

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

December 11, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff —Chris Marklund
Subcommittee on Federal Lands (x6-7736)

Mark-Up: **H.R. 1349 (Rep. Tom McClintock)**, To amend the Wilderness Act to ensure that the use of bicycles, wheelchairs, strollers, and game carts is not prohibited in Wilderness Areas, and for other purposes.
December 12 & 13, 2017; 1324 Longworth House Office Building

Summary of the Bill

H.R. 1349, introduced by Representative Tom McClintock (R-CA), would amend the Wilderness Act (16 U.S.C. 1133(c)) to permit the use of bicycles, strollers and other human powered wheeled implements, and motorized and non-motorized wheelchairs in wilderness acres.

Cosponsors

Rep. Duncan Hunter (R-CA), Rep. Bruce Westerman (R-AR), Rep. Stevan Pearce (R-NM), Rep. Kevin Cramer (R-ND) and Rep. Dana Rohrabacher (R-CA)

Background

The Wilderness Act of 1964 (Public Law 88-577, 16 U.S.C.1131-1136) established the National Wilderness Preservation System (NWPS) and reserved Congress the authority to designate federal lands as a part of the National Wilderness Preservation System. The law's enactment initially designated 54 wilderness areas encompassing 9.1 million acres of national forest lands. Subsequently, Congress has enacted more than 100 laws designating new wilderness areas. Today, the NWPS consists of roughly 110 million acres across 765 units managed by the U.S. Forest Service (USFS), National Park Service, Fish and Wildlife Service, and Bureau of Land Management.¹

The Wilderness Act describes wilderness as areas generally undisturbed federal lands and ascribes certain goals for the management of wilderness, noting the lands should be “administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.”² Generally, the

¹ CRS Report R41610, *Wilderness: Issues and Legislation*, Katie Hoover.

² 16 U.S.C. 1131(a).

Wilderness Act prohibits commercial activities, motorized uses, and the building of roads, structures and facilities. However, specific management criteria of wilderness lands can differ between land management agencies and acreages because of differing statutorily prescribed management provisions and administrative land management regulations.

For example, although the Americans with Disabilities Act (42 U.S.C. 12207) reaffirms Congress' intent that nothing in the Wilderness Act should be "construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair," a study by the National Council on Disability found differences across land management agencies in the use of motorized and non-motorized wheelchairs, and in one case a lack of policies regarding persons with disabilities in the NWPS.³

Similarly, although the Wilderness Act allows travel across NWPS lands on foot and with the use of horses and pack animals, the use of bicycles in NWPS lands has had a varied history. In 1966, the USFS banned the use of "mechanical transport" propelled by a nonliving power source⁴ – a definition that made bicycles an allowable form of transportation in wilderness. In 1977, the USFS issued a new regulation specifically prohibiting the use of bicycles (and hang gliders) on NWPS lands.⁵ However, although the USFS regulations broadly ban the use of bicycles on NWPS lands, the use of bicycles is still allowed in some wilderness areas.

In 1980, Congress passed the Rattlesnake National Recreation Area and Wilderness Act of 1980 (Public Law 96-476), which identified cycling to be considered "primitive recreation" and thus an allowable use in the Rattlesnake Wilderness of the Lolo National Forest. In 1981, the USFS issued a third regulation declaring bicycles to be permissible on wilderness lands unless expressly prohibited.⁶ Finally, in 1986, the USFS announced in the federal register that the regulation, which allows for Wilderness travel by living power sources, should be read as prohibiting wilderness travel by certain living power sources, including bicycles.⁷

Annually 40 million Americans participate in mountain biking activities, making it the second most popular trail activity in the U.S.⁸ H.R. 1349 would amend Section 4(c) of the Wilderness Act to clarify that the act does not prohibit the use of motorized wheelchairs, non-motorized wheelchairs, non-motorized bicycles, strollers, wheelbarrows, survey wheels, measuring wheels, or game carts on NWPS lands.

The legislation is supported by the Sustainable Trails Coalition and the Folsom Auburn Trail Riders Action Coalition.

³ "Wilderness Accessibility for People with Disabilities: A Report to the President and the Congress of the United States on Section 507(a) of the Americans with Disabilities Act," National Council on Disability, Dec. 1992. ncd.gov/publications/1992/December1992#8.

⁴ 36 CFR 251.75 (1966).

⁵ 36 CFR 261.18.

⁶ 36 CFR 261.57(h).

⁷ 51 FR 13835.

⁸ "Demographics of Mountain Biking." *International Mountain Bicycling Association*, 2005, www.imba.com/resources/research/demographics-mountain-biking.

Major Provisions of H.R. 1349

Section 1: Amends Section 4(c) of the Wilderness Act to clarify the use of motorized wheelchairs, non-motorized wheelchairs, non-motorized bicycles, strollers, wheelbarrows, survey wheels, measuring wheels, or game carts is not prohibited in wilderness areas.

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Administration Position

The administration position is currently unknown.

Anticipated Amendments

- Rep. Tom McClintock (R-CA) – Clarify that land managers *may* allow bicycles, strollers, wheelbarrows, survey wheels, measuring wheels, or game carts on wilderness lands. Clarify that the allowed wheeled implements must be non-motorized. Incorporate definition of wheelchair from Americans with Disabilities Act.

Effect on Current Law (Ramseyer)