking an outfitter's permit while allegations of wrongdoing are investigated. The bill would not allow an agency to revoke an outfitter's permits during the course of a law enforcement investigation, nor give the agency the right to revoke a permit for the cumulative impact of numerous violations of the regulations, until the end of the permit period.

The burden of proof that must be met before a commercial outfitter's permit can be revoked is higher than the burden for many crimes committed on the public lands, and must be proven in a court of law. Currently, most public lands crimes are misdeameanors—more likely to result

in a ticket and a small fine than a full-blown jury trial. Under S. 1969, the agencies could not respond to such misdemeanors by suspending or revoking the permit. As a result, liability may be imposed on the government under this provision, either for failure to remove a bad actor from the public land or for his loss of business if the government does so. Compounding this problem, no bonding requirements are imposed on the outfitter itself by this bill.

The bill sets an extreme standard. An agency may revoke an outfitter's permit only after a court finds that the outfitter's conduct demonstrates "repeated and willful disregard" for the health and welfare of the outfitter's customers or the conservation of the resources on which the commercial outfitted activities are conducted. "Willful disregard" requires proof of conduct far worse than negligent or reckless behavior. If an outfitter were found guilty of negligent or even reckless disregard for human safety, an agency could not revoke the permit.

In addition, the bill's sections limiting outfitter liability place public safety further at risk. Many types of activities offered by commercial outfitters on public lands, such as rock-climbing, river rafting, or cave exploration, are challenging physical events which pose unique hazards and risk. Insurance premiums of such outfitting activities may be high, or the outfitter may be unable to secure insurance for the riskiest activities, reflecting the insurance industry's determination of risk. High insurance premiums may constrict some outfitters' economic opportunity. S. 1969 absolves an outfitter from liability for injuries or damage related to "* * * the inherent risks of the commercial outfitted activity * * * or the inherent risks present on Federal land." The bill would shift much of the potential liability from the commercial outfitter onto the Federal government, thereby reducing the outfitter's insurance premium—and eroding a powerful incentive to conduct operations safely.

S. 1969 endangers the protection of fish, wildlife, and other natural resources on public lands

Sec. 16(a) of the bill states: "Each program of outfitted activities carried out on Federal land shall be consistent with the mission of the administering federal agency and all laws (including regulations) applicable to the outfitted activities." Under this provision, it appears that an authorized outfitter need comply only with those laws "applicable to the outfitted activities." This provision would greatly reduce an authorized outfitter's obligations, and stands in sharp contrast to FLPMA. Existing law requires that BLM's land use plans "provide for compliance with applicable pollution control laws, including state and federal air, water, noise, or other pollution standards or implementation plans." FLPMA Sec. 202(c)(8). Similarly, BLM is authorized to revoke or suspend any permit for violation of laws or regulations applicable to the public lands or "appli-

cable State or Federal air or water quality standard or implementation plan." FLPMA Sec. 302(c).

Under S. 1969, an outfitter could be held liable only for personal injuries or resource damage resulting from improper performance of activities authorized by the permit. an authorized outfitter could not be held liable for harm resulting from conduct that violated other laws, such as air or water pollution control. Consider an example: an outfitter received a permit for rock-climbing in a remote location. The site is inaccessible, however, except by motorized boat. A major fuel spill or waste expelled from the motorized boat may pollute the stream, resulting in harmful consequences downstream. So long as the outfitter complied with the terms of the permit for rock climbing, the bill would shield the outfitter from liability for the water pollution resulting from the use of a motorized boat to bring outfitted visitors into the remote location.

Protection of fish, wildlife, wilderness, and other resource values is placed at further risk because the outfitter' apparent right of allocation under S. 1969 applies to areas such as wilderness study areas, or Areas of Critical Environmental Concern, where an allocation for commercial recreational use may be inappropriate, even if not expressly restricted under a Resource Management Plan (RMP). The BLM currently has over 622 wilderness study areas (17 million acres) under interim management.

Finally, the bill undercuts existing protection of resources in an emergency. Under FLPMA Sec. 204(e), an agency must make an immediate withdrawal of public land if "an emergency situation exists and [that] extraordinary measures must be taken to preserve values that would otherwise be lost. * * *" S. 1969 allows an agency to change the terms of a permit subsequent to a change in the agency's Resource Management Plan but is silent as to the impact of an agency's immediate withdrawal of public land in an emergency.

S. 1969 improperly inserts the government into decisions affecting profitability of outfitter businesses

S. 1969 requires a federal agency to calculate fees for an authorized outfitter in such a way that the outfitter is assured of a "reasonable opportunity for net profit." Fees for most other public land activities that require permits are based on fair market value, and are not tailored by statute, as this bill would direct, to assure a net profit for a commercial user of a public land resource. The Department opposes exempting commercial outfitters from fees based on fair market value.

In addition, the bill's limitation on outfitter liability means an agency has to give an outfitter the right to conduct hazardous activity on public land, and also has to assume the risk of injury to the outfitters' customers or damage to the resource from the outfitters' activities. This shift of liability means that every taxpayer—whether he or she ever visits the public lands—is paying to keep an indi-

vidual outfitter's insurance premium down. Such a subsidy does not serve the public good.

Finally, while the theme of S. 1969 is competition in the awarding of authorized outfitter permits, the bill strictly limits the occasions on which a federal agency can require commercial outfitters to compete. At key points in the permit process, existing commercial outfitters are insulated from competition:

> Outfitters holding permits on the date S. 1969 is enacted would be "grandfathered-in" during the two years following enactment in which agencies must develop regulations;
>
> The statue "deems" the outfitter's performance to be good, if the agency for whatever reason has not formally evaluated the outfitter's performance within 60 days after the end of the outfitter's season;
>
> An outfitter with good performance is assured of an allocation for 10 years with a right of renewal for an indefinite number of subsequent 10-year terms;
>
> And, unless the outfitter is found guilty of willful disregard for the health and safety of its customers or the resource on which the outfitted activities are conducted,

the permit—the outfitters' right to use an allocated amount of public land or water resources—will remain the property of the outfitter, to use or to sell at its discretion.

CONCLUSION

Mr. Chairman, if there are specific problems involving federal agencies and the commercial outfitting industry that need to be addressed, we would be happy to work with the industry to address them. The agencies have already undertaken steps to improve customer service and make the permitting process more efficient. In the past year, BLM has trained over 250 of its recreation staff in order to provide more consistent administration of the BLM's Special Recreation Permit (SRP) program. This summer, the BLM and the Forest Service will introduce a joint "BLM/Forest Service Outfitter and Guide Application" form. We remain strongly opposed to S. 1969.

STATEMENT OF DENNIS BSCHOR, DIRECTOR, RECREATION, HERITAGE AND WILDERNESS RESOURCES, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee; thank you for the opportunity to testify on S. 1969, the Outfitter Policy Act of 1999. With me today is Kenneth Karkula, Recreation Special Uses program manager.

We defer to the Department of the Interior for the Administrator's position on this bill, but concur in the Department's assessment that S. 1969 would severely limit the agency's flexibility to manage the outfitter and guide program and be responsive to the needs of the public.

Mr. Chairman, before discussing our concerns with the bill I would first like to express just a few of the positive benefits and some of the challenges facing our outfitter and guide program.

We agree with the view you stated when you introduced this bill: "Many Americans want and seek out the skills and experience of commercial outfitters and guides to help them enjoy a safe and pleasant journey through our forests and deserts and over the rivers and lakes that are the spectacular destinations for many visitors to our federal lands."

There are millions of people who lack outdoor skills and who have never experienced the beauty and diversity of their public lands. Many of these people desire the safe environment that licensed guides and outfitters provide. There are numerous examples where outfitters and guides have helped users achieve a very positive out of doors experience, including outfitters who take physically challenged or economically disadvantaged children into the Wilderness or assist an arthritic man who wants to take his grandson on his first hunting trip. In addition, as the agency has become more involved with various tourism associations, we have learned that many international groups wish to provide eco-tourism trips to the United States to visit our public lands.

Mr. Chairman, you also stated during the bill's introduction, that the agencies represented here today used practices that historically have worked well for the outfitters, visitors, and other user groups, as well as for the federal land managers in the field. I would like to thank you for the recognition of the agencies' efforts to maintain a successful outfitter and guide program.

I also agree that managing the increasing competition for the nation's recreation resources today is challenging. Outfitting and guiding is one of the fastest growing uses of federal lands today.

We currently have approximately 6,000 permit holders that provide very necessary and sought-after services. These services range from traditional hunting and fishing trips to llama treks: from jeep tours and white water rafting, to guided hikes and prehistoric treks and everything in between.

With this variety of outfitting and guiding activities on federal lands and their potential impact on the resources, we believe that the outfitter and guide administrative system must address concerns of public health and safety, provide a pleasant experience for the visitor, and protect the interests of the government. Flexibility is an essential ingredient of a successful system. It is our position that this bill does not meet those objectives.

I would like to discuss several major problems with the bill including:

The bill codifies very detailed direction that is traditionally found in regulations and policy. These provisions severely limit agency flexibility to address specific needs as

they arise. In addition, our current policy was developed through the Administrative Procedure Act (APA), a process that included public involvement. This policy takes into account the needs and interests of the outfitting and guiding industry and the public in general. Any changes to the current policy would also be implemented with public involvement in compliance with APA.

Another serious concern is the question of diminished liability of outfitters and guides, which would result in increased liability of the United States and decreased incentive for outfitters and guides to operate safely. In several respects, the bill would substantially reduce the protection from liability currently afforded the United States under indemnification provisions in Forest Service regulations and permits. Under S. 1969, outfitters and guides would be liable only for torts, not for other sources of loss or damage to persons or property, such as losses arising under pollution control laws.

In addition, the standard for indemnification in the bill is significantly narrower than the standard in agency regulations and permits. The bill also would allow outfitters and guides to require their customers to sign waivers of liability, which could increase the liability of the United States and run counter to the public interest. To the extent the bill would shield outfitters and guides from liability, the bill would decrease their incentive to obtain insurance that protects the interests of the United States and would decrease their incentive to operate safely.

The language in the bill providing for "a reasonable opportunity * * * to realize a profit" and a "fair and reasonable return to the United States through appropriate fees" and taking into account "the obligations of the outfitter" and "economic conditions" does not currently exist in applicable law and policy. This new language would impose vague, subjective standards that could spawn litigation and make it difficult for the agencies to impose a land use fee based on the fair market value of the use of the land for outfitting and guiding. Fair market value is the standard for establishing fees for land use under the Independent Offices Appropriations Act and Office of Management and Budget Circular No. A–25.

The inability to make land use allocations in accordance with applicable law and the public interest. Distinctions in the bill with respect to allocations of use and the bases for adjusting them would prevent the Forest Service from allocating land use in accordance with forest land and resource management plans that are required by the National Forest Management Act and that are adopted with significant public input.

Eliminate the necessary discretion in the renewal and termination of outfitter permits:

1. The bill's renewal provision would confer a benefit that currently no other recreation special use permit holder enjoys, even ski areas that have significant investments on National Forest System lands. For all recreation special

use, the permit expires at the end of its term, and the Forest Service retains the discretion to determine whether to renew the use, and if so, under what terms and conditions.

2. The bill would establish a lengthy ten-year term for permit holders that are new and untested. While we understand that a permit term longer than one year is needed for outfitters and guides that have performed successfully, a ten-year term is inappropriate for inexperienced outfitters and guides and would make outfitting and guiding businesses operating on Federal lands much less competitive.

3. The bill would severely limit the agencies' ability to use competition to select permit holders. This method is not only fair where competition for limited opportunities exists; this method is also one of the best for selecting the most qualified applicant and establishing the fair market value of the land use.

4. The bill would authorize transfer of permits and would prevent the agencies from imposing new terms and conditions in transferred permits, thereby greatly reducing the agencies' flexibility to address changing conditions and circumstances.

5. The bill would greatly limit the agencies' ability to revoke a permit, even for poor performance.

The record-keeping requirements imposed on outfitters and guides in the bill are vague and inadequate. The requirements imposed on the agencies for establishing record-keeping requirements are vague and subjective and could impinge on the agencies' ability to require adequate record keeping. The access to records provision in unclear and appears to cut off the Government's access to outfitters' and guides' records' after a certain point, which would hamper the agencies' ability to administer and audit outfitting and guiding businesses.

In conclusion, it is our belief that this bill will not improve out outfitter and guide program, nor will it adequately protect the interest of the United States and the recreating public. We are willing to continue to work with our partner agencies. Congress, the industry, and the recreating public to resolve many of the industry's concerns so that they can continue to provide this much needed public service.

This concludes my prepared remarks. I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1969, as ordered reported.

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