

Michael Munoz  
Chairperson of the BMWC Managers Group  
Rocky Mountain Ranger District  
1102 Main Ave North  
Choteau, MT 59422

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Re: Outfitter and Guide Special Use Permits in the Bob Marshall Wilderness Complex (BMWC).

Submitted via: <https://cara.fs2c.usda.gov/Public/CommentInput?Project=65359>

Please accept the following comments respectfully submitted in response to the December 2023 scoping for reauthorization of existing priority outfitter and guide special use permits in the BMWC.

I am a retired Northern Region Bitterroot National Forest (BNF) employee with over 30 years of diverse duties including nearly 20 years as a wilderness ranger followed by my last five as BNF outfitter permit administrator, coordinating with both Montana and Idaho Licensing Boards, Fish & Game, and state outfitter associations.

In the late 1980s, I met and was mentored through decades by two wilderness champions: Stewart Brandborg, who worked closely with Howard Zahniser (principle author of the Wilderness Act), who became Executive Director of the Wilderness Society after “Zahni’s” death and stood in the room as Johnson signed the 1964 Act; William Worf, who, after the Act was passed, became one of the Northern Region specialists sent to hole up in a cramped room in DC and develop FSM and FSH for wilderness management (years later starting Wilderness Watch). These comments are intended to honor their insights into and commitment to the philosophical and statutory intent of the Act.

The BMWC is one of the original 54 Wilderness areas designated in passage of the 1964 Wilderness Act. In 1962 during testimony before Congress, Howard Zahniser explained “The purpose of the Wilderness Act is to preserve the wilderness character of the areas to be included in the wilderness system, not to establish any particular use.” This philosophical principle is enshrined in statutory language which states that, while the agency administers the area for public purposes (recreational, scenic, scientific, educational, conservation, and historical use), the agency must preserve a “natural,” “untrammeled” condition.

Quoting from Wilderness Watch’s excellent comments on the proposed national climbing directives: “The Wilderness Act contains a narrow exception to allow otherwise-prohibited activities—such as installation use—only where such activities are “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act].” 16 U.S.C. § 1133(c). The statute uses the word “purpose” in its singular form. In other words, the exception applies only where the otherwise-prohibited activity will affirmatively advance the “‘preservation and protection’ of wilderness lands ... in their natural, untrammeled state.”

To then paraphrase another Wilderness Watch comment: That recreational activities are a valid public use of wilderness areas does not excuse the Forest Service’s obligation to demonstrate that authorizing commercial use and/or associated permanent structures will advance “the [singular, overarching] purpose of” the Wilderness Act, 16 U.S.C. § 1133(c), which is to preserve Wilderness in its natural, untrammeled state, id. § 1131(a), (c). Congress and the federal courts have made clear that the goal of advancing recreation in wilderness, while allowable and encouraged, cannot trump the overriding

statutory purpose to preserve wilderness. See *id.* §§ 1131(a), (c), 1133(b)-(c); *High Sierra Hikers v. Blackwell*, 390 F.3d 630, 647 (9th Cir. 2004) (affirming that, under the Wilderness Act, the Forest Service may not “elevate[] recreational activity over the long-term preservation of the wilderness character of the land.”).

Your scoping letter states that “it appears these actions fit within category 36 CFR 220.6(d) (11)” (Issuance of a new authorization to replace an existing or expired special use authorization, when there are no changes to the authorized facilities or increases in the scope or magnitude of authorized activities); that many of these operations have been authorized “anywhere from 30 to 75 years” and most, if authorized again, would have an expiration date of 2035; that “Scoping comments and resource analyses will determine if there are extraordinary circumstances present that would warrant the need for an environmental assessment or environmental impact statement or whether actions could fall under the category listed above”; that “Changes to each specific permit (including increases and/or decreases in priority use) would be administrative and are not within the scope of this proposed action”.

The sheer scope of the proposed action, comprising authorizations for nearly 70 outfitters that are permitted with diverse use types/season of use and at least 60 assigned camps covering the BMWC on three National Forests, surely exceeds the CE category’s intended purpose relating to “an existing or expired special use authorization” - note the CE example is singular and the intent of the CE’s use is limited. This range of special use permits and activities requires, at minimum, an Environmental Analysis.

The BMWC provides one of the last great expanses of biodiversity in the world. That many of these operations have been authorized “anywhere from 30 to 75 years” clearly points to changed extraordinary circumstances such as the threatened and endangered listings of grizzly bear, lynx and wolverine, the creation of the Northern Continental Divide Grizzly Ecosystem (NCDE) Grizzly Bear Recovery Zone, and a recognition of climate change effects on habitat. My concern relates to all seasons of use but is especially related to authorizations that include winter and shoulder season activities. It is not enough to say the authorizations are “existing”. You have a responsibility, based on the scope of the proposal, range of extraordinary circumstances and potential change of existing resource conditions, to employ, at minimum, an Environmental Analysis. Have you consulted with USFWS for these permits, especially relating to the recent wolverine listing?

You have the authority to amend permits “at any time when it is in the public interest to do so” (FSM 2711.2) and the basis for this as described in R1 SUPPLEMENT 2700-2015-2, 6. Revocation for Public Interests: “Uses authorized by permit or term permit might occupy land for which there is a more important and or valuable public purpose or alternative public use... Public or semipublic use needs are not limited to a physical development, such as campground or winter sports development. Authorized land may be needed for a more important public use that requires no development. Examples include, but are not limited to: b. Special management areas. c. Key wildlife habitat.”

The Northern Region SUP workload is so overwhelmed that they put out R1 SUPPLEMENT 2700-2015-2 , 2716.5 – Purpose of Monitoring and Compliance Reviews; (b) Where there is not enough personnel to visit every authorization on the ground, which is often the case (2011 OIG audit 08601-55-SF, page 16), having a self-inspection would often be better than having nothing at all.” What percentage of “administered to standard” reporting for the BMWC is based on use of self-inspections?

That “Changes to each specific permit (including increases and/or decreases in priority use) would be administrative and are not within the scope of this proposed action” does not address that “administrative” increases of priority use over the last 30 to 75 years would have cumulative effects and

be relative to those commenting on the proposal. Has there been a cumulative increase in authorized service days in recent decades and, if so, for what authorized activities? An associated concern is that required administrative decreases to authorized priority service days, based on 5-year reviews, may not have taken place. For all proposed 10-year permit renewals, priority use must be based on the highest amount of actual use in one calendar year of the last five years, per 53.1n - Allocation of Use for Priority Use Permits. What is the authorized priority service day and 5-year high actual use for these permits?

In closing, the compromised administration of special use permits during Forest Supervisor Steele's tenure on the Flathead NF, as evidenced around the Holland Lake Lodge debacle and referenced to by retired Spotted Bear District Ranger Snelson, has lowered public trust in the agency and raised the bar significantly for how you handle this NEPA process. Take your time, and this opportunity, to base your decision on higher public interests relating to wilderness and wildlife, not bygone pressure from commercial enterprise.

Sincerely,

Marty Almquist  
PO Box 714  
Darby, MT 59829

CC sent via email to:

[anthony.botello@usda.gov](mailto:anthony.botello@usda.gov)

[Charles.Carver@usda.gov](mailto:Charles.Carver@usda.gov)

[adam.ladell@usda.gov](mailto:adam.ladell@usda.gov)

[james.yarbrough@usda.gov](mailto:james.yarbrough@usda.gov)

[michael.munoz@usda.gov](mailto:michael.munoz@usda.gov)

[robert.davies@usda.gov](mailto:robert.davies@usda.gov)

[Christopher.Dowling@usda.gov](mailto:Christopher.Dowling@usda.gov)