



# FEDERAL FOREST

## RESOURCE COALITION

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Testimony of  
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Committee on Energy & Natural Resources  
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On the DRAFT Wildfire Budgeting, Response, and Forest Management Act of 2016

My name is Julia Altemus, Executive Director, Montana Wood Products Association. I am here today to testify on behalf of MWPA and the Federal Forest Resource Coalition. MWPA is a charter member of FFRC, and I serve on their Policy Committee.

The Federal Forest Resource Coalition is a national non-profit organization representing purchasers of Federal timber, conservation groups, and county governments in 32 States. Collectively, our members employ over 390,000 people, and provide over \$19 billion in payroll. Our members purchase, harvest, transport, and process National Forest and BLM timber into renewable wood, paper, and biomass energy products.

The Montana Wood Products Association was founded in 1972 and serves as a major voice for the wood products industry in Montana while actively dealing with timber, logging, and wood products manufacturing issues in the public arena, and with state and federal government. Moreover, our members live and work in close proximity to our National Forests, and we value the wildlife, recreation, and clean water that they produce, along with the sustainable wood products that help us run our businesses. MWPA's membership includes a diverse group of companies and individuals involved in all facets of Montana's wood products industry. This includes sawmills, manufacturers of plywood, particle board, fiberboard, pulp and paper, posts and poles, log homes, as well as timberland owners and managers and logging contractors. They produce value-added products through manufacturing and provide over 7,500 direct jobs for Montana families. Montana's timber community professionals work daily using 21st century technology to log and mill trees - the renewable resource.

We appreciate the opportunity to testify on this discussion draft, which provides the Forest Service with new tools to manage the National Forests, which are showing the effects of inactive management, drought, overstocking, large wildfires and insect epidemics, and climate change. We are also pleased that the Discussion Draft provides the Forest Service with access to emergency spending authority through a budget cap adjustment to address wildfire costs that exceed the 10-year suppression average.

We urge the Committee to move as quickly as possible to approve these provisions with some changes, and to proceed to conference with the House, which passed a broader fire funding and forest reform bill in July of last year.

**The Need for Reform:**

The Committee has established a clear record in support of reforming both the management of the National Forest System and the funding mechanism to pay rapidly increasing suppression costs. Since February of 2015, you have held 5 full committee, subcommittee, and field hearings on the subjects of fire suppression, forest health, and forest management, not to mention 2 budget oversight hearings during which these subjects figured prominently.

FFRC has been privileged to testify at two of these hearings, in March and July of last year. Much of my written statement here today reflects testimony provided in those hearings. FFRC also had the opportunity to testify before this committee in July of 2013. Regrettably, little has changed since then, except for ever broadening acceptance of the facts on the ground: Our National Forests are experiencing widespread and growing forest health challenges, and our methods of paying escalating suppression bills still rob funds from needed forest management programs. The current system is neither fiscally responsible nor ecologically sustainable.

As you well know, over 82 million acres of Forest Service lands are at elevated risk of catastrophic wildfires, insect, or disease outbreaks. These problems are often the most severe in the States which have lost most of their wood using industries, such as Arizona and New Mexico. Large scale wildfires cost billions annually to suppress, and cities such as Denver have been forced to spend tens of millions of dollars restoring damaged watersheds. As California continues to cope with long-term drought, rapid and extensive forest mortality is occurring in over-stocked, under managed forests there as well.

In other National Forests, such as those in the Lake States and New England, passive management has allowed forests to develop into closed canopy stands where little sunlight reaches the forest floor. These forests have limited value as wildlife habitat and are susceptible to fire and insects, while sensitive species which require early successional habitat, such as the ruffed grouse and Kirtland's Warbler, continue to disappear.

The extent of the problem is not in doubt. The Government Accountability Office recognized the urgency of the need to reduce hazardous fuels in 1991. The Forest Service acknowledges that over 73 million acres of their lands are a high priority for management and that "one time treatment of all high fire risk areas would not fully address the fuels

problem, as landscapes continue to change over time and fuels would build up on many lands currently in historic condition, without periodic maintenance treatments.” The Western Governors Association has adopted numerous resolutions acknowledging the extent and severity of the problem, and urging rapid action to address it.

Current authorities do not allow the Forest Service to plan and implement needed management projects in a timely fashion. Badly needed projects to thin hazardous fuels can take years to plan, at which point groups opposed to management file lawsuits that cause further delays. Forests are woefully behind on meeting forest plan objectives, particularly those associated with young forests. At best, it takes the Forest Service at least a year to plan and begin implementing salvage projects in some regions. Worse yet, the agency has, in our view, been slow to implement streamlined authorities provided in the 2014 Farm Bill.

FFRC supports fundamental reform of the National Forest System, including identification of a land base for timber production, with streamlined analytic and judicial review processes. Further, we believe that the Forest Service must be provided with mission clarity if there is any hope for it to successfully tackle its management challenges. As FFRC has previously testified in front of this committee, a “trust” mandate with clear beneficiaries and fiduciary responsibilities – if implemented on the small portion of the National Forests suited for timber production – is the kind of mission clarity the Forest Service needs.

However, with due consideration of the difficulties of moving such a comprehensive bill in the current political climate, we believe the discussion draft represents a credible, implementable approach that will enable implementation of needed management projects much more quickly than is currently possible. We urge rapid action in the Senate, and urge you to negotiate a compromise with the House. The House passed HR 2467, the Resilient Federal Forests Act, in July of 2015. That bill uses a different fire funding mechanism to cover emergency fire costs, and provides a broader array of NEPA tools than the discussion draft.

Following are some specific observations and recommendations regarding the discussion draft.

**Sec. 2 Definitions:** The definition of “collaborative process” includes many ambiguous terms that may attract legal challenges. We suggest simplifying this section to avoid this problem.

**Title I: Wildfire Budgeting:** The discussion draft assumes the 10-year average for fire suppression costs will rise, and requires it to form the basis of Administration budget requests. Like the Resilient Federal Forests Act and other proposals, this leaves the problem of budget “erosion” in place – i.e. – increasing average suppression costs siphon money away from forest management and other priorities. In a constrained budget environment, the increasing 10-year average will eventually threaten key management programs, such as timber sales and forest roads. FFRC is not favoring one fire funding

solution over another, however we urge Congress and the Administration to settle upon a solution as rapidly as possible.

Further, we recommend two changes to the reporting requirements in Section 102, and some additional changes to the Wildfire Risk Reduction Projects authorized in Section 104.

**Recommendations:**

- (1) We recommend the Committee consider adding provisions which would stem budget erosion, such as adopting a cap on the 10-year average, starting with Fiscal Year 2015, perhaps indexing it for inflation.
- (2) Under the reporting requirements in Section 102, we urge the addition of two items: (i) report damage to adjacent non-Federal lands or inholdings in large fires where a Federal agency had primary suppression responsibilities and (ii) an estimate of the reforestation needs created on Federal lands by catastrophic, uncharacteristic fires.
- (3) We urge you to expand eligible Wildfire Risk Reduction Projects under Section 104 to include Fire Regime IV. This is particularly important for work in the Northern Rockies, as these landscapes frequently lack age class diversity, and would benefit from the establishment of fuel breaks.
- (4) Clarify that Wildfire Risk Reduction Projects under Section 104 can be conducted pursuant to streamlined NEPA authorities found in the Discussion Draft (Title III), or HFRA Authorities, as appropriate.
- (5) Clarify that Wildfire Risk Reduction Projects under Section 104 be dedicated to mechanical hazardous fuels reduction projects.

**Title II: Wildfire Response and Preparedness:** By and large, we defer to the expertise of State and Federal wildland fire fighting agencies on this title. However, we suggest one issue could be addressed in this title; Under current Federal law, Federal agencies only pay half of the personal liability insurance premiums required for employees in firefighting leadership positions. In California, State firefighters are exempted from personal liability altogether. We urge the Committee to either completely exempt Federal wildland firefighters from personal liability (with exceptions for criminal acts), or at least require the Federal agencies to cover 100 percent of the personal liability premiums.

**Title III: Public Land and Forest Management:**

Subtitle A: This title provides broad authority for the Forest Service to conduct streamlined NEPA on portions of the National Forests to meet any one or combination of 5 objectives; reducing hazardous fuels, installing fuel and fire breaks, restoring forest health and resilience, protecting municipal water supplies or communications sites, and improving wildlife habitat. These projects would be analyzed under a streamlined NEPA process that evaluates the proposed action and the no action alternative, with direction to clearly evaluate the consequences of not managing the forest.

FFRC strongly supports this new authority. While we believe there are specific Categorical Exclusions which would expedite needed work, particularly on such issues as early seral habitat, we believe this broad, flexible approach is laudable.

We are concerned about the conditional inclusion of lands designated as critical habitat. The draft allows Section 301 projects to go forward in critical habitat, if, after consultation under Section 7 of the ESA, the Secretary determines that the forest management activity is not likely to destroy or adversely modify critical habitat will delay project implementation. Many forests in Region One have thousands of acres of designated critical habitat. In our experience, the Forest Service shies away from most active management (let alone under expedited authorities) in designated critical habitat, even if foresters and biologists agree that leaving the habitat unmanaged subjects it to great risk from catastrophic fire. Strengthening this provision to encourage active management where it would benefit species would be helpful.

Subtitle B requires the Forest Service to meet the intent of the Tongass Forest Plan Advisory Committee by conducting a full, stand-level inventory of both old and young forests on the Tongass before the draft forest plan revision. While we have advocated strongly for more drastic measures in the past, we believe this provision represents a modest compromise needed to break the gridlock in Southeast Alaska.

Subtitle C addresses lingering questions regarding cancellation ceilings that have, at times, obligated the Forest Service to set aside significant funds to cover termination costs in Stewardship contracts. This subtitle provides statutory authority to allow the Forest Service to cope with it more efficiently. We strongly support this provision. We also applaud the increased flexibility to use retained Stewardship receipts for project planning, with a minor change.

Subtitle D provides new authority for the Forest Service to conduct restoration work in certain forest types. We believe this authority can be made more effective with some minor changes. As currently drafted, it may not provide the streamlining we believe was intended.

**Recommendations:**

- (1) For projects under Section 301, we recommend adding as a new purpose meeting forest plan goals for early successional habitat. These habitats are demonstrated to be among the fastest disappearing on NFS lands, unless created by wildfire. On forests with quantifiable early successional goals, the agency is considerably behind on meeting these goals.
- (2) Provide flexibility for collaboratively developed projects under Section 301 to use streamlined NEPA analysis on projects that include new road construction.
- (3) Require that projects conducted under Section 301 be subject to judicial review pursuant to Sec. 106 of the Healthy Forest Restoration Act, which requires cases to be filed in the district where the project is located, limits injunctions to 60 days (unless renewed), requires plaintiff to petition court for renewal of injunction, and requires courts to balance the harms of not doing the project).
- (4) We recommend adding a provision similar to HFRA Section 107 to Subtitles A and D, clarifying that the Secretary retains authority to conduct projects under other authorities.
- (5) In addition to the judicial review provisions recommended above and the substantial deference standard in Subtitle D, we recommend adding a provision to both Section 301

and Subtitle D allowing the use of binding arbitration on a pilot basis. We note that Chief Tidwell expressed openness to this idea in previous hearings.

(6) We strongly endorse Section 324, allowing the use of retained receipts for planning additional projects, but recommend striking the requirement that the projects must be done using Stewardship contracts.

(7) We suggest clarifying the Subtitle D to achieve greater streamlining. For instance, it's not clear how the Forest Service could successfully implement a project where forest industry facilities are "scarce." We recommend striking this ambiguous requirement. Also, we recommend a clearer definition of which lands are eligible for the project, such as condition class and/or an appropriate ecological province.

(8) Likewise, projects done under Subtitle D should, at the very least, be subject to the judicial review provisions of Sec. 106 of HFRA.

(9) For projects under both Sec. 301 and Subtitle D, we recommend that the legislation reinforce the existing deadlines found in the Endangered Species Act (90 days to complete formal consultation, and 45 days to issue the appropriate biological opinion).

We would also like to bring to the Committee's attention the need for a technical legislative change in order to implement the restoration strategy on National Forests east of the Cascades in Oregon and Washington. A one-size-fits-all regulation known as the "eastside screens" is preventing action on collaborative, science based forest restoration projects in the region. The eastside screens – a more than 20 year-old regulation intended to be temporary – requires the retention of all trees greater than 21" diameter at breast height (DBH) in forest management projects on national forests in eastern Washington and eastern Oregon-regardless of species type, age, or location.

This regulation imperils science-based restoration projects intended to protect older pine trees by removing younger fir trees greater than 21". Worse, a recent court decision has limited the Forest Service's ability to make project-level exceptions this this rule. It is imperative that reform legislation seeking to address federal forest restoration and resiliency in dry forest types in the Pacific Northwest provide an alternative to this dated and unscientific regulation.

**Litigation:** We are disappointed that the discussion draft does not address the problems that on-going litigation poses across the west. Western Regions of the Forest Service continue to have project implementation impeded by district and circuit court actions. Over 60 percent of Region One's budget is spent on environmental analysis to meet and anticipate court challenges. Montana Wood Products Association has submitted specific recommendations on litigation in the comments we filed through the Committee's website. While we recognize that many of these issues implicate the jurisdiction of other committees, we stand ready to discuss these issues with you in the hopes of finding acceptable solutions.

**Conclusion:** Climate change, 25 years of passive management, and rapid human development have created a landscape prone to large, expensive, and damaging fires. The National Forests are not producing the economic, ecological, or social benefits Americans deserve or expect. Our rural economies are suffering. Recreation opportunities are diminishing.

Congress has, ever since 2003, adopted measures intended to streamline management, expedite administrative objections, and, to an extent, reduce unnecessary delays from litigation. Missing from these cautious grants of new authority has been a clear mandate to manage our public forests more aggressively, and a simple, fiscally responsible solution to the problem of increasing fire suppression costs.

Addressing these budgetary issues is simple good government that anyone who cares about the Forest Service should support. We applaud all of the various measures intended to prevent fire borrowing, including the House-passed legislation, the efforts of this committee, and the work of the Appropriations Subcommittees to honestly budget for both suppression costs and expanded management

Over the last several years, the Committee has heard from multiple stakeholders concerned about the safety of their communities, their ability to access forest lands to hunt and fish, the sustainability of their economies, and the protection of their drinking water supplies.

The Forest Service is attempting to address many of these concerns by accelerating the pace and scale of forest restoration of our National Forests. However, Congressional action is needed. We urge this Committee to work with your colleagues in the House and the Administration to address these pressing problems, whether in the context of this legislation or elsewhere.

Thank you for the opportunity to share these thoughts on this discussion draft.

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*The Federal Forest Resource Coalition is a 501(c)(6) non-profit representing purchasers of Federal timber and biomass in 32 States. Our members harvest, transport, and process timber into wood products, pulp and paper, and biomass, and represent local governments, sportsmen's groups, and others who support better management of our national forests. Collectively, our members represent over 390,000 employees, and over \$19 billion in payroll.*