

To: Interested Persons
From: Mike Anderson, The Wilderness Society
Re: House Farm Bill – federal forest management
Date: April 19, 2018

Following is a quick summary and analysis of federal forest management provisions in the Forestry Title of H.R. 2, the Agriculture and Nutrition Act of 2018 (Farm Bill). The bill was introduced by Republican members of the House Agriculture Committee on April 12 and was approved, without amendments, by the Committee in a party-line vote on April 18.

Background

Since 2015, House Republicans have been promoting highly controversial legislation, sponsored by Congressman Westerman of Arkansas, called the “Resilient Federal Forests Act” (H.R. 2647 in 2015 and H.R. 2936 in 2017). Many conservationists and others have strongly opposed the Westerman bill because it would undermine bedrock environmental laws and take away opportunities for public involvement. The House passed H.R. 2936 in November 2017 on a partisan vote, with just nine Democrats supporting and nine Republicans opposing the bill. Some Senate Republicans introduced their own, equally controversial versions of the Westerman bill, but no bill has passed out of committee.

In March 2018, Congress reached an historic agreement on wildfire funding and federal forest management in Division O of the 2018 Omnibus Appropriations Act. In addition to reforming how the federal government pays for wildfire suppression, Congress adopted several management provisions that reflected portions of the Westerman bill.

The bi-partisan agreement addressed federal forest management by, among other things --

- legislating an exemption from the environmental analysis and public involvement requirements of the National Environmental Policy Act (NEPA) for fuel reduction projects up to 3,000 acres in size;
- allowing fuel breaks and firebreaks to be planned and carried out in accordance with the Healthy Forest Restoration Act of 2003;
- reducing endangered species consultation requirements for federal land management plans (overriding the “Cottonwood” court decision);
- authorizing stewardship contracts for up to 20 years;
- expanding the states’ use of Good Neighbor Authority to include road reconstruction and maintenance on federal lands;
- giving utility companies emergency authority to remove hazard trees near power lines that cross federal lands and limiting the companies’ potential liability.

House Farm Bill Proposals

Seemingly oblivious to the forest management provisions in the recently-enacted Omnibus Appropriations Act, the Republicans’ 2018 Farm Bill incorporates many of the most controversial elements of the Westerman bill. Most of the following provisions in the Farm Bill are taken directly from the 2015 or 2017 versions of the Westerman bill.

A. NEPA Rollbacks

1. Categorical Exclusions

Like the Westerman bill, the Forestry Title of H.R. 2 would create several new “categorical exclusions” (CEs) from the public participation and environmental analysis requirements of NEPA. The CEs would apply to both Forest Service and BLM lands. Several of the CEs would cover management projects up to 6,000 acres in size (9.3 square miles), which is twice the size of both the hazardous fuels CE authorized in the 2018 Omnibus Appropriations Act and the insect and disease treatment CE authorized in the 2014 Farm Bill.

First, a 6,000-acre CE would be available for five types of “critical response actions” -- defined as forest management activities (including logging) whose primary purpose is either to (1) address an insect or disease infestation, (2) reduce hazardous fuels, (3) protect drinking water supply, (4) protect critical habitat from wildfire threat, or (5) increase water yield [Sec. 8311]. Regarding the first two purposes, this legislation would effectively repeal and replace the 3,000-acre CEs authorized in the 2018 Omnibus and 2014 Farm Bill. The bill would also remove all the environmental sideboards provided by those laws, such as protection of old-growth forests.

Another 6,000-acre CE would be authorized for salvage logging projects [Sec. 8312], including environmentally damaging post-fire salvage logging. These projects could be 24 times larger than the current 250-acre size limitation for salvage logging CEs, which was adopted by the G.W. Bush Administration.¹ The bill would allow a Forest Service Regional Forester or BLM State Director to waive the stream buffer requirements in land management plans for salvage CE projects [Sec. 8312(d)].

A third CE would be created for forest management projects up to 6,000 acres in size whose primary purpose is to create early successional habitat for wildlife “and other purposes” [Sec. 8313]. Since the creation of early successional habitat in eastern national forests is commonly accomplished by clearcutting, this CE could authorize 9 square miles of clearcuts at a time with no consideration of environmental impacts on scenery, water quality, etc. Current Forest Service NEPA policy does not allow the use of CEs for clearcutting, regardless of purpose.

Fourth, the bill would categorically exclude eight different types of forest management activities up to 6,000 acres when their “primary purpose … is to improve or restore such lands or reduce the risk of wildfire....” [Sec. 8315(b)(1)]. For example, the bill would exempt from NEPA analysis the “use of herbicides,” [Sec. 8315(b)(2)(H)], which apparently would override current Forest Service NEPA regulations that require the agency to prepare a full environmental impact statement prior to aerial spraying of herbicides.² Potentially, the bill would allow herbicide spraying on over 9 square miles

¹ See 36 CFR 220.6(e)(13).

² See 36 CFR 220.5(a)(1).

near communities in the wildland-urban interface, with minimal public notification and no analysis by the Forest Service of the effects on human health and safety. Other activities covered by this 6,000-acre CE would include reducing hazardous fuels, and creating fuel breaks, thereby effectively repealing and replacing Sections 202 and 203 of the recently enacted Omnibus Appropriations Act (see Background above).

In addition to these four 6,000-acre CEs imported from the Westerman bill, H.R. 2 includes several other CEs, including –

1. removal of hazard trees [Sec. 8314], which is also derived from the Westerman bill;
2. various types of forest “restoration” projects (including commercial timber harvest and salvage logging) up to 6,000 acres in size and involving up to 3 miles of permanent road construction [Sec. 8316];
3. various types of “infrastructure” projects, including up to 3 miles of permanent road construction [Sec. 8317];
4. operation and maintenance of developed recreation sites, including up to 3 miles of road construction [Sec. 8318];
5. construction and maintenance of administrative sites, including up to 3 miles of permanent road construction [Sec. 8319]; and
6. seven types of activities associated with special use authorizations, including approval of a vegetation management plan for a utility powerline corridor [Sec. 8320].

The need for congressional action to establish CEs for these purposes is dubious; for example, the Forest Service can use the agency’s existing CE for road maintenance to remove hazard trees. Moreover, the categorical exclusion of up to 3 miles of permanent road construction is problematic; current Forest Service CE’s typically allow no more than one-half mile of temporary road construction in connection with small-scale logging projects.³

Finally, H.R. 2 doubles the size of the 2014 Farm Bill’s insect and disease treatment CE from 3,000 acres to 6,000 acres [Sec. 8107(c)(2)] – another example of the House Farm Bill’s tossing aside of past bi-partisan policy-making on federal forest management.

2. Extraordinary Circumstances

H.R. 2 swings another axe at NEPA by eliminating current environmental safeguards in the Forest Service’s NEPA regulations for potential wilderness areas, imperiled wildlife and plant species, cumulative effects, and other “extraordinary circumstances” [Sec. 8503]. The effect would be to allow categorical exclusions (including, but not limited to, the new CEs created by H.R. 2’s Forestry Title) to be used even when potential wilderness areas and at-risk species are affected. This section also eliminates a requirement (adopted under the Bush Administration) to prepare an environmental impact statement whenever a project would substantially alter a potential wilderness area [Sec. 8503(c)].

³ See 36 CFR 220(e)(12) and (13).

B. Weakening the Endangered Species Act

H.R. 2 significantly weakens the interagency consultation requirements of the Endangered Species Act (ESA). The bill would exempt the Forest Service and the BLM from consulting with the U.S. Fish and Wildlife Service regarding forest management activities if the federal land managers determine that their actions are not likely to adversely affect an endangered or threatened species or its designated critical habitat [Sec. 8303(a)]. For any forest management activity that is subject to consultation, the bill imposes a 90-day deadline to conclude the consultation [Sec. 8303(b)].

C. Undermining Protection of Roadless Areas

The bill includes convoluted language about roadless area management that could be interpreted to eliminate current regulatory protection of Inventoried Roadless Areas under the national Roadless Area Conservation Rule and the Idaho and Colorado roadless rules. The bill states that the bill's authorities do not apply to lands "that are located within a national or State-specific inventoried roadless area ... unless (A) the forest management activity to be carried out under such authority is consistent with the forest plan applicable to the area; **or** (B) the Secretary of Agriculture determines the forest management activity is permissible under the applicable roadless rule governing such lands" [Sec. 8302(2), emphasis added]. The use of the word "or" instead of "and" indicates that any forest management activities that are consistent with local forest plans would be allowed, even if those activities are prohibited by the national or state-specific roadless rules.

At the time the Roadless Rule was adopted in 2001, forest plans allowed commercial logging on approximately 9 million acres of roadless areas and road construction on more than 34 million acres. Since very few forest plans have been updated since then to incorporate the Roadless Rule's prohibitions on road construction and commercial logging, road building and logging arguably would be allowed in millions of acres of roadless areas because those activities are "consistent with the forest plan applicable to the area."

D. Re-directing Funds from Environmental Restoration to Logging

Subtitle B of H.R. 2's Forestry Title would make several changes in the Secure Rural Schools (SRS) Title II program that aim to shift the program's emphasis and funding from environmental restoration to timber production. Specifically, the bill would repeal and replace the existing requirement to dedicate at least 50 percent of the SRS Title II funding to stream and watershed restoration or road maintenance or removal. Instead, the bill would require that at least 50 percent of the SRS Title II funds in each county must be used only for stewardship projects that include "the sale of timber or other forest products," reduce fire risks, or improve water supplies [Sec. 8201]. The bill would also establish a "self-sustaining RAC program," in which the purposes of the SRS Title II projects would be changed from the "protection, restoration, and enhancement of fish and wildlife habitat" under the current SRS law to "accomplish forest management objectives" and "generate receipts" [Sec. 8203(a)].

The bill would also shrink the size of the RACs from 15 members to just 9 members, and limit RAC membership to local residents [Sec. 8202(b) and (c)]. The combination of re-purposing Title II funds to be used for timber projects, along with reducing the size and geographic diversity of the RACs that make recommendations on use of Title II funds, would be problematic and would undermine the collaborative nature of RACs and the SRS Title II program.⁴

⁴ The 2018 Omnibus Appropriations Act includes one of the Westerman bill's proposed changes to the SRS Title II program by repealing the merchantable materials pilot program – see Division O, Section 401(b)(1).