



# **How the Sportsmen's Heritage Act of 2012 (HR 4089) Would Effectively Repeal the Wilderness Act, America's Foremost Conservation Law**

**An Analysis Prepared by Wilderness Watch**

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## **How the Sportsmen’s Heritage Act of 2012 (HR 4089) Would Effectively Repeal the Wilderness Act, America’s Foremost Conservation Law**

*“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 April 17, 2012, the U.S. House of Representatives passed HR 4089, the Sportsmen’s Heritage Act, supposedly “to protect and enhance opportunities for recreational hunting, fishing, and shooting.” **But the bill is a thinly disguised measure to gut the 1964 Wilderness Act and protections for every unit of the National Wilderness Preservation System.**

HR 4089 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 nearly 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 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, HR 4089 would remove Wilderness Act prohibitions against motor vehicle use for fishing, hunting, or recreational shooting, or for wildlife conservation measures.

### **Background**

The Wilderness Act is widely considered America’s foremost conservation law. 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 with nearly unanimous support--only one dissenting vote in the House and 12 in the Senate. 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, HR 4089 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.”<sup>1</sup> 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.”<sup>2</sup>

HR 4089 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, HR 4089 puts the utilitarian, nature-modifying desires of 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, HR 4089 essentially throws wilderness areas wide open to motorized use and a nearly unlimited variety of wilderness-damaging developments. Wilderness, as envisioned by its founders and congressional supporters and known by generations of Americans, will cease to exist if HR 4089 becomes law.

### Specific provisions in HR 4089

• **Motor Vehicles, Roads, and Structures.** HR 4089 would significantly reduce the safeguards provided by section 4(c) of the Wilderness Act. Section 104(e)(1) of HR 4089 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.”

Section 4(c) of the 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*. Visitors to Wilderness are welcome to hike, ride horseback, paddle a canoe, row a raft, or access Wilderness in a variety of other non-motorized or non-mechanized ways. They are not allowed to use motor vehicles, build roads or any other structures, or engage in other activities prohibited by this provision.<sup>3</sup> 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.

HR 4089 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 visitor engaged in hunting, angling, recreational shooting, or any manager engaged in any activity related to wildlife conservation, is exempted from the Wilderness Act’s section 4(c) prohibitions. Any hunter, angler, or recreational shooter could drive their ATV in Wilderness as long as he/she is engaged in one of those activities. Moreover, managers could

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

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

<sup>3</sup> 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.

build hunting blinds, cabins, target ranges, airplane landing strips or helicopter landing pads, build fishing ponds, dam 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 HR 4089 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 recreational activity or management activity could be shoehorned into one these exceptions and thereby be exempted from Wilderness Act safeguards.

Simply put, Section 104(e)(1) of HR 4089 would render meaningless the prohibitions in the Wilderness Act.

• ***Endless Manipulations of “Primeval Character and Natural Conditions.”*** Sec. 104(e)(2) of HR 4089 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. HR 4089 provides that:

“The term ‘within and supplemental to’ Wilderness purposes in section 4(a) of Public Law 88-577, means that any requirements imposed by that Act shall be implemented only insofar as they do not prevent Federal public land management officials and State fish and wildlife officials from carrying out their wildlife conservation responsibilities or providing recreational opportunities on the Federal public lands subject to a wilderness designation.”

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 along the way. Under HR 4089, 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 to these visitors. This would allow managers unrestricted use of motor vehicles and aircraft and the unrestricted ability to construct buildings, cabins, or any other development for recreational use. Permanent roads could be built for the convenience of federal and state managers for carrying out any of these purposes.

Even more threatening to the Wilderness Act’s central tenet to preserve *wilderness character* is section 104(e)(2) would allow any sort of wildlife habitat manipulation that managers desire to do. It would allow logging, chaining, roller-chopping, or bulldozing forests and other vegetation to create more forage for deer, elk, or other game species<sup>4</sup>. 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. 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.

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<sup>4</sup> 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.

These provisions strike at the heart of the Wilderness Act and its foundational underpinnings to preserve an untrammeled wilderness. Howard Zahniser, who wrote the Wilderness Act, put it this way: “The idea within the word ‘Untrammeled’ 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.”<sup>5</sup> In testimony before Congress, Zahniser spoke directly to the issues raised by HR 4089:

“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.”<sup>6</sup>

While HR 4089 attempts to downplay its impacts on Wilderness by saying it merely “interprets” the Wilderness Act, in reality, it effectively repeals the protections in the Act.

• ***Waiving Environmental Review.*** As the Congressional Research Service points out, because Section 104(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.<sup>7</sup> Viewed another way, not only will Wilderness lose the protections afforded it by the Wilderness Act, it will not even receive the protections afforded to other public lands by NEPA.

• ***House Amendment does NOT Address Problems with HR 4089.*** The House floor manager of the bill, Natural Resources Committee Chair Doc Hastings (R-WA), added an amendment during floor debate that he claimed would maintain Wilderness protections against commodity development or motorized recreation use. But it does not. The Hastings amendment only says that the bill’s provisions “are not *intended* to authorize or facilitate commodity development, use, or extraction, or motorized recreational access or use”<sup>8</sup> (emphasis added) but in fact they do. Tellingly, Rep. Hastings led opposition to an amendment by Rep. Martin Heinrich (D-NM) that would have explicitly protected Wilderness in this bill from those named uses.<sup>9</sup> Yet, even if the Hastings amendment were to achieve its claimed *intent*, the vast majority of significant, wilderness-damaging provisions in HR 4089 would still eviscerate the Wilderness Act.

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

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

<sup>7</sup> Congressional Research Service Memorandum to Rep. Martin Heinrich, Re: H.R. 4089 Section 104(e) and Its Impacts on Wilderness Management, Apr. 13, 2012.

<sup>8</sup> HR 4089, Sec. 104(e)(3).

<sup>9</sup> The full text of the amendment proposed by Rep. Heinrich read: “Nothing in this Act shall be construed to allow oil and gas development, mining, logging, or motorized activity on Federal public land (as defined in section 103) designated or managed as wilderness.” Cong. Rec. House – April 17, 2012, p. H1888.