

WILDERNESS RISK MANAGEMENT CONFERENCE OPENING ADDRESS

Wilderness Accessibility: Right to Risk
Janet A. Zeller
National Accessibility Program Manager
U.S. Forest Service

Thank you, Sara. And thanks to all on the Conference Steering Committee for inviting me. Good evening. It is an honor to serve as the opening speaker for this 16th annual Wilderness Risk Management Conference. I'm really looking forward to these next two days of information and discussion. There is an outstanding line-up of outdoor educators who will be presenting and the terrific opportunity to learn from each other. Plus it's always good to spend time with other people who share our passion for wilderness.

A conference is a great place for each of us to challenge our thinking and our perceptions. And that's just what I want do this evening concerning Wilderness and Accessibility and the Right to Risk as to what's required and what's reality?

As Sara said I'm with the U.S. Forest Service. Here's a quick overview: The U.S. Forest Service is within the Department of Agriculture. The 175 National Forests and Grasslands encompass 193 million acres of incredible land from Alaska to Puerto Rico and California to Maine.

Each year 178 million people recreate on these National Forests, that provide the greatest diversity of outdoor recreation opportunities in the country, connecting people with nature in an unmatched variety of settings and activities.

The National Forests are America's backyard...it's where we go to play.

www.nof.edu/wrmc | 801-730-6657x3



This article may not be reproduced
with out the author's consent. 10/09

On the national forests there are 153,000 miles of trails, some allow motorized used, but most do not. The Forests also encompass thousands of lakes and rivers including 101 designated as National Wild and Scenic Rivers. We provide 10,000 recreation sites, a campground is counted as one recreation site whether it contains 6 camping units or 250 camping units, so you can see we have a lot of recreation sites. They are in the more developed areas -and they are there for the comfort and convenience of visitors. When a constructed feature is placed in a remote area it is solely for the resource protection - generally those are simple structures such pit toilets placed to protect the watershed and to control the toilet paper bloom...for example this accessible Forest Service designed Wilderness pit toilet shown here in the Boundary Waters Canoe Area Wilderness.

And Speaking of Wilderness...we need to sort out some bureaucracy to be sure we are all on the same page. Congress has separately designated close to 37 million acres of National Forest managed lands within the continental U.S. under the specific protection of the Wilderness Act as part of the National Wilderness Preservation System (the NWPS). The Forest Service manages all those set aside acres in 439 separate Wilderness units within the various National Forests. I'll be referring to those areas as "designated Wilderness" in order to differentiate them from the vast areas of remote and primarily undeveloped land that is much of the remaining 155 million acres of the National Forest System.

This article may not be reproduced
without the author's consent. 10/09

Those areas that are not designated as Wilderness often have much of the same feel of remoteness and may be as difficult to reach, but they aren't under the same very tight Wilderness Act protections which don't allow the use of mechanical transport and motorized devices in order to maintain the unique Wilderness character of those designated areas. The Forest Service refers these other areas that are not congressionally designated as Wilderness simply as remote or dispersed recreation areas.

Recreation activities are fun -- and so much more. As we've all experienced recreation contributes greatly to the physical, mental, and spiritual health of individuals, and to the bonds with family and friends. Outdoor recreation has become an essential part of American culture. It is where we each can renew body and spirit. The effort it takes each of us to recreate in wilderness and other remote areas, and the risk within that effort and environment, are essential parts of that experience.

But how can disability and wilderness meet while ensuring both wilderness protection and risk management? This evening I want to challenge your perception of people who have disabilities recreating in wilderness and perhaps even to shift your thinking.

For me, time spent hiking, camping, canoeing and kayaking in the areas away from development and lots of other people, those wilderness experiences, have always been my renewal. All of my life spending time in those silent, self-reliant areas was an essential part of my life. I grew up spending summers outdoors in New England

including in the Pemigewasset Wilderness on NH's White Mt. National Forest and similar remote areas.

Then, in 1984, I was injured in an accident that resulted in quadriplegia, which simply means some level of paralysis in all 4 limbs. One of my greatest fears was that I had lost my outdoor recreation life.

My memory of my first trip back to wilderness is still a touchstone for me.

I took this photo of sunset that first night back in the Boundary Waters Canoe Area Wilderness, on the Superior National Forest in northern Minnesota. The only sound was the gentle lapping of the lake against the shore.

We had paddled and portaged our canoes to get to that remote campsite. Our tents were pitched in the clearing near the campfire and up the hill was a primitive pit toilet. It takes the help of my friends to get me and my wheelchair over rough ground, and to get me in and out of my tent and sleeping bag, up the hill to the toilet and so forth. In my daily life I hate to ask for assistance, but on a wilderness trip it's different, I do what I can to help others and they help me in return. That assistance is simply part of a team effort with a mutual goal of a shared experience.

That first time I was back in wilderness the outdoor recreation part of me that I'd been afraid I had lost in the accident was found again. It wasn't easy, there were risks, but I had met the wilderness on its terms. From that point on, I knew I could once again do

whatever I set my mind to. And that conviction is renewed every time I get back to wilderness which is never often enough.

Even before a wheelchair became my means of mobility, spending time in Wilderness involved planning and careful preparation. Now my wilderness trip planning starts by identifying friends, an organization or an outfitter that shares my love of these remote lands and is willing to provide the extra physical assistance I'll need while still allowing me to put out my full effort. After spending time in a wilderness area, the effort I have made, and the resulting sense of accomplishment, along with the time I have spent in the unmatched peace of those areas, refills that wilderness shaped space within me and my spirit is renewed. I take that refreshed spirit back to my daily life and work. I'm sure that sounds just like your experience. That's the power of Wilderness for all of us including for those of us who have disabilities. And I'll talk more about that shortly.

But first let's talk about the obvious. I'm going into designated Wilderness using a wheelchair but isn't that a form of mechanical transport? And under the 1964 Wilderness Act, mechanical transport is not allowed in designated Wilderness areas. And for everywhere else there's practicality wheelchairs can be tough to use in areas that aren't firm and stable or paved.

The Wilderness Act was written before the rights of people with disabilities were a prominent national issue. So not surprisingly there is no mention of people with disabilities in the Wilderness Act. After 1964, as people began to use those newly

designated Wilderness areas the question was raised as to whether a wheelchair is mechanical transport and therefore not allowed. However, for some people who have mobility impairments, a “wheelchair” is their means of daily mobility; it’s our footwear.

What was needed was a tightly crafted, limited allowance for only what is essential for a person’s basic physical function, while remaining sensitive to the reasons the use of mechanical transport is prohibited in designated Wilderness. This solution had to be consistent with the protection of the Wilderness character and experience for everyone.

To meet this need, one section in the 1990 Americans with Disabilities Act (ADA) was developed. Title V section 508c states:

“in Federally Designated Wilderness: Congress reaffirms that nothing in the Wilderness Act prohibits wheelchair use in a wilderness area by an individual whose disability requires its use”.

The law goes on to define the term wheelchair as: *“a device designed solely for use by a mobility impaired person for locomotion that is suitable for use in an indoor pedestrian area.”*

This is a two part definition. In the first part, “Designed solely for use by a mobility-impaired person” means that the original design and manufacture of the device was only for the purpose of mobility of a person who has a limitation of their ability to walk. The second part of the definition requires that the device must also be “Suitable for use in an indoor pedestrian area”. A good test of that suitability is to ask your self “would the

security guard in the local shopping mall allow that device to be used in the food court area of that mall?” If you think the answer is “Yes”, then the device passes the indoor pedestrian area part of the test.

A mobility device, including those that are battery-powered, that complies with both parts of this definition, is considered to be a “wheelchair,” and may be used anywhere foot travel is allowed in designated wilderness, providing the device is used for the transportation of that individual. The U.S. Forest Service has additional regulations that extend this same definition of a wheelchair to every place within the National Forest System.

This simple definition has proven to be both flexible and effective. One of its greatest strengths is that it evaluates only the device used by a person, and does not evaluate the person. That’s important because it is unlawful to ask a person about the existence of a *disability*. Let’s look at photos of some of the devices that meet the definition. Now photos of some of the devices that do not meet the definition.

This definition was tightly written around the minimum necessary requirement language of the Wilderness Act. Use of motor vehicles might make it easier for a person who has some limitation in their ability to walk long distances or over rough ground. However such devices go beyond what is essential for daily mobility. And the use of motor vehicles would change the wilderness experience for everyone around them.

If a person is seeking easier access, there's wide range of other federally managed lands to choose from, including some where motor vehicles are allowed, and yet look and feel much like designated wilderness areas. The federal agencies are glad to assist people in locating the places where they can pursue the type of recreation and the means of accessing that recreation that they prefer.

Okay, now let's get back to people who have disabilities. Currently 54 million people in the U.S. have a disability. This is the largest minority in the country. And the population is aging. The Census Bureau tells us that by 2030 over 80 million people in the U.S. will be over 65. Currently 1 of every 2 people over 65 has a disability. A disability is defined in the laws as "a substantial limitation to one or more of the person's major life activities". The law gives examples including: walking, seeing, hearing, breathing, caring for one's self, thinking and so forth.

Of course not every person who has a disability is interested in outdoor recreation. Of the 178 million people each year who recreate on National Forest System, only 7.7% (about 14 million) voluntarily identify themselves within the U.S. Forest Service National Visitor Use Monitoring surveying as having a disability. Keep in mind the National Forests aren't easy to get around in - they are your BACK yard NOT your Front yard. And recreation in wilderness is *not* about what is easy, recreation in wilderness and other remote areas is about self reliance and solitude and yes the risks it takes in order to experience those outcomes.

People with Disabilities are interested in recreating in wilderness areas for the same range of reasons that anyone else is: to enjoy the scenery; for personal challenge; to spend time away with family or friends and/or to experience solitude.

For some people it is about returning to wilderness after a disability has become part of their life, for others it's adjusting the way in which they recreate so they can keep getting into wilderness despite an increasing level of disability. We've heard from people across the country, who have recreated in remote areas before their disability, their return after disability is often the "*Ahh –my life is really back*" experience like mine was.

Or if the challenges of wilderness recreation are new to them that is they had not recreated in remote settings before a disability became part of their life, it is often about proving to themselves they can do as much or more than they did before their disability. Typical are the comments shared by a veteran after a wilderness experience through one of the Wounded Warrior Sports Projects. He said "*It's been awesome, I've never done anything like it before. Now I know losing my leg doesn't have to stop me.*" Another person said, "with teamwork we all succeeded". The lower left photo is with Wilderness Inquiry, and upper right with Northeast Passage doing "Team Hiking", both of those organizations host only inclusive trips that is people with and without disabilities recreating together. The other 3 photos are of friends working together in a mutual effort to ensure they ALL reached their shared goal.

For each person with a disability with whom I've talked after their wilderness experience, they have shared it was hard but it was worth it. They took on the risk and came out stronger on the other side of it.

The Issue for us at this Conference IS Risk and that's where the questions are: Are the risks greater if the person has a disability? If a person with a disability is in our group won't they slow down the group? Won't we have to change the program for everyone? All of which might also increase risk for others.

A person has the right to risk themselves - but they do not have the right to put others at risk. So how can we draw the line?

What are the risks for a person who has a disability? A person who uses a wheelchair could fall, their wheelchair could break which would be akin to a broken leg, they could get sick, get lost, basically any of the same risks that anyone in a wilderness area could experience. But keep this in mind - a person who has a significant physical disability tends to be aware of their own limitations, and based on their disability, they are usually prepared to deal with them. Whereas some people who do not have an identified disability may not realize they have any limitations. ...and therefore may go beyond their capability.

Only 15% of disabilities are obvious, such as an amputation, a person using a wheelchair, crutches, walker, etc. While 85% are unseen, including hearing, seeing, or

having breathing or heart limitations which can impact a person's ability to walk and so forth. So how can we manage the risk if we don't even know if a person has a disability?

First, medical information is essential to be gathered from ALL of your participants. All are to be asked the same non-discriminatory questions. And Yes, there is a voluntary aspect to what people will share. So it's important to address up front why the information is being gathered and how it will be shared and used.

In addition to medical information the 1973 (Section 504 of the Rehabilitation Act) and 1990 (American with Disabilities Act) disability related laws provide guidance around screening for risk and management

Those laws state:

No qualified person can be denied participation in a program or activity that is open to all other people, solely because that person has a disability.

Note the law is written in the negative. A person can't be denied the opportunity to participate just because they have a disability. However, that person has to follow the same rules as everyone else. True equal opportunity means everyone plays by the same rules. Everyone is to be held to the same standards, to have the right to try, and to fail, to have the right to risk IF they are "qualified to participate".

And the also laws define who's "qualified". Simply stated the laws require...*a qualified person must be able to "meet the essential eligibility criteria for participation in that*

program or activity". Each person, with and without a disability, must be able to meet the same criteria in order to participate. Anyone can be denied participation ONLY if that person does not meet that "essential eligibility criteria".

According to the Department of Justice the purpose of the EEC is to establish who can participate in an activity based on their ability to perform the "basic essential skills required for safety" in that activity. That's a quote from the Department of Justice. However we know that would be better stated as: the basic essential skills required to manage the risk in that activity.

EEC is *NOT* about determining access to programs for those who have disabilities. In fact it is illegal to use EEC only for those who appear to have a disability. Rather EEC is the law and an important tool that allows programs to screen ALL program applicants...based only on their ability to perform those essential skills required for that activity. If everyone in the group meets the EEC for that activity...all should be able to keep the same pace, and the program would not be changed.

This risk management screening using the EEC tool isn't new, but you may not have realized that it is actually in the disability based non discrimination laws.

However, the EEC is OK to use Only IF it is nondiscriminatory in both the manner in which it is applied in that it must be applied to each participant and in its language. The EEC must be written in nondiscriminatory language describing each essential function.

By nondiscriminatory language I mean not using terms like walk, climb, hear, etc. An example, instead of the criteria being “is able to hear all information provided”, the nondiscriminatory language would be “is able to understand all information provided.”

The EEC also needs to state if the criteria can be accomplished “with the assistance of a companion” or not. This topic of crafting appropriate non-discriminatory EEC and all that is related to the potential for inadvertent loaded language is a workshop session of its own. EEC is an essential risk management tool for all participants. And I would love to present a working session on EEC at this conference another time.

We all know of the power wilderness experiences have to change people’s lives that is especially true for people who have disabilities. And I don’t think you’d be here at this conference if you weren’t interested in sharing your passion for that wilderness experience with others.

But I can’t caution you strongly enough. If a person does Not meet the EEC do Not take them into that program just because they have a disability and in your trying to be inclusive and you hate to say “No”. Risk management is for the good of ALL participants. The Forest Service does have a Resource for you online at www.fs.fed.us/recreation/programs/accessibility . It is the U.S. Forest Service *Accessibility Guidebook for Outfitters and Guidelines Operating on Public Lands* and contains lots of information on how to develop your own EEC.

Let's talk about inclusive trips which are trips that include people with and without disabilities recreating together in the same group. Would you raise your hand if people who have disabilities are integrated into any of your wilderness programs?

For those who do not currently have inclusive programs, as you launch into them please understand that inclusion takes planning and preparation.

Your *appropriately* written non-discriminatory, comprehensive EEC, completed for each of your various programs, determines who is qualified to participate. When a person meets that EEC, as the program provider you need to be ready to include them. That means avoiding loaded language, having solid logistics and knowing the group culture on the various trips. Staff training is essential. Now let's get more specific about this.

First logistics: For the 15% of people who have an obvious disability and especially the 8% who use wheelchairs or other mobility devices...the logistical issues include the accessibility of the vehicles and facilities you'll use and areas where you are going. Much of this should already be addressed in the EEC for that specific program. This is a plan-ahead issue. While there are general guidelines for your preplanning, talking with the person before the trip is a best practice that leads to a good experience for all.

Of the 85% whose disabilities are unseen, 30% of them have mobility limitations but they don't use wheelchairs or other mobility devices. Those folks generally have

limitations on the distance they can walk. Again that's logistics, about where that program goes and that needs to be addressed in the EEC.

8% of people with disabilities have some level of hearing loss, another 8% some level of vision loss. All are pretty straight forward if your EEC is written appropriately.

But what about the 14% who have various levels of cognitive function or disabilities related to mental or emotional illnesses? Some people may need opportunities to be away from a larger group and that just won't work on all trips. That needs to be defined within the EEC coverage, by your determining in advance what is essential for the safety practices in the specific environment within which that specific trip will be traveling. Can people go off by themselves, or not?

The larger issue is likely to be the dynamics around group culture, that is how all the participants in the group will relate to each other. Only you know the culture within your various programs. Staff training on inclusive programming is absolutely essential in order to create an embracing atmosphere. Some of your organizations have in-house training. I urge each of you to get that training. As we all know it is the dynamic cohesion of the group that will make or break that trip's experience for everyone.

I want to continue this conversation with as many of you as possible. I'll be here throughout the conference attending various sessions. But I would be glad to meet with

any of you to talk more about your program and the issues involved in it, to help you with your specific EEC or in identifying your information resources.

In closing...

People with a wide range of significant disabilities value their right to those same opportunities, under the same criteria, to challenge themselves and thereby to gain the unique experiences offered by designated wilderness and other remote areas.

It is important that each of us, regardless of ability, works together to protect the uniqueness of the full range of outdoor recreation opportunities and experiences, including Wilderness. After all Wilderness is the one great gift we can provide for future generations.

Thank you.

Additional Resources

- *Accessibility Guidebook for Outfitters and Guides Operating on Public Lands (USFS)* www.fs.fed.us/recreation/programs/accessibility.

- *Canoeing and Kayaking for People with Disabilities*
American Canoe Association <http://www.americancanoe.org>.

- *Local Independent Living Centers: national directory at* <http://www.ilusa.com>.

- *U.S. Forest Service Accessibility Coordinators network.*
- Contact jzeller@fs.fed.us for local contact information.