

May, 23 2024

The Honorable David Scott
Ranking Member
House Agriculture Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Ranking Member Scott and Democratic Members of the House Agriculture Committee:

On behalf of our millions of members and supporters, the undersigned organizations write to express our concerns with several provisions in the Chairman's mark of the 2024 Farm Bill, and we ask you to oppose this bill. Our objections center around changes to the National Environmental Policy Act and the Endangered Species Act contained within Title VIII: Forestry.

National Environmental Policy Act (NEPA)

Congress enacted NEPA to require the federal government to evaluate the consequences its actions before implementing them, thereby providing an opportunity for communities and stakeholders to provide input and to ensure all impacts of the proposal, particularly those that result in environmental harm, are carefully evaluated.

There are three possible levels of environmental review under NEPA: Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS). A CE requires the least amount of detail and analysis, and an EIS requires the most extensive analysis. Categorical exclusions (CEs) are defined as "a category of actions which do not individually or cumulatively have a significant effect on the human environment."¹

When properly established and substantiated by analysis, CEs are a way for agencies to efficiently and effectively implement reviews under NEPA for projects that have no significant impact on the environment. However, when CEs are established by Congress instead of an agency analysis and rulemaking process, entire categories of potentially harmful actions risk completely evading environmental review and public input.

The Chairman's mark proposes to expand three existing CEs – the insect and disease CE, the wildfire resilience CE, and the fuel break CE – to 10,000 acres, up from the existing limit of 3,000 acres. If enacted, this change would result in very limited environmental review and no public input for forest management projects that are over 15 square miles, potentially including logging and road building. By its very nature, a project covering or affecting 10,000 acres can, and likely will, have a significant effect on the human environment, especially in the absence of any interdisciplinary NEPA analysis. It is therefore inappropriate to apply a CE to projects of this magnitude.

The Chairman's mark also includes several new CEs, including one for the implementation of Protection Projects as defined in H.R. 2989, the Save Our Sequoias Act, that authorize forest management activities in response to the threats of wildfire, insects, and drought to giant

¹ <https://bja.ojp.gov/funding/nepa-guidance>

sequoias. The concern around Protection Projects is twofold. First, H.R. 2989 allows Project implementation to begin and conclude before completing environmental analysis, rendering any subsequent analysis moot and subverting the very purpose of ensuring environmental harm is minimized and mitigated before a project begins. In practice, this would mean projects can remove trees and conduct the environmental analysis after they have been logged. H.R. 2989 goes further by declaring Protection Projects and reforestation and rehabilitation activities to be “categorically excluded from the preparation of an environmental assessment or an environmental impact statement” under NEPA, thus creating a new CE for these activities (H.R. 2989 Sec. 6(a)(4)(A)).

U.S. Forest Service Chief Randy Moore stated during two separate Congressional hearings that 85 percent of all Forest Service projects are completed using CEs,² and this figure represents work done before the passage of the Fiscal Responsibility Act, which granted agencies additional CE authorities. This extraordinarily high percentage strongly suggests that additional CEs, waivers, and amendments to NEPA are unwarranted.

Endangered Species Act

One requirement under the Endangered Species Act (ESA) is that land management agencies, such as the Forest Service and Bureau of Land Management (BLM), must consult with the Fish and Wildlife Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats.

The Chairman’s mark includes two pieces of legislation that would weaken ESA protections – H.R. 200 and H.R. 2989.

H.R. 200 would weaken the ESA by broadly exempting the 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.

Similarly, H.R. 2989 exempts Protection Projects in sequoia groves from complying with the ESA’s requirement to avoid harm to critical habitat by declaring that all Protection Projects are consistent with improving the health and resilience of critical habitat for threatened and endangered species (Sec. 6(a)(4)(C)(i)). The bill also allows for Protection Projects to be implemented prior to initiating ESA consultation. Similar to our concerns around the NEPA provisions in this bill, the only way to avoid harm to critical habitat is to conduct ESA consultation before project implementation.

The ESA’s Section 7 consultation process is a vitally important safeguard for more than 400 ESA-listed species that occur on the National Forest System and 300 listed species that inhabit BLM lands. The wildfire crisis poses a risk to many listed species, but so can ill-informed, poorly conducted forest treatments, especially large-scale treatments that can span large swaths of a species’ habitat. Proper planning and management of these federal public lands offer the best opportunity for recovery of many of these imperiled species whose unique requirements for survival occur on federal lands.

² Legislative Hearing before the Committee on Natural Resources. Wednesday, May 10, 2023. Serial No. 118-22. Page 31.

We thank you for considering these concerns, and we ask that you voice them during the May 23rd markup and vote **NO** on the Chairman's mark.

Sincerely,

350 Eugene
Alaska Rainforest Defenders
Alaska Wilderness League
Alaska Wilderness League Action
American Bird Conservancy
Animal Welfare Institute
Applegate Siskiyou Alliance
Bird Alliance of Oregon
Californians for Western Wilderness
Cascade Forest Conservancy
Center for Biological Diversity
Center for Sustainable Economy
ColoradoWild
Conservation Northwest
Defenders of Wildlife
Earthjustice
Endangered Habitats League
Endangered Species Coalition
Environmental Law & Policy Center
Environmental Protection Information Center
Forests Forever
Friends of Plumas Wilderness
Friends of the Clearwater
Friends of Wisconsin Wolves and Wildlife
Great Lakes Wildlife Alliance
Great Old Broads for Wilderness
Idaho Conservation League
Interfaith Power and Light
Kalmiopsis Audubon Society
Kentucky Heartwood
Klamath Forest Alliance
Klamath Siskiyou Wildlands Center
Lassen Forest Preservation Group
League of Conservation Voters
Los Padres ForestWatch
National Wolfwatcher Coalition
Natural Resources Defense Council
Natural Resources Law
New Hampshire Audubon

North Central Washington Audubon Society
Northeastern Minnesotans for Wilderness
Ohio Environmental Council
Oregon Wild
Project Eleven Hundred
Roaring Fork Audubon Society
Save Our Sky Blue Waters
Sierra Club
Sierra Foothills Audubon Society
Sierra Forest Legacy
Silvix Resources
Soda Mountain Wilderness Council
South Umpqua Rural Community Partnership
Southern Environmental Law Center
Standing Trees
The Fire Restoration Group
The Illinois Environmental Council
The Wilderness Society
Trust for Public Land
Umpqua Natural Leadership Science Hub
Umpqua Watersheds
WE ACT for Environmental Justice
Western Environmental Law Center
Western Watersheds Project
WildEarth Guardians
Women's Earth and Climate Action Network (WECAN)