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Comments: Thank you for the opportunity to comment on the Forest Service's proposed climbing policy which addresses Wilderness. I write my comments as a lifelong visitor to wilderness, having visited hundreds of Wilderness areas across the United States, including hundreds managed by the Forest Service. During these visits, I have participated in primitive recreation activities, including rock climbing. I will continue to be a wilderness visitor as long as I am able. I also am a subject matter expert regarding Wilderness stewardship, having received a Master's degree emphasizing Wilderness stewardship, and having been employed for about 25 years stewarding the management of wilderness. I write in opposition to the policy the Forest Service is proposing.

Section 4(b) of the Wilderness Act provides the mandate of "preserving the wilderness character of the area." Proposals to broaden this singular mandate were made during the development of the Wilderness Act, and current practitioners of the Act continue to explore rationale for broadening the mandate in the present. For example, in 1962, Representative John Westland (Washington, 1953-1965, R, 2nd District) offered an amendment to the wilderness bill that would have inserted new language to Section 4 (c). With the amendment the Wilderness Act would read "...except as necessary to meet the minimum requirements for the use of visitors and the administration of the area for the purpose of this Act..." (language offered through the amendment for insertion is underlined). Under the amendment, the furthering of recreational purposes, or visitor use, would be an equally valid reason for implementation of a prohibited use in Wilderness as would those needed for the preservation of wilderness character.

Representative John Saylor (Pennsylvania, 1949-1973, R, 26th, 22nd, and 12th Districts), who introduced the bill in 1956 and was its lead sponsor in the House, opposed the amendment stating: "The amendment offered by Mr. Westland is one of the most vicious amendments to the very purpose of wilderness which has been offered, and it completely indicates that the gentleman from Washington is opposed to wilderness of every type, make, and description, and as a result of it has rendered this section null and void" (House Hearing - H.R. 776 (87th Congress) - August 9, 1962).

The amendment was rejected. This history of the wilderness bill clearly highlights the intent of Congress in providing a singular mandate of preserving wilderness character, and managing for other purposes such as recreation only insofar as upholding the mandate to preserve wilderness character. Present-day reviewers read into other parts of the Wilderness Act interpretations that would have the same outcome as the language Representative Westland suggested. The proposed climbing policy guidance invokes the public purposes found in Section 4(b) of the Act as an equal mandate to preserving wilderness character, thus using a different tactic than Representative Westland, but having the same affect that was condemned by Representative Saylor and rejected by the Congress. This tactic will be used for many other activities in the future, the endpoint for its application and impact unknown, but the result a weakening of the Wilderness Act.

The "purpose" of the Wilderness Act is the preservation of wilderness character. Courts have affirmed the Act's "purpose" is not to be confused with "public purposes" described in Section 4(b) of the Act. One court carefully described the purpose of the Act as "securing the benefits of an enduring wilderness" by inserting that purpose, described in Section 2(a) of the Act, into the Section 4(c) exception to prohibited uses reading "except as necessary to meet minimum requirements for the administration of the area for the purpose [of securing the benefits of an enduring wilderness]" (Wilderness Watch v. Creachbaum, (W.D. Wash., 2016)). Securing the benefits of an enduring wilderness is achieved by preserving the area's wilderness character. Another court more directly stated "[t]he 'overarching purpose' of Congress in passing the Wilderness Act was to preserve the 'wilderness character' of that land" (Wilderness Watch v. Vilsack (D. Idaho, 2017)).

Rather than focusing on the preservation of wilderness character, the proposed climbing policy would seek to allow fixed anchors, an installation prohibited by Section 4(c) of the Act, by considering it as a public purpose, and making that public purpose equal with the preservation of wilderness character. In other words, the allowance for the prohibited use would be based upon fixed anchors being necessary for a recreational purpose and then only subject to some form of minimization. The proposed policy does not explicitly invoke the public purposes, but employs this arrangement nonetheless.

Though rock climbing may be consistent with wilderness in many of its forms, the proposed policy contemplates developing or enhancing rock climbing through the use of fixed anchors, an installation prohibited by Section 4(c) of the Act. A parallel topic for consideration is that just as existing trails, also an installation, may be retained in wilderness (retention preserves the degree of primitive recreation available upon designation by Congress), existing climbing routes with their fixed anchors may also be retained (as it is also consistent with preserving the degree of primitive recreation available upon designation by Congress). However, just as the construction of a new trail would be a new installation, the establishment of a new climbing route with fixed anchors would be a new installation(s). In either case, the justification purely on the terms of enhancing recreational opportunities, which the proposed policy promotes, is not an outcome consistent with the Wilderness Act. One court concluded that "[no] particular activity is endorsed by the Wilderness Act, nor is the enhancement of any particular recreational potential a necessary duty of wilderness area management…the wilderness that the Act seeks to preserve is not defined by reference to any particular recreational opportunity or potential utility, but rather by reference to the land's status or condition as being 'Federal land retaining its primeval character and influence, without permanent improvements or human habitation" (High Sierra Hikers v. U.S.F.S (E.D. Cal. 2006)).

A Catch 22 situation exists where the proposed policy suggests fixed anchors will be allowed, but the MRA process to make that determination would not allow it. Section 2355.32 2. of the draft climbing policy states that a Minimum Requirement Analysis (MRA) is the method for analyzing the placement or replacement of fixed anchors. This section calls for a determination as to whether fixed anchors, "facilitate primitive or unconfined recreation or otherwise preserve wilderness character." This section creates the expectation that the placement of fixed anchors is normally compatible with a wilderness designation, and that a Minimum Requirement Analysis will bear that out. However, Step 1 of the MRA process requires a determination of necessity for action in wilderness. Necessity is not present merely upon the desire of recreationists to facilitate or develop recreational opportunities in wilderness. Under the current MRA template, called the Minimum Requirements Analysis Framework (MRAF), the criteria under which any issue is evaluated for determining necessity is: "are any of the qualities of wilderness character degraded, impaired, or threatened to a degree that it is necessary to analyze potential action." The lack of developed climbing routes is not an issue under which wilderness is degraded, impaired, or threatened. The enhancement of any particular recreational potential is not a purpose of the Wilderness Act. Rather, its only purpose, as described in Section 2(a) is to secure an enduring wilderness through the preservation of wilderness character. The MRAF, endorsed by all four wilderness managing agencies, is written based upon this basic principle.

Resolving the climbing issue is most aligned with defining a criterion for when use of a prohibited use installation is "de minimis;" that is, "of a trifling consequence and a matter that is so small that the court does not wish to even consider it" (Black's Law Dictionary, 2nd Ed.). In this approach, fixed anchors are installations and not all fixed anchors are "de minimis." A very limited use of fixed anchors in wilderness may be "de minimis" and consequently could occur, but would only be so allowed under strict guidelines - and they would not be common. However, to make this approach feasible would require defining a criterion for when an installation, not just a climbing bolt, is "de minimis." Creating such a definition is a daunting challenge, and may not be possible. That challenge should be considered by a group of subject matter experts from all four wilderness management agencies working together rather than the Forest Service attempting this challenge on its own.

Again, thank you for the opportunity to comment. I do not take to writing this comment in opposition lightly.

However, this proposed policy constitutes a significant and serious threat to the National Wilderness Preservation System. The threat posed is equal to the treat addressed by Representative John Saylor as quoted above. I urge the Forest Service to abandon this proposed policy which is reliant on elevating the public purposes of recreation to equal importance with preserving wilderness character. Instead, I urge the Forest Service to draft a new policy consistent with the Wilderness Act and its singular mandate to preserve wilderness character.