



National Press Photographers Association

200 Delaware Avenue • Suite 200 • Buffalo, NY 14202

Phone: 716.983.7800 • Fax: 716.608.1509

lawyer@nppa.org

November 18, 2015

Hand Delivered

Hon. Lisa Murkowski, Chairman
U.S. Committee on Energy & Natural Resources
709 Hart Senate Building
Washington, D.C. 20510

Hon. Maria Cantwell, Ranking Member
U.S. Committee on Energy & Natural Resources
511 Hart Senate Building
Washington, D.C. 20510

Re: Opposition to S. 556, the Bipartisan Sportsmen's Act of 2015

Dear Chairman Murkowski and Ranking Member Cantwell;

As the Energy and Natural Resources Committee considers S. 556, the “Bipartisan Sportsmen’s Act of 2015,” the Society of Environmental Journalists (SEJ) and the National Press Photographers Association (NPPA) express our opposition to the inclusion of Section 102, “Annual Permit and Fee for Film Crews of 5 Persons or Fewer” in that bill. This provision directly threatens the Constitutionally protected First Amendment right of a free press to gather news and of citizens’ rights of free speech to take photographs and record sounds and images.

As noted in our letter of last year, the Society of Environmental Journalists, Society of Professional Journalists, National Press Photographers Association, Radio Television Digital News Association, Reporters Committee for Freedom of the Press and the American Society of Media Photographers,¹ strongly oppose these provisions because of the undue burden they place on First Amendment protected activities.

We urge you to amend the bill by striking the entirety of Section 102, so that the issue of media access to public lands can be thoughtfully considered and any problems with media access to public lands can be addressed with carefully drafted legislation. Not only does the current Section 102 threaten to cut off news media access to public lands, but is so vaguely drafted as to have other unintended and harmful consequences on citizens wishing to exercise their constitutional rights.

It has long been established practice that news media have unfettered access to public lands to report on important natural resources stories, to the extent consistent with the

¹ SEJ Letter to Senators Re: *Sportmen's Act Impact on Public Lands Reporting*. July 8, 2014. Available at <http://www.sej.org/publications/text-sej-letter-senators-re-sportmens-act-impact-public-lands-reporting>

government's conservation mission and the enjoyment of the resource by others. Journalists should not need a permit and a two-day waiting period to report on a wildfire racing across federal land and waterways. As currently drafted, Section 102 could prevent the media and the public from getting news about how federal government agencies are managing these taxpayer-owned and -funded resources.

Specifically, we are concerned that Section 102:

- Requires permits and fees for newsgathering and other First Amendment protected activities on federal lands
- Contains no explicit exemption from fee-and-permit requirements for newsgathering or other First Amendment protected activities on federal lands
- Includes overly broad, vague and undefined general language subject to unpredictable interpretation (“commercial filming activities or similar projects”)
- Fails to define a “film crews” or “5 person or fewer,” which could be interpreted to include almost anyone
- Fails to define “commercial filming activities or similar projects on Federal land and waterways administered by the Secretary.” Precisely what a “commercial activity” or “similar project” is left open to arbitrary and capricious interpretation
- Subsection (E) “Use of Cameras” is similarly overbroad, vague and contradictory where “The Secretary shall not prohibit, as a mechanized apparatus or under any other purposes, use of cameras or related equipment used for the purpose of commercial filming activities or similar projects in accordance with this paragraph on Federal land and waterways administered by the Secretary” (emphasis added).
- Subsection (F) “Notification Required” could be used to prevent a “film crew of 5 persons or fewer” from reporting on or documenting a news story for failing to “notify the applicable land management agency with jurisdiction over the Federal land at least 48 hours before entering the Federal land.” Such requirement may be seen as an unconstitutional prior restraint on newsgathering.
- Subsection (G) “Denial of Access” provides authority to “The head of the applicable land management agency [to] deny access to a film crew under this paragraph if—
 - (i) there is a likelihood of resource damage that cannot be mitigated;
 - (ii) there would be an unreasonable disruption of the use and enjoyment of the site by the public;
 - (iii) the activity poses health or safety risks to the public; or
 - (iv) the filming includes the use of models or props that are not part of the natural or cultural resources or administrative facilities of the Federal land.

Such denial of access grants such person arbitrary and capricious authority to deny meaningful press access without an appeals process or standard of review.

As noted by US Forest Service Chief, Thomas L. Tidwell in response to our letter last year expressing our concerns over the “USFS Proposed Directive for Commercial Filming in Wilderness” which contained similar permitting and fee language:

To further help differentiate between journalism and other activities, the following question should be asked: Is the primary purpose of the filming activity to inform the public, or is it to sell a product for a profit? If the primary purpose is to inform the public, then no permit is required and no fees assessed.

I also want to emphasize that commercial photography only requires a permit if the photography takes place at locations where members of the public are not allowed, or uses models, sets, or props.

Commercial film and photography permit fees should be primarily viewed as land-use fees. If the activity presents no more impact on the land than that of the general public, then it shall be exempt from permit requirements.²

It is our understanding that there have been a number of very recent proposed amendments that would better define “commercial filming or still photography,” exempting most of those situations from the permit and fee scheme. The new language also considers newsgathering as a non-commercial activity and thus also exempt from the permit and fee requirement.

We assert that in its current form Section 102 does nothing “to protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes,” stated as the legislative intent of the bill. We, therefore urge you to amend S. 556 by striking Section 102 or significantly amending it as proposed above.

Thank you for your attention and consideration in this matter.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
NPPA General Counsel

Beth Parke

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SEJ Executive Director

²U.S. Forest Service Memo dated November 4, 2014 from Chief Tom L. Tidwell to Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs and WO Directors, regarding Commercial Filming and Photography Permits. Available at <http://www.scribd.com/doc/245666089/Chief-Direction-on-Commercial-Filming-Nov-2014>

cc:

Hon. John Barrasso
Hon. Mike Lee
Hon. Bill Cassidy
Hon. Steven Daines
Hon. John Hoeven
Hon. Shelley Moore Capito
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