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**Testimony
Legislative Hearing on H.R. 5129, H.R. 799 and H.R. 3683
November 30, 2016**

Mr. Chairman and members of the Committee, thank you for giving me the opportunity to testify in support of H.R. 5129, The Guides and Outfitters Act (The GO Act). America Outdoors Association represents the interests of more than 1,200 outfitters, guides, guest ranches, and outdoor recreation service providers who are members of our association and our affiliate organizations. Most of our members provide services to the public in National Forests, on Bureau of Land Management lands, including units within the National Landscape Conservation System, and in U.S. Fish and Wildlife Service Refuges. Please accept my sincere appreciation on behalf of outfitters and guides for your concern about the future of recreation and outfitted services on public lands.

As you know, the authority for permitting outfitters and guides in National Forests and on BLM lands is contained in the Federal Lands Recreation Enhancement Act (FLREA), which expired in 2014 and has been extended annually for one year in each annual appropriations bill. The authority is currently set to expire on September 30, 2017, yet thousands of permits are currently being issued for terms beyond the expiration of the legislative authority. Without going into detail, I think you can understand why this is a significant potential problem and why we need renewed, longer-term authority for issuing permits for outfitting and guiding.

We are very supportive of H.R. 5129 as you can see from my testimony. Passing H.R. 5129 will secure significant economic benefits for rural America. Currently, the Forest Service issues approximately 7,500 permits for outfitting, 3,400 temporary recreation event permits, and 900 non-commercial, group use permits. The BLM issues over 4,500 special recreation permits. That is nearly 17,000 permits which generate several million visits to federally-managed lands throughout rural America.

Historically, the special use permitting program in the Forest Service and the BLM has been a great success. But over time, problems have begun to crop up as the processes have become more complex and expensive (See Exhibit 1). Therefore, the reforms in H.R. 5129 are needed. One of the great benefits of H.R. 5129 is the requirement to streamline permitting processes. These processes are exceeding economies of scale of the Forest Service in particular, so new uses are seldom permitted. The result is a lockdown of federal lands to new recreation activities for outfitters and organized groups.

Renewal of existing uses has also become increasingly complex and burdensome. The Forest Service has attempted to transfer the costs for expensive analyses to small businesses and to special events through cost recovery. If the agency can force permittees to pay for environmental analyses, there is an incentive to ramp up the requirements under the National Environmental Policy Act (NEPA) in order to drive more revenue. This transfer of capital from the private sector to inefficient and redundant bureaucratic processes in economically weak rural areas is not a commendable policy goal. The Forest Service is making some efforts internally to improve their permitting processes and reduce some of the unnecessary burdens, but they need legislative backup in some areas.

H.R. 5129 includes several strategies to improve and streamline the permitting process without sacrificing legitimate concerns for environmental protection.

1. SEC. 3 authorizes the agencies to issue one permit by a lead agency when an outfitted trip or event crosses multiple agency or jurisdictional boundaries but only when the outfitter concurs.
2. SEC. 3 also codifies the practice to allow for categorical exclusions for previously studied activities or activities that are similar to previously studied uses provided that they are not inconsistent with the Forest plan. This is not a waiver from NEPA since scoping is required for categorical exclusions and a higher level of NEPA has been completed previously in some form. I do have concerns that this language could be more restrictive in some situations and may need to be adjusted since the Forest Service does not currently require NEPA analyses for every permitted activity where there are no changes from the previous permit and there is no evidence of unacceptable impacts. But this practice is not universal and is often disregarded due to concerns over possible legal challenges. That is why some legislative authority for categorical exclusions is needed to prevent redundant paperwork.
3. SEC. 4, GUIDELINES AND PERMIT FEE CALCULATIONS, is a very important section to prevent the Forest Service from levying fees for services delivered and consumed outside the boundaries of federal land, which is their current policy.

According to the Forest Service Handbook on Fee Determination for outfitters, the permit fee is based on "Gross Revenue" which includes:

"c. Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded."¹

The Forest Service fee policy requires their fee calculations to be based on the total cost of the trip, including services delivered outside the boundaries of public lands. The agency then discounts the fee based on the time spent on the Forest, but that discount is not proportionate to the time and services delivered off the Forests or on other agency lands

¹ Forest Service Handbook, Fee Determination, FS 2709.11, Chapter 30, page 66.

The discounted fee schedule as it appears on page 74 of the Forest Service Handbook (2709.11), Fee Determination is as follows:

Percentage on NFS Lands	Fee Reduction
Less than 5 percent	80 percent
5 to 60 percent	40 percent
Over 60 percent	None

If an outfitter’s trip spends 39% of its time on private land, which would include food and lodging services delivered and consumed on private land but packaged into the price of the trip, the outfitter pays the full Forest Service permit fee on the entire cost of the trip including the food and lodging delivered outside the Forest. An outfitter’s trip which spends just 6% of its time on Forest Service lands will pay 60% of the permit fee (40% reduction).

The Forest Service Handbook of Fee Determination states:

“Duration of Outfitted or Guided Trip. The period that begins when the client first comes under the care and supervision of the outfitter or guide, including arrival at the holder's headquarters or local community, and ends when the client is released from the outfitter's or guide's care and supervision. Duration of the outfitted or guided trip is used to calculate client days, which in turn are used to determine the average client-day charge and the adjustment for use off the National Forest System lands. See section 37.21c for related direction.”²

This fee determination is confusing and is a significant problem for outfitters who visit multiple Forests or cross agency boundaries, which often want to base their fees on the full costs of the trip and not just that portion which occurs within their jurisdiction. This fee calculation issue can be simplified by establishing a flat day-use fee for the activity, which the Forest Service used to do prior to 2008.

4. SEC. 5 applies permit fees to permit administration and to streamlining permit processing. Currently, permit fees are not authorized to be used for permit administration. There may need to be some adjustment to this language to ensure that permit fee revenue can be set aside for permit administration in future years without further appropriation.
5. SEC. 7 authorizes temporary, short term permits for new uses not to exceed 2 years, which lowers processing costs for previously unauthorized activities. Then, if the activity is monitored and does not present significant negative impacts, those permits can be issued for longer terms.

² Ibid, page 66.

6. SEC. 9 requires the agencies to streamline permitting processes within 180 days of enactment and authorizes the use of programmatic environmental assessments, which would cover the studies required under SEC. 3 (h) (3). This practice is already used by the Bureau of Land Management.
7. SEC. 10 requires cost recovery reform. When the Forest Service finalized the cost recovery rule in 2006, it recognized the potential negative economic impacts of cost recovery on small entities. The final rule stated:

“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. These entities could be economically impacted, for example, when they apply for agency approval to expand or change their authorized use, or when an expired authorization prompts them to apply for a new authorization to continue their use and occupancy, and the application requires a substantial amount of time and expense to process.”³

In response, the Forest Service provided an exemption from cost recovery for the first 50 hours or less of work for processing permit applications, but illogically eliminated that credit when the time required to process a permit or a group of permits exceeds 50 hours. In other words, there is no cost recovery if the work takes 48 hours. But if the work required to process the permit takes 51 hours, both the Forest Service and the BLM charge the permit holder cost recovery for all 51 hours.

Despite assurance by some of the rule’s authors, that outfitters would not be negatively impacted, the agency provides no 50 hour credit when a group of permits is renewed and processing time for the group of permits exceeds 50 hours. SEC. 10 corrects this conundrum by applying the 50 hour credit to each individual permit and gives the authorizing officer the leeway to waive cost recovery when forces beyond the control of the permit holder drive the agency to complete a full Environmental Impact Statement. Furthermore, other streamlining features of the bill offer opportunities to eliminate redundant analyses.

8. Another important feature of the bill can be found in SEC. 6 in the revisions to Forest Service use reviews related to permit utilization. While use reviews can be an important tool to ensure that the permit holder performs the services authorized by their permit, the current policy approved in 2008 is too strict and is inconsistent with the way some permits are structured.

The current policy bifurcates the assignment of use based on the amount of use allocated. Smaller permittees get more use than permittees with more than 1,000 service days on their

³ *Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations; Final Rule*, 71 Fed. Reg. 8891, 8897 (Feb. 21, 2006) (emphasis added).

permits when service-day use is reviewed and re-assigned to the permit. If the permit authorizes more than 1,000 service days, the Forest Service assigns actual use plus 15% of actual use in the highest of five years (not to exceed the original allocation). Outfitters with less than 1,000 annual service days get actual use plus 25% up to their original allocated capacity.

There is no substantive basis for this bifurcated strategy and therefore, it appears to be largely aimed at penalizing larger outfitters. It requires larger permit holders to operate at 87% percent capacity, which is an unreasonably high standard for some permits given the way they are structured.

For example, some permits are assigned daily service-day capacities for 365 days per year but their seasons are constrained to a few peak months with less use during shoulder seasons. In other words they do not have annual lump sum capacities, which the current policy addresses. While the outfitter needs capacity to operate in the early season, they cannot possibly perform at 87% capacity during shoulder seasons. The current strategy will put some very good, quality operations out of business unless it is modified. Our efforts to address this with the Forest Service have fallen on deaf ears.

The solution in SEC. 6 requires the Forest Service to treat all outfitters the same when their utilization is reviewed by assigning actual use in the highest of five years plus 25% of actual use up to the original allocation. In cases where additional capacity is available, the assignment may exceed the original allocation so growth is allowed in cases where additional capacity is available. SEC. 6 (b) gives Forest Supervisors more flexibility than the current rules by recognizing natural disasters, such as fires, floods, displacement of wildlife and similar disasters that have had long-term negative impacts on demand for services that are beyond the control of the outfitters. This provision also recognizes that some permits should recognize shoulder seasons as periods of low demand and not apply the use review to those periods. One important provision is that SEC. 6 allows anticipated unused allocation to be shared with other qualified permit holders without penalty if the permit holder applies for approved non-use.

9. The one area of concern about H.R. 5129 is that there is no term for the expiration of the permitting authority, which presumably would result in coupling the expiration of the authority in the bill with the sunset provisions in the Federal Lands Recreation Enhancement Act, which is currently being authorized annually. We urge you to decouple this authorization from FLREA's fee authority and authorize the permitting authority contained in H.R. 5129 for a term of at least 20 years, so we do not have to revisit this issue every few years.

On behalf of outfitters operating on agency lands nationwide, thank you for your attention to these important issues and for the opportunity to testify in support of H.R. 5129.