

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Joe Manchin
Chairman
Senate Energy and Natural Resources
Committee
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Senate Energy and Natural Resources
Committee
Washington, DC 20510

CC: The Honorable Debbie Stabenow, Chairwoman, Senate Agriculture Committee

Dear Leader Schumer, Leader McConnell, Chairman Manchin, and Ranking Member Barrasso,

On behalf of our millions of members and supporters, our organizations write to express our strong opposition to the inclusion of Chairman Westerman's and Representative Peters's legislation, the "Fix Our Forest Act" (FOFA) in any public lands package in the final months of the 118th Congress. All of our groups are supportive of legislation that will conserve our public lands and waters, but any attempt to include FOFA (especially the three specific sections of concern discussed below) in a public lands package will make such a package untenable, and unnecessarily controversial, and will cause our groups to oppose such a package.

This legislation purports to be about sound forest management and wildfire risk reduction, but it will stifle citizen voices, remove science from land management decisions, and legislate a rollback of the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and the National Historic Preservation Act (NHPA) on millions of acres of federal lands. As the Administration indicated through a Statement of Administration Policy (SAP), FOFA "contains a number of provisions that would undermine basic protections for communities, lands, waters, and wildlife; reduce opportunities for public input; and heighten the likelihood for conflict, litigation, **and delay on needed forest restoration and resilience work**" [emphasis added]. We have three primary concerns with the legislation which we view as poison pills that must be removed before final passage.

First, the Fix Our Forests Act encourages logging and other activities within designated fire-shed management areas and categorically excludes these activities from detailed NEPA review. Specifically, FOFA includes emergency authorities that will authorize ground-disturbing activities prior to any environmental analysis or Tribal consultation. Additionally, 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 almost certain to have significant impacts on sensitive wildlife habitat, drinking water sources, and ecosystems. Authorizing extensive timber harvest without objective and detailed environmental and administrative review is unacceptable because

it disregards the best available western and Indigenous knowledge, limits public involvement in federal decision making, and ultimately does not facilitate projects that keep our forests and communities safe from uncharacteristic wildfire.

Second, Section 121 of the bill contains several provisions that inappropriately and severely limit long standing judicial review standards for certain U.S. Forest Service and Bureau of Land Management actions. The legislation 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 a firehosed management project: the current statute of limitations is 6 years. This abbreviated timeframe places an undue burden on interested parties and rural and frontline 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.

Third, Section 122 would weaken the ESA by broadly exempting the USFS and the BLM from the regulatory requirement under Section 7 of the ESA to reinitiate consultation when new information comes to light that indicates that implementation of land management plans may affect 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. A recent FOIA response revealed that reinitiation of consultation at the forest plan level based on new information (often climate change-related), newly-listed species, or new designations of critical habitat has only occurred 6 times between 2017-2020; a rare occurrence that when it did occur, was completed relatively quickly. Exempting the USFS and BLM from the requirement to reinitiate consultation would harm listed species and codify climate denial.

The passage of any public lands package that includes any of these three provisions will only serve to harm our public lands by removing expert scientific and public input from the process, anathema to a public lands package that is meant to protect these special lands and waters that are owned by the American public. Therefore, our organizations strongly oppose the inclusion of the Fix Our Forests Act in a public lands package, and will not support any package that contains the problematic language identified above. We urge members of Congress to pass a clean public lands package, without these provisions that would undercut our bedrock environmental laws.

Sincerely,

Center for Biological Diversity
Defenders of Wildlife
Earthjustice
Natural Resources Defense Council
Sierra Club
Silvix Resources
Southern Environmental Law Center