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US Forest Service
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RE: Public Comment, U.S. Forest Service, Proposed Forest Service Manual (FSM) 2355, Climbing Opportunities

“...Fishing, skiing, and other winter sports, hunting, mountain climbing, nature observation and photography, hiking, boating, pack tripping, horseback-riding...these things have become part and parcel of our way of living. Realization of the value of all this to America has brought about a change of attitude on the part of the citizenry. From thinking of our great outdoors as something to be conquered, we have been shifting to the idea that it is something to be cherished and preserved.” ---Howard Zahniser, author of the Wilderness Act of 1964, Hearing before the Committee on Interior and Insular Affairs, United States Senate, 85th Congress, 2nd Session, on S.4028, July, 23, 1958

The American Alpine Club (“AAC”) appreciates the opportunity to provide comments for the USFS Proposed FSM 2355 Climbing Opportunities Manual. Alpine climbing, mountaineering, and rock climbing attract many of the AAC’s 26,000+ members nationwide to climb and enjoy the Wilderness resources in the U.S. Forest Service (“USFS”) system, as well as in National Park Service (“NPS”), Bureau of Land Management, and U.S. Fish and Wildlife managed areas. The AAC and its membership, and climbers more generally, have engaged in the protection and stewardship of Wilderness resources, with many contributing to the idea of “wilderness” protection prior to the Wilderness Act of 1964. The AAC supports the collaborative management of the ecological, cultural, and natural

resources of Wilderness Areas, especially as more people recreate in the outdoors and the population of climbers continues to grow. The AAC looks forward to the continuing work with the USFS to steward these important resources for generations to come.

I. The American Alpine Club

The AAC is a 501(c)(3) non-profit organization based in Golden, Colorado, with over 26,000 members nationally. Founded in 1902 to support the research and exploration of mountainous regions, the AAC remains committed to supporting the climbing and human-powered outdoor recreation communities over a century later. Grounded in community and location, the AAC's mission is to share and support members' passion for climbing and respect for the places they climb. Through education, community gatherings, stewardship, policy, advocacy, and support of scientific research, the AAC strives to build a united community of competent climbers and healthy climbing landscapes.

II. Fixed Anchors

A. Novel Interpretation. Since the enactment of the Wilderness Act of 1964 (“the Act”) the responsible placement, maintenance, and removal of fixed anchors within designated Wilderness Areas has been intrinsic to the recreational climbing experience of Wilderness. Guided by an ethos of maintaining wilderness character, climbers and other recreationalists have utilized fixed anchors in accordance with the Act with an understanding that fixed anchors or fixed equipment should be rare in wilderness. In fact, in many locations recreational climbing and the use of fixed anchors commonly occurred before an area's designation as Wilderness, and in such cases climbing has routinely been viewed as a core “public purpose” for which an area's Wilderness designation has been based. Moreover, for more than 60 years climbing, and a climber's use of fixed anchors in Wilderness, has been consistently guided by broadly accepted federal regulatory directives for maintaining Wilderness character. These directives have acknowledged climbers and other recreationalists responsibly utilizing fixed anchors in accordance with the Act.¹

¹ U.S. Dept. of the Interior, National Park Service, Director's Order #41: Wilderness Stewardship, May 13, 2013, pg. 15.

However, recently the agencies have adopted a novel re-interpretation of the prohibitions listed under section 4 (c) of the Act, and in doing so have unilaterally reclassified fixed anchors as prohibited installations.² It is worth noting that nowhere in the Act itself is a definition of installation offered, nor do the representative legislative histories of the Act offer that Congress intended a fixed anchor to be considered an installation. Additionally, the administrative history of the Act, descriptive of the multiple agencies' management of Wilderness through regulation or policy, has never relied on a definition of fixed anchors as an installation when making agency decisions.

In over 18,000 pages of Wilderness Act testimony and related Congressional Record discussions, climbing was cited as a reason for wilderness preservation. Installations, structures, and devices considered nonconforming to Act purposes were defined and delineated in great detail. However, fixed anchors- pitons, slings and bolts -were not mentioned once, despite ample opportunity to question climbers who attended the Act's hearings. Lack of USFS or congressional inquiry about the 1964 Act's effect upon USFS's climbing management suggests fixed anchors were endemic to mountain climbing, as a rod to fishing or a gun to hunting. Fixed-anchors' permissibility is conspicuous by absence of deliberation throughout the Act's legislative history. The Act is very explicit in that Wilderness Areas, "...shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historical use."³ Climbing is clearly a recreational use, but in many areas could also be considered "historical use" especially given areas such as USFS managed Wind River Range and Linville Gorge where climbing long predated Wilderness designation and continues as a use today.

The Administrative Procedure Act ("APA") notice and comment requirements provides several requirements an agency must comply with prior to rulemaking.⁴ In this instance it appears that the agencies involved arbitrarily and/or capriciously issued new policy which was not an issuance of "interpretative rules, general statements of policy, or rules of agency organization, procedure or practice;"⁵ This fundamentally changed the definition and understanding of what an installation is by broadening its meaning through its application to fixed anchors. As further discussed below, this arbitrary and/or capricious rulemaking radically impacts

² Proposed FSM 2355, Climbing Opportunities, section 2355.32, (14 NOV 2023).

³ 16 U.S.C. section 1133(b)

⁴ 5 U.S.C. 553(b)

⁵ *Id.*

other acts, such as the John D. Dingell Conservation, Management, and Recreation Act, where there was thought to be a clear understanding of what is and what is not an installation in accordance with the Wilderness Act.⁶ There is no evidence offered or suggested in the drafts of the agencies' reasoning behind the novel interpretation of the Act, nor was there any kind of notice-and-comment process utilized in arriving at their chosen definition which changed a 60-year understanding of what constituted an installation. This appears to be a violation of the APA, and may be a cause of action for future litigation.

B. Application. The AAC would offer that the description of fixed anchor usage found in another agency's guidance, NPS Director's Order #41 ("DO #41"), as well as the management strategies offered for fixed anchors, are consistent with the legal, practical, and philosophical purposes of the Act. That, "[t]he occasional placement of fixed anchor for belay, rappel, or protection purposes does not necessarily impair the future enjoyment of wilderness or violate the Wilderness Act" and that, "...climbing practices with the least negative impact on wilderness resources and character will always be the preferred choice" are principles found in DO #41 which resolutely precludes bolt-intensive climbing.⁷ That fixed anchors or fixed equipment should be rare in wilderness, and that some kind of authorization or administration process should be present to regulate the placement of fixed anchors or equipment are elements of DO #41 that the AAC fully supports and believes are necessary to properly steward wilderness resources in the Wilderness Preservation System.

DO #41 was the result of several years of collaborative rulemaking between climbing and recreation oriented groups, agency, and wilderness focused groups. This consensus-based process consisted of a well balanced negotiating committee that represented all the interests of the impacted groups. The AAC would suggest that if the agencies are unable or unwilling to revert to those policies outlined in DO #41 or a "DO #41-like" policy, that the negotiated rulemaking process, or other collaborative process, be utilized again to develop a suitable solution to the issue. In addition to the efficiency obtained by having all the "players" at the table working collaboratively, there would be a time and money savings in the avoidance of litigation, and a highly valuable perception of the American public that the

⁶ Public Law 116-9, 133 Stat. 580, John D. Dingell, Jr. Conservation, Management, and Recreation Act, Section 1232, Administration (12 March 2019).

⁷ U.S. Dept. of the Interior, National Park Service, Director's Order #41: Wilderness Stewardship, May 13, 2013, pg. 15.

agencies are willing to work with the people to find mutually agreeable solutions that preserve the spirit, intent, and integrity of the Wilderness Act.

III. Minimum Requirements Analysis

A. Inappropriate Tool. The Minimum Requirements Analysis (“MRA”) is a resource-intensive process which was developed for agency *administration* of public lands, rather than review of an action undertaken by a member of the public in their private capacity.⁸ MRAs must be completed by USFS personnel in order to determine, “...that the placement or replacement of fixed anchors or fixed equipment is the minimum necessary for administration of the area for Wilderness Act purposes...”⁹ The proposed MRA process, in this instance, begins with the premise that the placement of a fixed-anchor is a creation of an installation and is therefore a “prohibited use” which is a significant departure from the agency’s practice of the last 60 years. While this is certainly an appropriate tool for an agency initiated action or project analysis, it is wholly inappropriate as an evaluation tool for a privately initiated activity.

B. Implementation. Unfortunately, it is unrealistic that effective implementation of the draft manual will occur if the guidance is published in its current form. In an agency which is historically under-resourced, USFS has neither the budget nor the personnel to appropriately execute the policies set forth in the draft guidance, which includes the MRA process being applied to all fixed anchors. This most likely will resort in a “management by moratorium” scenario which is not good for Wilderness management. The North Cascades National Park (“NOCA”) is an example of moratorium based management, albeit by another agency, that does not work. Over ten-years ago NOCA instituted a moratorium on fixed-anchors in Wilderness with the intention of “engaging the public in a planning process to address climbing related issues *as time and resources allow*.”¹⁰ The proposed language in FSM 2355, utilizes nearly identical language, in regards to evaluating existing anchors stating, “Existing fixed anchors and fixed equipment may be retained pending completion of a [MRA], as funding and resources allow...”¹¹ Seemingly, in the last ten-years NOCA has found neither

⁸ USFS, Minimum Requirements Analysis, FAQs and Common Errors, 20150507, https://winapps.umn.edu/winapps/media2/wilderness/NWPS/documents/MRDG/MRA_FAQ.pdf, accessed 22 JAN 2024.

⁹ Proposed FSM 2355.32(1).

¹⁰ https://www.nps.gov/noca/planyourvisit/climbing.htm#CP_JUMP_640464 (accessed 16 JAN 2024).

¹¹ Proposed FSM 2355, Climbing Opportunities, section 2355.03 (14 NOV 2023)

the time nor the resources to address fixed anchors, thus the moratorium continues. Given the monumental nature of the tasks associated with the cataloging of fixed anchors and conducting MRAs on existing anchors, one can reasonably expect that the underfunded and understaffed USFS would not have the capacity to also administer new requests, and would use the power of moratoriums resulting in essentially a ban of fixed anchors. Similar “as available” language is echoed under the responsibilities of the District Rangers under paragraph 2355.04e(2), “As funding and resources allow, developing climbing management plans for climbing opportunities in their ranger districts for which a climbing management plan is required...”¹², and again in 2355.21-Climbing Management Plan.¹³

C. Appropriate Analysis. A collaborative local analysis which considers the individual wilderness resources, user population, climbing history, volume of use, and density of fixed anchors of a management area would be the best tool to manage fixed anchor usage. USFS recognizes the value of local climbing organizations (“LCOs”), and we strongly support the language in paragraph 2355.04e(4) which encourages the execution of cooperative agreements with LCOs and other groups to manage climbing opportunities.¹⁴ LCOs are generally an excellent resource and more than willing to augment USFS staff in the development of locally relevant and locally tailored practices and policies. As a specific example, LCOs were instrumental in aiding in the return of peregrine falcons to Yosemite National Park and supported the implementation of seasonal closures to climbing, demonstrating an astute awareness of the balance of protection and use of our climbing areas.¹⁵ Clearly, requirements concerned with the managing of fixed anchors in Coronado National Forest, Arizona, will differ from those of Tongass National Forest, Alaska, and it would be most appropriate, cost effective, and in the best interest of the Parks and LCOs to work collaboratively to locally determine fixed anchor management in accordance with the Act. This would provide a significant cost and time savings to the agency, as well as contribute to the spirit of collaboration and community ownership of the tasks associated with the management of the area.

IV. Implications

¹² *Id.* at 2355.04e(2).

¹³ *Id.* at 2355.21-Climbing Management Plan.

¹⁴ *Id.* at 2355.04e(4).

¹⁵ <https://www.accessfund.org/latest-news/brink-of-extinction-climbers-help-bring-peregrine-falcons-back-to-el-capitan> (accessed 16 JAN 2024).

A. Environmental Impact. Consider that oftentimes a fixed anchor, especially in the case of a rappel station, lessens the degree of visitor impact on the Wilderness Area and preserves wilderness character. Climbers or other recreationalists that utilize fixed anchors tend to “canalize” or channel their traffic, especially in the case of travel off of vertical objectives (rappelling), which mitigates environmental impact to the overall area. In many cases a single rappel station can facilitate the descent for multiple routes, if not all the routes, in a climbing area. Impacts are further reduced on vegetation, such as trees, which may be utilized as temporary anchor points if a fixed anchor is not available or otherwise not allowable. Fixed anchors further reduce instances of “grooving” or rope-friction induced indentations on softer rock surfaces.

B. Safety. Travel and activities in Wilderness inherently involves an element of risk.¹⁶ In rock climbing, alpine climbing, and mountaineering, climbers assume responsibility for their personal safety. Climbers mitigate risk through appropriate training, experience, and utilization of the proper gear for the climb. This does not imply that a climbing objective should be “bolted into submission” or brought down to the climber’s level, but rather that the climber should climb within their ability level and climb with the least negative impact on wilderness resources and character. However, in the case of emergency (such as injury or weather), a climber should be prepared to self-rescue, and have the ability to utilize fixed anchors to manage such a self-rescue. The proposed guidance accounts for emergency replacements of pre-existing fixed anchors, but does not consider the case of utilization of new fixed anchors for an emergency situation.

Additionally, the continued care and maintenance of existing fixed anchors in wilderness, if subjected to the draft policy, would cause significant safety concerns. As mentioned above, the agencies as a whole are generally underfunded and understaffed. While awaiting the proposed MRA procedure to be completed fixed anchors will not be receiving the care and maintenance required, except possibly in the poorly defined “emergency” context in paragraphs 2355.03(7) and 2355.32(4). This poses direct safety concerns to climbers, canyoneers, rafters, and other user groups which rely on fixed anchors for their experience of wilderness.

¹⁶ https://www.fs.usda.gov/detail/invo/learning/safety-ethics/?cid=fsbdev3_003828 (accessed 16 JAN 2024)

C. Precedent Setting. The broad application of the term installation to include fixed anchors sets a precedent to expand other terms found in the 4(c) prohibitions of the Act. As mentioned above, in the historical context of the Act there was never a consideration of fixed anchors as installations. Climbers and canyoneers who backcountry ski may now have concerns that the utilization of mechanical release skis is prohibited as a “mechanical transport” despite being excluded in current agency administration manuals and regulations.¹⁷ As we all see, definitions, especially administrative definitions, can change. There could also be a chilling effect on various activities in wilderness in general as visitors would be concerned that they are in violation of the Act through something as relatively innocuous as a child accidentally leaving behind an item, or a snagged nylon clothing item leaving trace “man made” material in the area. While this may seem a far fetched or fairly contrived idea, it stands that if the agencies plan to enforce such guidelines they would need to be enforced equally, consistently, and in a non-biased manner.

D. Creation of Division. Climbers and members of the AAC have advocated for the protection of Wilderness for more than 60 years and were advocates for the creation of the Wilderness Act itself. David R. Brower, alpinist and lifetime member of the AAC who served as the organization's Vice President from 1956-58, contributed substantially to the establishment of sound global environmental practices and the conservation of many of America’s wild landscapes. Brower is only one example of the ethic shared by many in the climbing community to conserve wilderness areas. Historically significant climbers like Rick Reese, Peter Metcalf, Yvon Chouinard, Rick Ridgway, Doug Thompkins, Royal Robbins, and many others, led the charge to protect America’s wild spaces. The draft manual, if implemented, could unnecessarily cause a division between climbers, most of whom view themselves as conservationists, and other conservation minded individuals. The proposed guidance will affect the public’s opinion of the need for conservation and have a negative and direct impact on the future of public lands. This will undermine the support from climbing communities with future Wilderness designations and inherently frustrate their ability to enjoy Wilderness experiences through primitive and unconfined recreational climbing.

¹⁷ See Forest Service Manual 2320.5(3) and 43 C.F.R. 6301.5.

Additional division could be created amongst the American public when considering past bills, such as the John D. Dingell Conservation, Management, and Recreation Act, which granted Wilderness protection to areas, claimed to preserve the right to low-impact climbing practices, including the usage of fixed anchors. This could appear to be a “bait and switch” when reading section 1232(b) RECREATIONAL CLIMBING, which provides, “Nothing in this part prohibits recreational rock climbing activities in the wilderness areas, such as the placement, use, and maintenance of fixed anchors, including any fixed anchor established before the date of the enactment of this Act.”¹⁸ Implementation of fixed anchor guidance, such as that proposed in the draft manual, will likely be divisive and create members of the American public who are no longer in support of Wilderness designation because of disdain for a system that allegedly assures a right through the law-making process, but administratively takes it away when their support for the designation is no longer needed.

E. Climbing Opportunity. The USFS’s definition of “Climbing Opportunity” is ambiguous and could be the source of unnecessary confusion.¹⁹ We would offer clarifying language such as, “A user-created or primarily user-created future or existing dispersed recreation area on NFS land...” The definition as offered could be interpreted as identifying only currently existing climbing areas as “climbing opportunities” rather than incorporating areas that have not yet been realized.

F. Restrictions Outside Wilderness. We have significant concerns with the proposed restriction of placement and replacement of fixed anchors, outside of designated Wilderness Areas, to “established climbing opportunities” found in 2355.31.²⁰ The proposed language offers very little in the way of guidance for what would be considered “extensive” or “arbitrary” placement/replacement of fixed anchors, and the limiting-language guiding the considerations are akin to the prohibitions found in the Wilderness Act. This is wholly inappropriate for non-Wilderness designated areas. Additionally, the subjectiveness of the language lends itself to misapplication by districts that may not have a strong background in climbing, or to outright abuse by land managers that do not like climbing. We would encourage a more collaborative approach

¹⁸ Public Law 116-9, 133 Stat. 580, John D. Dingell, Jr. Conservation, Management, and Recreation Act, Section 1232, Administration. (12 March 2019)

¹⁹ Proposed FSM 2355.05- Definitions. (14 November 2023)

²⁰ Proposed FSM 2355.31-Placement, Replacement, and Retention of Fixed Anchors and Fixed Equipment Outside Wilderness. (14 November 2023)

which requires working with LCOs to evaluate routes, as well as in developing climbing management plans.

V. Conclusion

The American Alpine Club values this opportunity to represent the collective climbing community, work with other climbing and recreation organizations, and offer practical insight on the issue of fixed anchors to the agencies. In summary, the AAC would like the USFS to adopt guidance which affirms that fixed anchors are not installations prohibited by the Wilderness Act and allow agency land managers to administer their areas in a similar manner with what had been established under NPS Director's Order #41. In lieu of publishing such guidance, the AAC would ask that the USFS convenes a committee pursuant to the negotiated rulemaking process, or similar collaborative process, in order to address the issue of fixed anchors in Wilderness and implement guidelines following a committee report. The AAC reiterates that the MRA process is not only a technically incorrect tool for the evaluation of fixed anchors, but cannot be practically implemented due to agency underfunding and limited staffing, and such a process will inevitably lead to management by moratorium.

The AAC will remain committed to instilling the ethos of maintaining wilderness character, utilizing the best low-impact climbing techniques and practices, and staunchly supporting appropriate recreation in Wilderness. The AAC is ready and willing to assist the USFS to deliver on their dual mandate of conserving Wilderness characteristics while also ensuring the benefit and enjoyment of the Wilderness for the broader public.

Respectfully,



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