



Testimony submitted in writing.

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Subcommittee on Federal Lands (Chairman Tom McClintock, Ranking Member Colleen Hanabusa)
Committee on Natural Resources
U.S. House of Representatives

Legislative Hearing on H.R. 1349
Washington, D.C., December 7, 2017

Good afternoon, Chairman McClintock, ranking member Hanabusa, and subcommittee members.

I'm Ted Stroll, president of the Sustainable Trails Coalition. We founded STC to restore the Wilderness Act of 1964 to its two original purposes: conservation and rugged, self-reliant recreation. Chairman McClintock's bill, H.R. 1349, will accomplish this.

In Wilderness, federal agencies allow human-powered land travel only on foot. Travel using bicycles, adaptive cycles, baby strollers, hunters' game carts, and anything else that's human-powered but has a wheel is forbidden.

This uniform management practice misreads the Wilderness Act of 1964, in which Congress earmarked the National Wilderness Preservation System for conservation and "a primitive and unconfined type of recreation"—recreation that was to be nonmotorized and self-powered, but was not limited to walking.

The nation's federal trails system is heavily impacted by these erroneous agency rules against human-powered travel. In Colorado, more than 80 percent of all roadless federal land is Wilderness. About 15 percent of the entire land area of California—not just of public lands, but of the whole state—is Wilderness. Because of the agencies' Wilderness bicycling bans, mountain biking is prohibited in a number of areas around Lake Tahoe, in the state's far north, throughout the Sierra Nevada, within two or three hours' drive from the Bay Area and the Los Angeles basin, and in San Diego County. Similar situations exist in every western state.

The Wilderness Act of 1964 is a conservation landmark and is not the problem. The Act valuably set aside scenic public lands for nonmotorized visitors and celebrated the recreational opportunities they would experience. Congress wanted to preserve roadless areas as Wilderness and maintain trails in them to encourage intrepid visitors to see wild places under their own power.

The Act prohibits “mechanical transport” (16 U.S.C. § 1133(c)), but its legislative history reveals that by this language Congress meant to forbid people being passively transported by mechanized conveyances like wagons and ski lifts. Following subcommittee and committee hearings in June 1964, the House of Representatives reduced draft language forbidding “any other mechanical transport or delivery of persons or supplies” to “no other form of mechanical transport,” the language now found in 16 U.S.C. § 1133(c). But this amendment did not widen the prohibition. Rather, the intent of the original “transport or delivery of persons or supplies” language remained following the simplification. The historical record establishes this point: a member of Congress explained to the House Committee on Interior and Insular Affairs that the clause was being amended “solely for the purpose of clarification. The substance and intent of the original language and of the substitute language are the same.” (Statement of Representative Baring, on June 18, 1964, in an unpublished report on a hearing to Establish a National Wilderness Preservation System etc., House of Representatives, 88th Cong., 2d Sess. (1964) 121, 131.)

In other words, Congress did not mean to prohibit people from moving *themselves* about entirely under their own power, even if they relied on ancillary mechanical (but nonmotorized) devices, like a bicycle, to do this. In general, Congress meant to exclude roads, permanent infrastructure, and motors, not human-powered visitors who leave no permanent trace. Thus, H.R. 1349 does not materially amend the Wilderness Act of 1964. Rather, it restores the Act to its original meaning.

Two years after the Act passed, in 1966, the Forest Service correctly interpreted the Act's recreation language to allow all forms of human-powered travel. (36 C.F.R. § 293.6(a).) That regulation remains in the Code of Federal Regulations but is

disregarded. The agency prefers a conflicting regulation it finalized in 1984 whose effect is to limit overland travel to horse-riding and limited forms of walking and specifically bans bicycling. (36 C.F.R. § 261.18(b).) The National Park Service and Bureau of Land Management have adopted the same regimen. (36 C.F.R. § 4.30(d)(1); 43 C.F.R. § 6302.20.)

For reasons unknown, the drive to impose severe restrictions on public access to Wilderness began in or about 1977. Key legislative backers of the Act responded with alarm. In that year, the renowned conservationist legislators Representative Morris K. Udall and Senator Frank F. Church warned that Forest Service interpretations of the Wilderness Act of 1964 were draconian and ran counter to congressional intent.

Representative Udall warned against “stringent ‘purity’ criteria” that have “led to public opposition to wilderness proposals based on what is, and what is not, perceived to be . . . permissible in wilderness areas . . .” Senator Church likewise said, “agencies are applying provisions of the Wilderness Act too strictly and thus misconstruing the intent of Congress as to how these areas should be managed.” He also said, “If Congress had intended that wilderness be administered in so stringent a manner, we would never have written the law as we did.”

Despite these admonitions, the Forest Service maintained and added unwarranted restrictions, including restrictions on its own ability to maintain Wilderness trails. (Quixotically, the Forest Service forbids its own workers to routinely use wheelbarrows and chainsaws for trail maintenance.)



A dilapidated, almost invisible trail in the Aldo Leopold Wilderness, near Silver City, N.M. (Photo dated May 2011.)

As a result, many Wilderness areas are languishing. The nation’s oldest Wilderness, the Gila Wilderness in New Mexico, is almost as large as Rhode Island. In 2012 a backpacker reported, “We have encountered trails that disappear, trails overgrown with stinging plants that ripped into our clothes and flesh, trails covered by miles of sizable deadfall that got too slow and tedious to go on. . . . Unpredictable trail conditions may turn hikers back and can be particularly hazardous when attempting a loop.” (*The Taos News*, April 29, 2012.)

We do not believe that the intent of the Wilderness Act was to make these areas inaccessible.

As for “mechanical transport,” events on the ground have gone astray from Congress’s intent. One of our supporters met a Forest Service ranger who said she



A boundary sign at the Oregon Badlands Wilderness east of Bend, Ore.: No baby strollers, bicycles, or game carts.

“had to kick some young parents with a [baby] stroller off of a trail in the wilderness earlier in the week because it was a ‘wheeled, mechanized device.’ ” Our supporter commented, “I was sorry to hear this forest service ranger proclaim (almost proudly) that she had stopped somebody with a stroller.”

In addition, federal agencies increasingly are banning bicycles in the vast acreage of Wilderness Study Areas and so-called “recommended Wilderness,” i.e., places that the agencies think could become Wilderness someday. Administrative creation of de facto Wilderness areas is having devastating effects in Montana. “Unfortunately, over the last five years, nearly 800 miles of trail in Montana have been closed or are at risk of being closed to bikes. During their Travel Planning, the National Forests in Montana have implemented a new policy that wilderness study areas and recommended wilderness areas will be managed as wilderness when it comes to bikes.” ([http://www.savemontanatrails.com/.](http://www.savemontanatrails.com/))

Montana is not alone in this regard. In Colorado, the Forest Service and BLM are banning bicycling in vast tracts of land they have identified as Wilderness-eligible. The BLM forbids mountain biking in Wilderness Study Areas in the San Juan mountain range. The Rio Grande National Forest warns mountain bikers, “Besides the La Garita, Weminuche and South San Juan Wilderness Areas”—each of which is enormous—“nearly the entire Sangre de Cristo Range” is “under consideration for inclusion in the National Wilderness System and [is] currently being managed as wilderness. Therefore all wilderness closures apply” (Source: 1996 Rio Grande National Forest map.) Unhappy will be the mountain biker who would like to explore the Rio Grande National Forest’s most scenic areas extensively.

For me and tens of thousands of cyclists, riding a bicycle on dirt trails is a lifelong passion. It’s an exhilarating, fantastic way to see America’s wild places. Mountain biking offers great physical and psychological benefits.

Wilderness started out small in 1964. It’s now larger than the entire land area of California. Thus, bicycles, strollers, and any human-powered wheeled conveyance are banned in an area larger than all of California, for no environmental reason. If people are serious about conservation, they should support managing Wilderness by human-caused impacts, not some other value of personal preference or convenience that often fits neatly with what those individuals like do to in Wilderness.

H.R. 1349 doesn't give bicycling a blanket permit. It ends the antiquated blanket bans, but stops there. It leaves in place regulations that let local forest and park supervisors decide who can be on a particular Wilderness trail. This was the Forest Service's own rule from 1981 to 1984. (Former 36 C.F.R. § 257(h).)

To be sure, the language of H.R. 1349, in its current iteration, does not allude to such discretion. It provides, in its entirety:

“Section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)) is amended by adding at the end the following: ‘Nothing in this section shall prohibit the use of motorized wheelchairs, non-motorized wheelchairs, non-motorized bicycles, strollers, wheelbarrows, survey wheels, measuring wheels, or game carts within any wilderness area.’”



An adaptive cyclist navigates a rugged trail near Crested Butte, Colo., an activity disallowed in Wilderness areas.

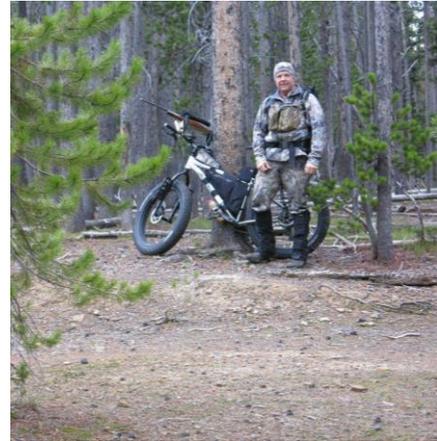
With this language, however, H.R. 1349 merely puts mountain bikers on the same footing as campers, hikers, hunters, and equestrians in terms of federal agency authority to set conditions on cyclists' use of trails in Wilderness. The Sustainable Trails Coalition would welcome additional language that would make clear adaptive cyclists, including disabled veterans, may use Wilderness trails if the local forest or park supervisor permits it.

To get a sense of H.R. 1349's effects, one need only look at current management authority. Nothing in the Wilderness Act of 1964 prohibits camping, hiking, hunting, and horse riding. The agencies, however, retain full authority to, e.g., prohibit camping by certain lakes, allow hunting only in season, or prohibit hiking if a trail is damaged or it would disrupt a species migration. Authority over mountain biking would be no different.

To be precise, a Forest Service regulation provides: “The Chief, each Regional Forester, . . . and each Forest Supervisor may issue orders which close or restrict the use of any National Forest System road or trail within the area over which he has jurisdiction.” (36 C.F.R. § 261.50(b).) The other Wilderness-administering agencies—the National Park Service, Bureau of Land Management, and U.S. Fish & Wildlife Service—have similar authority. (36 C.F.R. § 1.5(a)(1), (2) [National Park Service may “close all or a portion of a park area to all public use or to a specific use or activity” and “Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity”]; 43 C.F.R. § 6302.19 [Bureau of Land Management may prohibit or limit uses to protect Wilderness]; *id.*, § 8364.1 [Bureau

of Land Management may “close or restrict use of designated public lands” to protect them]; 50 C.F.R. § 35.2(b) [U.S. Fish and Wildlife Service authorized to protect Wilderness character]; *id.*, § 35.6(a) [U.S. Fish and Wildlife Service may restrict visits to Wilderness].)

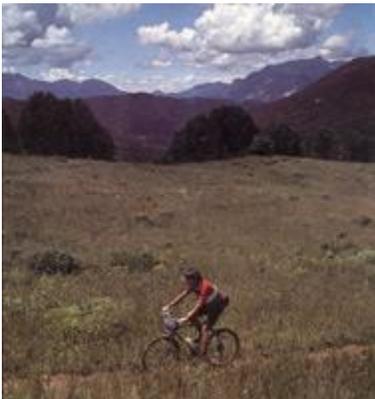
These provisions provide ample authority to restrict and regulate mountain biking. Many trails undoubtedly would be designated off-limits to mountain biking. It’s unlikely mountain biking will be allowed on the most popular trails in the more popular national parks, for example. On other trails, mountain biking might be allowed only on weekdays, in the less popular visiting seasons, or on alternate days.



Hunter with mountain bike.

Here are examples, two among many, of the problems the agencies’ restrictions have created.

Colorado is the world capital of mountain biking. In 2000, the Colorado Department of Transportation estimated that cycling added more than \$1 billion to Colorado’s economy. Anecdotal evidence buttresses the state government’s evaluation. The economies of counties like Chaffee, Gunnison, and Summit depend materially on mountain biking tourism. The route from Denver to Gunnison on Friday afternoons contains a stream of cars bearing high-quality mountain bikes, and it can be hard to find a motel room in Salida or Gunnison on any snow-free weekend, even after Labor Day. Other counties, like Boulder, have throngs of resident mountain bikers whose passion for mountain biking generates notable economic activity and huge physical fitness benefits.



An adventurer bicycles in the West Elk Wilderness near Crested Butte, Colo., in 1983, before the bicycle bans took final effect.

And yet federal bicycle prohibitions—in both existing Wilderness and in areas federal agencies are managing as if they were Wilderness—have a deadening effect on mountain biking in Colorado. Mountain bikers resist these, as showed by the battle over the Hidden Gems Wilderness proposal. But over time, the trail losses constitute death by a thousand cuts.

Mountain biking is prized in North Dakota too, but the same rules taint the Maah Daah Hey Trail’s status as one of America’s great regional trails. Nationwide, the



Mountain biking on the Maah Daah Hey Trail in Little Missouri National Grassland, North Dakota. This well-preserved section is maintained by volunteer mountain bikers.

Maah Daah Hey Trail is the longest Forest Service trail that allows bicycling. It runs from near Watford City to Medora. Its 144-mile tour of western North Dakota's badlands draws visitors from around the U.S and Canada and benefits the local economy.

Some 70 percent of Maah Daah Hey Trail visitors are mountain bikers. The International Mountain Bicycling Association says: "The Maah Daah Hey is a true shared-

use trail, enjoyed by hikers, equestrians and cyclists, and is one of the jewels of North Dakota open space. As it follows the Little Missouri, the trail blends difficult climbs up the bentonite buttes with challenging downhills. Beautiful vistas of the river-cut valley abound."

But two portions of the Maah Daah Hey Trail, one of them tiny, run through the Roosevelt Wilderness in the widely separated northern and southern units of Theodore Roosevelt National Park. National Park Service rules disallow bicycles inside Wilderness and, with rare exceptions, on trails outside of Wilderness too. The NPS sternly commands, "Bicycles cannot be carried or walked over the [Maah Daah Hey] trail; they must go around the park." Moreover, says the NPS, "Bikers should exercise caution as they ride in the park; they will share the narrow roads with large RVs and other vehicles." (<https://www.nps.gov/thro/planyourvisit/bicycling.htm>.) Hence, cyclists have to truncate their once-in-a-lifetime adventure and risk their safety in the bargain, reducing the Maah Daah Hey Trail's appeal. It's a prime example of the absurdity of these outdated bicycle prohibitions.

H.R. 1349 would let the park superintendent open the Maah Daah Hey Trail to bicycle riding if she wants to. We think it would benefit the National Park Service, because mountain biking is environmentally benign and introduces younger people to the outdoors. Meanwhile, a local observer reported that the segment in the Theodore Roosevelt National Park north unit Wilderness area hadn't been maintained for at least four years and was overgrown. Volunteer mountain bikers maintain most of the Maah Daah Hey Trail for all users and the government, but are understandably loath to maintain sections they can't ride.

Mountain bikers are united on bicycle access in Wilderness. A survey of more than a thousand cyclists on the popular media outlet Singletracks.com indicated that 96 percent of mountain bikers support this effort. An International Mountain Bicycling Association survey conducted in 2016 showed that in California, with its many Wildernesses, about half of IMBA members feel regaining some Wilderness access is "very or extremely important." Nationwide, only a handful of mountain bikers,

whether or not IMBA members, are actively opposing bicycling in Wilderness. Unanimity is impossible to obtain in any large population, and among the likely hundreds of thousands of mountain bikers nationwide, outliers can be expected.



A commercial pack outfitter improperly leads his pack string off the trail in the Bridger Wilderness near Pinedale, Wyo.

Subcommittee members may hear assertions that H.R. 1349 is dividing the conservation community. Not so. Predictably, there will be opposition to H.R. 1349. It will come from the Wilderness industry, an enterprise comprising people with strong ideological opposition to human activity in public lands, commercial pack outfitters, and organizations that raise money by scaring people that Congress will

abolish Wilderness or dilute it out of all recognition. The latter are almost certain to tell the gullible that H.R. 1349 is part of that ultimate goal. Other privileged users of public space assert that whatever they do in Wilderness (high-impact camping, off-trail use, nocturnal disturbance of animals, trail damage, trampling of meadows, etc.) is compatible with Wilderness values but mountain biking isn't. For-profit commercial pack train operations in particular damage iconic Wilderness areas, yet their owners can be expected to oppose H.R. 1349 on specious grounds that bicycling is environmentally harmful or necessarily intrusive. But Congress meant for rugged, self-reliant travel to define the Wilderness experience, and human-powered mountain biking fits right in.



Trail damage in the Bridger Wilderness from improper use and poor maintenance.

We think our opponents' real fear is not that reform will fail, but that it will succeed. If limiting Wilderness travel to methods available in Biblical times ends, the result will be better-managed Wilderness, maintained by volunteers who are currently excluded from the Wilderness country club. That will make the opponents' cries of wolf look foolish.

Under the administrative access restrictions, Wilderness has become a preserve largely for a select few, set aside notably for those rich in time or money. The situation is similar to one Chairman McClintock described in 2011: in the "eras of Norman and Plantagenet England, the Crown declared one third of the land area of Southern England to be the royal forest, the exclusive preserve of the monarch, his forestry officials and his favored aristocrats. The people of Britain were forbidden access to and enjoyment of these forests under harsh penalties. This exclusionary system became so despised by the people that in 1215, five clauses of the Magna

Carta were devoted to redress of grievances [concerning lack of access]”
([https://mcclintock.house.gov/newsroom/speeches/the-royal-forests.](https://mcclintock.house.gov/newsroom/speeches/the-royal-forests))

In sum, there is no divide among reasonable conservationists. After all, what can be more logical than regulating public land use by environmental impact? Resistance comes from those unwilling to share Wilderness with mountain bikers and other innocuous human-powered users.

Top-down prohibitions were issued decades ago, when mountain biking was new and little understood. They remain frozen in place. It’s time to let local land managers regulate human-powered travel. We mountain bikers—tens of thousands of us—are grateful to the subcommittee for your interest in resolving this long-neglected problem. Thank you.