



How the Sportsmen's Heritage and Recreational Enhancement (SHARE) Act of 2017 Undermines the Wilderness Act

An Analysis Prepared by Wilderness Watch

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“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.”

– Howard Zahniser, chief author of the Wilderness Act, in testimony on the wilderness bill

Introduction

On February 26, 2016, the U.S. House of Representatives passed HR 2406, the Sportsmen’s Heritage and Recreational Enhancement (SHARE) Act, supposedly “to protect and enhance opportunities for recreational hunting, fishing, and shooting.” A similar bill has been drafted for discussion and reintroduction in the 115th Congress. **Like its predecessor, the draft bill is a thinly disguised measure to gut the 1964 Wilderness Act and the protections for every unit of the National Wilderness Preservation System.**

The discussion draft of the SHARE Act would give hunting, fishing, recreational shooting, and fish and wildlife management top priority in Wilderness, rather than protecting the areas’ wilderness character, as has been the case for over 50 years. This bill would allow endless, extensive habitat manipulations in Wilderness under the guise of “wildlife conservation” and for providing hunting, fishing, and recreational shooting experiences. It would allow the construction of “temporary” roads to facilitate such uses and would allow the construction of dams, buildings, or other structures within Wildernesses. It would exempt all of these actions from National Environmental Policy Act (NEPA) review. Finally, the SHARE Act would remove Wilderness Act prohibitions for agency managers against motor vehicle use for any management activities related to fishing, hunting, or recreational shooting, or for any wildlife conservation activities.

Background

The Wilderness Act is widely considered America’s foremost conservation law, securing for future generations the opportunity to see and experience a piece of the Wilderness that once stretched across the entire continent, and that shaped our character as a people. It was a bipartisan masterpiece: introduced in the Senate by Hubert Humphrey, Democrat from Minnesota, and in the House by John Saylor, Republican from Pennsylvania, the wilderness bill passed Congress in 1964 with overwhelming support. The wilderness system has grown from 9 million acres in 1964 to nearly 110 million acres today, but the wilderness law itself has remained virtually unchanged. Born in America, the wilderness idea has spread to dozens of countries around the globe, yet the Wilderness Act and the National Wilderness Preservation System remain the envy of the world. Sadly, the SHARE Act would eviscerate the letter, spirit, and fundamental ideals expressed in this seminal law.

The Wilderness Act defines wilderness as “an area where the earth and its community of life are untrammelled by man...retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions.” The Act requires wilderness areas 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 [and] the preservation of their wilderness character.”¹ In order to protect wilderness areas and preserve their wilderness character, the Act prohibits commercial enterprise and permanent roads, and “*except as necessary to meet minimum requirements for administration for the purpose [wilderness preservation] of this Act*” it states “there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.”²

The SHARE Act strikes at the heart of these Wilderness Act provisions. Whereas the Wilderness Act seeks to preserve areas untrammelled by man, where the *forces of nature* are in control, the SHARE Act puts the utilitarian, nature-modifying desires of various managers (such as fish and game or wildlife managers) and the special interests they respond to in charge. Whereas the Wilderness Act prohibits the use of motorized vehicles or equipment and the building of roads and other structures, the SHARE Act essentially throws wilderness areas wide open to motorized use by agency managers and a nearly unlimited variety of wilderness-damaging manipulations and developments. Wilderness, as envisioned by its founders and congressional supporters and known by generations of Americans, will cease to exist if the SHARE Act becomes law.

Specific Damage to Wilderness in the SHARE Act

• ***Motor Vehicles, Roads, and Structures.*** Section 4(c) of the 1964 Wilderness Act prohibits the use of motor vehicles, aircraft, motorboats, other mechanized transport, motorized equipment, or the building of temporary roads, structures or installations unless their use is “necessary to meet minimum requirements” for *protecting the area as wilderness*.³ Managers also must access Wilderness in the same fashion and forego the use of other developments (i.e. cabins, boat ramps, permanent camps, etc.) unless their use is the *minimum required* to preserve the wilderness resource.

The SHARE Act would significantly reduce the safeguards provided by section 4(c) of the Wilderness Act. Section 503(e)(1) of the 2017 SHARE Act discussion draft provides:

“The provision of opportunities for hunting, fishing and recreational shooting, and the conservation of fish and wildlife to provide sustainable use recreational opportunities on designated wilderness areas on Federal public lands shall constitute measures necessary to meet the minimum requirements for the administration of the wilderness area, provided that this determination shall not authorize or facilitate commodity development, use, or extraction, motorized recreational access or use that is not otherwise allowed under the Wilderness Act (16 U.S.C. 1131 et seq.), or permanent road construction or maintenance within designated wilderness areas.”

¹ Public Law 88-577, Sec. 2(c). See also 16 U.S.C. 1131(c).

² Public Law 88-577, Sec. 4(c). See also 16 U.S.C. 1133(c).

³ Section 4(d)(1) of the Wilderness Act provides an exception allowing for the public use of motorboats or aircraft at the discretion of the managing agency where these uses have already become established at the time of designation.

The SHARE Act constitutes a complete departure from wilderness law. It declares any activity relating to hunting, fishing, recreational shooting, or fish and wildlife conservation “shall constitute measures necessary to meet the minimum requirements for the administration of the wilderness area.” Thus, any manager engaged in any activity related to wildlife conservation, is exempted from the Wilderness Act’s section 4(c) prohibitions. Moreover, managers could build hunting blinds, cabins, target ranges, airplane landing strips or helicopter landing pads, build fishing ponds, construct dams on rivers or streams, build temporary roads or any structure or installation that could be rationalized as facilitating opportunities for hunting, fishing, shooting, or conserving fish or wildlife. The only limitation in the SHARE Act on motor vehicle use or development is that the activity must be related to hunting, fishing, shooting, or wildlife conservation, though that need not be its only or even its primary use. In reality, almost any management activity could be shoehorned into one these exceptions and thereby be exempted from Wilderness Act safeguards.

Simply put, Section 503(e)(1) of the SHARE Act would render meaningless many of the prohibitions in the Wilderness Act.

• ***Endless Manipulations of “Primeval Character and Natural Conditions.”*** The central tenet of the 1964 Wilderness Act is to preserve some areas unmodified and uncontrolled by humans: “where the earth and its community of life are *untrammelled* by man.”⁴ Howard Zahniser, who wrote the Wilderness Act, put it this way: “The idea within the word ‘Untrammelled’ of...not being subjected to human controls and manipulations that hamper the free play of natural forces is the distinctive one that seems to make this word the most suitable one for its purpose within the Wilderness Bill.”⁵ In testimony before Congress, Zahniser spoke directly to the issues raised by the SHARE Act:

“All uses of wilderness areas for such purposes as wildlife conservation and watershed protection that are not inconsistent with preservation of the wilderness should be encouraged...In no such areas which are parts of the national wilderness preservation system, however, should management for any purpose be permitted to include the modification of the wilderness character of the area. Management for wildlife could, to continue this example, involve exclusion of recreational use to such extent as might seem necessary, but should not include the installation of water-control or other structures modifying the wilderness, even though these might be deemed to be measures to increase the area’s wildlife.”⁶

Sec. 503(e)(2) of the SHARE Act discussion draft would waive *any requirements* imposed by the Wilderness Act for any activity deemed to be undertaken in the name of wildlife management or for providing recreational opportunities related to wildlife. The 2017 SHARE Act discussion draft provides that:

⁴ Public Law 88-577, Sec. 2(c). See also 16 U.S.C. 1131(c).

⁵ Howard Zahniser letter to C. Edward Graves, Apr. 25, 1959, Wilderness Society Files.

⁶ Hearings before the Committee on Interior and Insular Affairs, United States Senate, Eighty-Fifth Congress, on S. 1176, June 19 and 20, 1957.

“Provisions of the Wilderness Act (16 U.S.C. 1131 et seq.), stipulating that wilderness purposes are ‘within and supplemental to’ the purposes of the underlying Federal land unit are reaffirmed. When seeking to carry out fish and wildlife conservation programs and projects or provide fish and wildlife dependent recreation opportunities on designated wilderness areas, the head of each Federal agency shall implement these supplemental purposes so as to facilitate, enhance, or both, but not to impede the underlying Federal land purposes when seeking to carry out fish and wildlife conservation programs and projects or provide fish and wildlife dependent recreation opportunities in designated wilderness areas, provided that such implementation shall not authorize or facilitate commodity development, use or extraction, or permanent road construction or use within designated wilderness areas.”

Almost anyone who visits Wilderness is involved in wildlife-related recreation, whether they are pursuing wildlife with a camera, binoculars, rifle, bow, or simply hoping to observe wildlife or its tracks along the way. Under the SHARE Act, managers would be freed of *any requirements* imposed by the Wilderness Act for any management activity they choose to carry out that is designed in whole or in part to provide recreational opportunities for these visitors. This would allow managers the unrestricted use of motor vehicles and aircraft and the unrestricted ability to construct buildings, cabins, or any other development for recreational use. “Temporary” roads could be built for the convenience of managers for carrying out any of these purposes for as long as those managers might want them.

Even more threatening to the Wilderness Act’s central tenet to preserve *wilderness character* is combination of section 503(e)(1) and section 503(e)(2), which would allow any sort of wildlife habitat manipulation that managers desire to do. It would allow logging, chaining, roller-chopping⁷, or bulldozing forests and other vegetation to create more forage for deer, elk, or other game species, as long as those activities were done for habitat purposes and not commercial commodity extraction. Reservoirs and watering holes could be bulldozed for bighorn sheep or mule deer, or to create fish ponds or duck ponds. Lakes and streams could be poisoned, and exotic fishes could be planted to provide more angling opportunities. Predator control, including aerial gunning, trapping, and poisoning, would be allowed. The focus on game species from management activities will likely lead to declines in non-game species and biodiversity. “Temporary” roads could be bulldozed into Wilderness as long as there was some stated intent to remove them at some later date. There is literally no limit to what managers could do in Wilderness in the name of wildlife management or of providing opportunities for recreational hunting, fishing, and shooting.

While the authors of the SHARE Act have attempted to downplay its impacts on Wilderness by saying it merely “interprets” the Wilderness Act, in reality, it effectively repeals the protections in the Act. It flies in the face of a foundational principle of the Wilderness Act, that in some places nature will be allowed to reign.

⁷ Chaining and roller-chopping are just two of many ways in which bulldozers or other large equipment are used to destroy vast swaths of vegetation (i.e. pinyon-juniper forests, sagebrush, or other brushlands) in order to grow a forage crop.

• ***Waiving Environmental Review.*** As the Congressional Research Service pointed out regarding the 2012 version of the SHARE Act, because Section 503(c) of the bill bars application of the National Environmental Policy Act (NEPA), none of these activities will need to undergo environmental review for their impacts on wilderness values or wildlife.⁸ Viewed another way, not only will Wilderness lose the protections afforded it by the Wilderness Act, it will not even receive the protections, analysis of less damaging alternatives, or public involvement afforded to other public lands by NEPA. The agencies will not be required to examine alternatives, environmental impacts will not be analyzed, and the public will not be allowed to comment on the proposals.

Conclusion

The wilderness provisions in the SHARE Act significantly weaken the Wilderness Act in many important ways. These provisions strike at the heart of the Wilderness Act's primary purpose, and would allow damaging manipulations to occur in every Wilderness in the nation if managers could concoct some connection to fish and wildlife management, or recreation connected to fish and wildlife. Taken in combination, the provisions in the SHARE Act would completely undermine the protections that wilderness designation should provide, and dramatically weaken wilderness conservation for the entire 110 million-acre National Wilderness Preservation System. These wilderness provisions in the SHARE Act must not be enacted into law.

⁸ Congressional Research Service Memorandum to Rep. Martin Heinrich, Re: H.R. 4089 Section 104(e) and Its Impacts on Wilderness Management, Apr. 13, 2012.