

Extent Necessary Determinations for Authorizing Outfitting and Guiding In Wilderness

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Under section 4(d)(5) of the Wilderness Act of 1964, 16 U.S.C. 1133(d)(5), authorized officers may authorize commercial services such as outfitting and guiding in wilderness only to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas. Recent case law has affirmed this decision space and required documentation of the “extent necessary”. The purpose of this document is to provide a general framework that can be used to assist in the decision-making to authorize outfitting and guiding in wilderness. The framework is based on guidance from the Interagency Visitor Use Management Council’s (IVUMC) Visitor Use Management Framework, a long history of individual forest projects that authorize outfitting and guiding, and the National Park Service’s *Extent Necessary Process* for authorizing commercial services in wilderness. The steps in this framework can be used for making extent necessary determinations for a single outfitting and guiding permit or for all outfitting and guiding permits within a particular wilderness.

Variations in how managers approach the extent necessary determination may be appropriate depending on specific forest needs or unique legislative mandates. In all cases, authorizing commercial services should be consistent with the recreational or other wilderness purposes of the area while preserving wilderness character.

Background

Commercial enterprises are generally prohibited in wilderness by Section 4(c) of the Wilderness Act, 16 U.S.C. 1133(c). Commercial service is allowed under Section 4(d)(5) to the extent it is necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

The practice of all the Federal agencies is that “commercial service” includes outfitting and guiding. This practice is consistent with the Forest Service’s special use regulations, which define “outfitting” as “renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment” and “guiding” as “providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups on National Forest System lands.” 36 CFR 251.51.

Forest Service wilderness management regulations and directives do not define “extent necessary” and do not prescribe a method for determining the amount of commercial services that are necessary in wilderness. Existing directives do allow outfitting and guiding to be authorized where necessary to help segments of the public use and enjoy wilderness areas for recreational or other wilderness purposes and consistent with wilderness management (FSM 2323.12). However, the lack of additional clarity has caused different implementation practices across the agency.

In determining whether and to what extent outfitting and guiding are necessary in wilderness, we

recommend a three-step process:

1. Determine whether the activity supported by the outfitter and guide is proper for realizing a wilderness purpose.
2. If the activity supported by the outfitter and guide is proper for realizing a wilderness purpose, determine whether outfitting and guiding is necessary to conduct that activity in wilderness.
3. If the activity supported by the outfitter and guide is proper for realizing a wilderness purpose and if outfitting and guiding is necessary to conduct that activity in wilderness, determine the extent of outfitting and guiding necessary to conduct that activity.

Step 1. Is the activity supported by the outfitter and guide proper for realizing a wilderness purpose?

Commercial services like outfitting and guiding may be authorized in wilderness only to the extent they are necessary for activities which are “proper for realizing a wilderness purpose.” 16 U.S.C. 1133(d) (5). Proper¹ means “marked by suitability, rightness, or appropriateness.” Outfitting and guiding are commercial activities that support or facilitate recreation, and recreation is a wilderness purpose.

Activities supported by outfitters and guides may be considered proper for realizing a recreational or other wilderness purpose if they are consistent with applicable laws, regulations, directives, and land management plans (see the initial screening criteria in 36 CFR 251.54(e)(1)(i) and (e)(1)(ii)). Management of activities within wilderness must be consistent with the Wilderness Act, the enabling legislation for the wilderness, the applicable land management plan, and, the appropriate approved wilderness management plan. Activities that include mechanized transport or motorized equipment are not allowed in wilderness. The enabling legislation for a particular wilderness may contain special provisions regarding appropriate uses and the enabling legislation should be reviewed for this direction. .

Step 2. Is outfitting and guiding necessary to conduct the activity in wilderness?

If the activity supported by the outfitter and guide is proper for realizing a wilderness purpose, the next step is to determine whether outfitting and guiding services are necessary to conduct that activity in wilderness. Consider the following factors in making this determination.

a. Specialized Knowledge, Skills, and Equipment

A finding of necessity may be supported by a determination that outfitting and guiding services are needed to provide access to people who would otherwise not be able to visit. This should not be confused with visitors’ desire or demand for outfitting and guiding. For example, a finding of necessity for outfitting and guiding services may be supported specifically to support access for people with disabilities to experience wilderness, or by a determination that outfitting and guiding services are necessary to provide the requisite knowledge, skills, and equipment for whitewater rafting, which many people cannot pursue otherwise. In addition, state law may require the use of outfitters and guides to conduct certain recreational activities. In contrast, day hiking on a trail is an activity that a larger segment of the population may be able to

¹ <https://www.merriam-webster.com/dictionary/proper>.

undertake independently with ease. Factors specific to a wilderness, such as access, terrain, elevation, and weather, can affect the determination.

b. Enhancing Visitor Understanding and Appreciation of Wilderness Character

A finding of necessity may be supported when outfitting and guiding services can enhance visitors' understanding and appreciation of wilderness character. There may be specific reasons on why a specific Wilderness Area was designated; an activity that focuses on interpreting or showcasing those reasons would contribute to understanding and appreciation of that specific wilderness. Contributions also refer to introducing youth and under-represented populations to wilderness to broaden the constituency that finds wilderness relevant.

c. Need to Protect Wilderness Resources

A finding of necessity may be appropriate when outfitting and guiding services are needed in wilderness to protect resources, either because of the location or the nature of the activity involved. Outfitter-guides, through modeling ethical behavior and imparting skills, can mitigate these impacts.

d. Wilderness Setting

A finding of necessity may be appropriate when the outfitting and guiding services are directly tied to a wilderness setting. For example, if the wilderness provides the only unroaded terrain available for a specific type of trip, it may be dependent on a wilderness setting. The activity could also be entirely focused on an experience only found in wilderness (for example, wilderness education). On the other hand, if a multi-day backpacking trip is desired and the only criteria necessary is the presence of a backcountry, remote experience, this may not need to occur in wilderness. This finding will be specific to the individual wilderness area being considered. As a reference Forest Service policy on "wilderness experience" and "wilderness setting" can be found at (2323.11, 2323.12 #3).

Step 3. To what extent are outfitting and guiding necessary to conduct the activity in wilderness?

Now that a determination has been made whether the activity supported by outfitting and guiding is proper and necessary, the next step is to determine the extent. Refer to the [IVUMC Visitor Capacity Guidebook](#) for examples, a sliding scale analysis tool, and case studies.

A sliding scale of analysis should be used in making extent determinations to ensure the investment of time, money, and other resources is commensurate with the complexity of the analysis area and the degree of threat to wilderness character from outfitting and guiding in wilderness. A variety of factors influence where an extent determination lands on the sliding scale, including the level of uncertainty associated with the issue being addressed, potential impacts on wilderness character (see definitions in Appendix A), level of stakeholder interest, and level of controversy. As an example specific resource protection concerns may dictate that a particular type of activity supported by outfitters and guides, such as rock climbing in critical nesting areas or stock use in sensitive, high alpine meadows, is inappropriate at a particular location due to negative impacts that may occur to wilderness character.

It may be helpful to develop questions to inform the analysis. The following are examples:

- Has monitoring of wilderness character indicated a downward trend in the area proposed for use?
- Does this specific outfitting and guiding activity contribute to the downward trend?

If yes, to what degree when compared to the impacts of general unguided use?

- Would an increase in outfitting and guiding enhance or protect wilderness character or meet needs identified by the agency? Examples include providing identified educational gaps, providing a guided opportunity to mitigate existing unguided resource impacts, and working with the agency to meet a desired condition.
- Would additional or new use, considering the likely frequency and intensity of such use proposed, cause a downward trend in wilderness character?
- If yes: is there an opportunity to mitigate negative changes by stipulating conditions for timing, operations, or limitations to areas of use?

Other Considerations:

In situations where there is already some permitted outfitting and guiding in place, a review of the actual use data may be helpful. An existing low utilization of permitted service days may indicate poor business practices of the existing permittees, acts of nature such as fire or low snow years, lack of effective marketing rate, or a low demand. Further exploration with the interested industry could be needed to sort out what the utilization rate may mean.

The conflicts that arise in meeting the existing wilderness plan guidelines, thresholds, or standards would have bearing on the extent necessary determination. By way of example, in a wilderness with low visitor use and no known impacts on wilderness character or resources, outfitting and guiding may be acceptable at some level. In another example with high levels of visitation and monitoring showing high levels of impact on wilderness character, managers may not authorize additional outfitting and guiding services, reduce existing authorizations, adjust overall visitor use, or take other appropriate management action to prevent adverse impacts on wilderness character.

Documentation

Each step of an extent necessary determination for authorizing outfitting and guiding in wilderness must be documented. The complexity of the documentation will depend on social and political interest and controversy.

Implementation

The analysis process for an extent necessary determination is not a NEPA analysis nor a NEPA decision. It is a framework or a method for determining the necessity of an activity supported by outfitting and guiding in wilderness. It could be the foundation for a purpose and need statement in an environmental analysis, or form the basis for accepting/rejecting a special use permit application for outfitting and guiding in wilderness. It essentially determines if any additional analysis is warranted.

In contrast, a NEPA analysis discloses and compares the environmental effects of alternatives, documents a decision, and requires public involvement. This framework can help inform a NEPA decision, and is not a substitute or replacement for NEPA.

Monitoring

An extent necessary determination can be revisited based on monitoring, especially where there is a

downward trend in wilderness character.

² USDA 2015. General Technical Report RMRS-GTR-340. Keeping It Wild 2: An Updated Interagency Strategy to Monitor Trends in Wilderness Character across the National Wilderness Preservation System.

³ Guidance may be found at <https://visitorusemanagement.nps.gov/VUM/Framework>.

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Appendix A. Wilderness Character Definitions

Untrammeled—The Wilderness Act states that wilderness is “an area where the earth and its community of life are untrammeled by man” and “generally appears to have been affected primarily by the forces of nature.” This quality refers to wilderness being essentially unhindered and free from modern human control or manipulation.

Natural—The Wilderness Act states that wilderness is “protected and managed so as to preserve its natural conditions.” This quality refers to the intended and unintended effects of people on ecological systems inside wilderness since the time of designation.

Undeveloped—The Wilderness Act states that wilderness is “an area of undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation.” The undeveloped quality refers to the presence of structures, construction, habitations, and other evidence of modern human presence or occupation, including the development level of trails and campsites. The undeveloped quality also refers to the absence of mechanical transport and motorized equipment. Wilderness was partly established “in order to assure that...growing mechanization, does not occupy and modify all areas within the United States...” (Wilderness Act, Section 2a).

Outstanding opportunities for solitude or a primitive and unconfined type of recreation—The Wilderness Act states that wilderness has “outstanding opportunities for solitude or a primitive and unconfined type of recreation.” This quality includes the values of inspiration and physical and mental challenge. Primitive recreation in wilderness has largely been interpreted as travel by nonmotorized and nonmechanical means. It also encompasses reliance on personal skills to travel and camp in an area. Unconfined encompasses attributes such as self-discovery, exploration, and freedom from societal and managerial controls.

Other features of value—a fifth quality is sometimes present. In addition to the four primary qualities of wilderness character listed above, the Wilderness Act states these areas “may also contain ecological, geological, or other features of scientific, educational, scenic, or historical use” that reflect the character of this wilderness. Features such as the presence of important geological formations, cultural resources, historical sites, or paleontological localities, do not fit easily into one of the other four qualities. While many different types of features could be included, the intent is to include those that are significant or integral to the wilderness. The other features of value that are present must be just as rigorously protected as the primary qualities of wilderness character.