

The Honorable Bruce Westerman  
Chairman  
House Committee on Natural Resources  
Washington, D.C. 20515

The Honorable Raul Grijalva  
Ranking Member  
House Committee on Natural Resources  
Washington, D.C. 20515

Dear Chairman Westerman, Ranking Member Grijalva, and members of the House Committee on Natural Resources:

On behalf of our millions of members and supporters, our organizations write to express our strong opposition to Chairman Westerman's and Representative Peters's legislation, the "Fix Our Forest Act" which was heard under a different title before the Subcommittee on April 17, 2024 and **[will update with markup info]**. We respectfully request that this letter be included in the markup record.

This legislation purports to be about sound forest management and fire, but it is really about stifling citizen voices, removing science from land management decisions, and legislating a large-scale rollback of the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) on millions of acres of federal lands. Its sweeping provisions remove scientific review and accountability to benefit the short-term interests of extractive industries.

Instead of focusing on proven ways to protect communities such as home hardening and science-based forest management projects close to communities, this legislation will open millions of acres of federal land to logging without scientific review and community input, which may increase the risk of wildfires. This bill also paves the way for increasing road density and removing large old trees that naturally confer fire resilience. Older trees also store a disproportionately high amount of carbon, mitigating against climate change that fuels fires. Road density has been linked with an increase in human-caused wildfires—as the density of roads increase, so do wildfire ignitions. Logging roads also fragment forest habitat and are sources of chronic sediment that harm water quality in rivers and streams. During a time of mass extinction, it also removes ESA consultation requirements designed to prevent harm to imperiled species. Finally, compounding these harms, the bill removes rights to judicial review, effectively barring citizens from holding federal agencies accountable.

Our organizations recognize the challenge in addressing threats posed by climate change, including increased risks from fire. Unfortunately, the majority of this bill would harm forests, communities, the climate, water, and biodiversity. Federal land managers already have broad procedural efficiencies: 85% of management on National Forest lands now proceeds under categorical exclusions (CEs). Further changes to bedrock environmental laws will only exacerbate harm to our forests. In particular, Congress should not be undermining ESA protections amidst an extinction crisis. As such, we are fully **opposed to this legislation as a whole**.

Our organizations welcome the chance to be part of this critical discussion, and we detail our concerns with specific sections of the legislation below.

## **Section 2: Definitions**

(7) HAZARDOUS FUELS MANAGEMENT ACTIVITIES.—Section 2 of the bill defines “hazardous fuels management activities” in a way that does not require that the activity be intended for the purpose of reducing hazardous fuels. Instead, it encompasses “any vegetation management activities that reduce the risk of wildfire....” This leaves room to justify any “mechanical thinning” or other vegetation management activity (such as clear cut logging) as risk reduction and could therefore fall within the definition of “hazardous fuels management activities.” Our organizations **oppose** the use of this broad definition, which invites confusion and potential abuse.

## **Title I: Landscape Scale Restoration**

### **Subtitle A - Addressing Emergency Wildfire Risks in High Priority Firesheds**

Subtitle A Section 101 waives the designation of fireshed management areas from the requirements of NEPA. A fireshed, as delineated by the Forest Service, is a very large area, typically 250,000 acres (390 square miles), and fireshed management areas comprise multiple firesheds. The fireshed assessments of these fireshed management areas are also waived from NEPA review. Doing so cuts critical scientific and public input from the process and risks inaccurate assessments and designation.

Subtitle A Section 106 encourages logging and other activities within designated fireshed management areas and categorically excludes these activities from detailed NEPA review. Along with unfettered logging, Section 106(a) calls for removal of dead and dying trees (trees which are essential for forest health and regeneration), chemical applications, undefined mechanical thinning, and grazing to be used on federal and non-federal lands deemed to have higher wildfire risk. This provides a vehicle for the agencies to carry out fireshed management projects for reasons unrelated to fire management and without the standards, responsibility, and accountability that would otherwise exist. **Section 106(b) amends the Healthy Forests Restoration Act to increase numerous existing CEs to 10,000 acres, or 15 square miles (an acreage that the Forest Service has testified may have significant impacts).** Treatment across this large acreage is likely to have significant impacts on habitats, watersheds, and ecosystems. Authorizing huge logging projects without objective and detailed environmental and administrative review, which limits public engagement and the use of best available science, is unacceptable because it does not facilitate appropriate projects for our forests and community safety.

Although this Subtitle is couched as wildfire-related, in fact it is simply a rollback of environmental laws. Section 106(a)(3)(A) states that “emergency” provisions in regulations implementing the ESA and NEPA are applicable “[f]or any fireshed management area designated under section 101” of the bill.<sup>1</sup> In so doing, the legislation requires no finding of an

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<sup>1</sup> [\[1\]](#) These provisions include 50 C.F.R. § 402.05, which allows informal consultation under alternative procedures, with formal consultation deferred until after the emergency is under control. Under this bill, consultation appears intended to be deferred as long as the bill is in force. As a result, it would not occur

actual emergency. Instead, it extends these emergency provisions to areas comprising hundreds of thousands of acres – without requiring that the exempt projects be directed at reducing wildfire risk. Our organizations **oppose** these provisions within Subtitle A.

### Subtitle C - Litigation Reform

**Section 121** of the bill contains several provisions that inappropriately and severely limit long standing judicial review standards for certain Forest Service and BLM actions. This section makes changes to standards for injunctive relief which is not within the committee's jurisdiction. Alarmingly, Section 121 also allows forest management projects to proceed even when a court finds a plan legally insufficient. Furthermore, even when the court finds a plan legally insufficient, it gives the agency the opportunity to proceed in some circumstances without ever remedying the legal violation, as long as the agency did not “entirely fail to prepare” an EA or EIS. This is no legal requirement at all.

Section 121 also dramatically limits the time to seek judicial review to 120 days after the date of publication of a notice in the Federal Register of agency intent to carry out the fire-shed management project. This abbreviated timeframe places an undue burden on interested parties and communities with limited resources and would likely have the unintended consequence of leading to more litigation, not less, as interested parties may be forced to file suit to protect their legal rights. This is especially true if a claim requires a pre-suit notice period, such as the 60-day notice period required by the ESA. Finally, Section 121 creates a new, restrictive standard for standing to sue by requiring a litigant to have participated in the rulemaking in a very specific way that goes beyond the standard required by federal courts for Article III standing. We therefore **oppose this provision** of the bill.

**Section 122** of this bill, known as “Cottonwood”, would weaken the ESA by broadly exempting the U.S. Forest Service and the BLM from the regulatory requirement under Section 7 of the ESA to reinitiate consultation when new information indicates that implementation of land management plans may be harming threatened or endangered species in a manner that was not previously anticipated. Reinitiation of consultation at the forest plan level is rare, but imperative because it provides the only mechanism to change management practices and apply them uniformly at the landscape scale, thereby avoiding extinction-by-a-thousand-cuts from consultation that occurs solely at the project level. In a recent FOIA request, it was found that reinitiation of consultation at the forest plan level for new information has only occurred 10 times from 2011-2024 to date and the process was completed relatively quickly.<sup>2</sup> Exempting the Forest Service and BLM from the requirement to reinitiate consultation would codify climate denial. This provision would permanently exempt these agencies from ever modifying any land management plans to protect listed species from changing climate conditions, therefore placing these threatened species at even greater risk. We therefore **oppose this provision** of the bill.

## **Title II: Protecting Communities in the Wildland Urban Interface**

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until long after the harm to endangered and threatened species has happened, and it is too late to avoid or mitigate that damage.

<sup>2</sup> Data available at <https://www.biologicaldiversity.org/foia-search/search> or upon request.

**Section 204** creates a new categorical exclusion for the development and approval of vegetation management, facility inspection, and operation and maintenance plans for electric utility line rights-of-way. The forest management activities conducted under this section would not be subject to the preparation of an EA or an EIS under NEPA - exclusions that our organizations oppose. There is no evidence that this authority is necessary, given that the Forest Service in particular has dozens of existing CEs that could be used for this purpose, and the agency now has the ability to “borrow” CEs from other federal agencies, some of which already allow this kind of activity: no new CE authority is therefore necessary. Additionally, this Section cross references clause iii of Section 106(a)(3) and therefore has the potential to extend, automatically, exemption from ESA consultation, as it is not clear whether the intent is to incorporate Section 106(a)(3)(A) or 106(a)(3)(B). We **oppose this section** and legislative proposals that seek to expand the use of CEs further.

### **Title III - Transparency and Technology**

Finally, **Section 305** of the bill proposes a study of potentially moving the Forest Service headquarters. This bill is not the place, nor is this the time, to divert resources amidst the challenges confronting the agency. Indeed, many high-level staffers presently live (and work) outside the existing headquarters. And, both Forest Service regions and individual forest supervisors have significant decision-making power under the status quo. Any such move would come at considerable cost to taxpayers and staff without adding value. It also risks the loss of institutional knowledge if individuals leave the agency, as occurred when BLM moved its headquarters.

Thank you for considering these comments and suggestions. Our organizations welcome the opportunity to be part of the critical discussion around climate change and wildfires. We recognize the need for science-backed policies to help protect communities from wildfire, such as the various community defense and home hardening recommendations put forth by the 2023 Wildland Fire Mitigation and Management Commission Report. We would like to specifically recognize Sections 201 and 202 of this legislation, which promote research and grant funding for community defense measures and home hardening projects. We would welcome the opportunity to work with members of the Natural Resources Committee to advance legislation that reflects the recommendations of the Commission and follows the best scientific guidance. Unfortunately, this legislation does not do that and includes many problematic provisions that are not in line with the Commission’s recommendations, and we ask you to **oppose the “Fix Our Forests” Act**.

Sincerely,