



A Message from AFRC President Travis Joseph

Those of us who work in the woods often confront existential questions when caring for our forests and natural resources: What legacy do we want to leave for future generations? What actions must we take now to create the future we hope for? And, what lessons have we learned from the past that will help us secure a better future? These are the same questions we should be considering and discussing as we all confront and respond to uncomfortable truths about racism and inequality in our country.

While AFRC's work and mission is passionately dedicated to the responsible and sustainable management of public forests in the West, we wish to share our principles as they relate to the serious and complex social challenges facing our country:

AFRC stands against racism in any form. We stand in solidarity with those working to end discrimination and injustice in America. We will look for ways to promote diversity, equity, and inclusivity in our work. We are committed to ensuring that our actions exemplify AFRC's values of equality and respect for all.

We are grateful that our profession is one dedicated to issues with the extraordinary potential to bring people together around a common cause: healthy forests and communities for all. We remain committed and hopeful that AFRC's work will help build bridges, inspire unity, and contribute to a society where all Americans enjoy equal opportunity. */Travis Joseph*

AFRC 2020 Annual Meeting Postponed

AFRC's 2020 Annual Meeting scheduled for September 16-18, 2020 at Skamania Lodge has been postponed and rescheduled for 2021. This was a difficult and disappointing decision, and was only made after careful consideration, numerous discussions about alternatives, and AFRC Board approval.

The health and safety of all meeting participants is our first priority. COVID-19 continues to pose too many risks and uncertainties to proceed this fall.

AFRC will host its regularly-scheduled 2021 Annual Meeting from April 6-8, 2021 at Skamania Lodge. Please save these dates on your calendar. We have already been able to secure many of the exciting panelists and speakers planned this year and look forward to offering another outstanding Annual Meeting when we can safely reconvene in April 2021. We will provide additional meeting and registration details in our monthly newsletter, on our webpage, and via Social Media later this fall.



For those of you who have registered for the September meeting, AFRC is in the process of issuing refunds (same form of payment – credit card or check). Thank you for your understanding and flexibility. We hope to see you at Skamania Lodge in April. /Nick Smith

Washington, D.C. Update



The House and Senate are both working on major legislation that would increase the funding available to the Forest Service to address an estimated \$5 billion roads, trails, and infrastructure maintenance backlog. The Senate recently voted 73-25 to pass the Great American Outdoors Act (GAOA), which the House is expected to pass in July. President Trump came out in support of the legislation earlier this year following a meeting with Senators Steve Daines (R-MT) and Cory Gardner (R-CO), two Republican Senators facing tough reelection battles that are important to Republican efforts to maintain control of the Senate.

GAOA couples the full and permanent funding of the Land and Water Conservation Fund (LWCF) at \$900 million per year with the creation of a five-year trust fund to direct up to \$9.5 billion to address deferred maintenance at national parks and on other public lands. The original version of the legislation only directed 5% of the maintenance backlog funding to the Forest Service, but our industry and other organizations succeeded in increasing that share to 15%. The final allocations would direct 75% of the funding to the National Park Service while the US Fish and Wildlife Service, Bureau of Land Management, and Bureau of Indian Affairs would each receive 5%.

The largest component of the Forest Service’s maintenance backlog is tied to its 385,000-mile road system, much of which was built and maintained with revenues from timber harvests. The volume and value of Forest Service timber harvest has declined in recent decades and Congress has failed to provide the agency with sufficient roads funding through the annual appropriations process. A failing road system now limits access to areas available for timber harvest and threatens the economic viability of proposed timber sales due to associated road work. It also limits public access and can also make fighting wildfires more dangerous and expensive.

GAOA only allows the agencies to direct up to 35% of the maintenance backlog funding to transportation projects. For the Forest Service, this would allow the agency to direct nearly \$100 million more per year towards its road maintenance backlog. The agency currently receives \$220 million in annual appropriations for its roads system, so the GAOA funding represents a significant increase. The Forest Service would also have at least \$185 million per year to direct towards facilities and other maintenance activities.

Most western Republicans voted “no” on the measure since it would roughly double - and make permanent - the funding available for federal land acquisition through the Land and Water Conservation Fund. Many western states already have large swaths of public lands owned by the federal government, which cannot be developed or taxed by local governments to help support essential services.

House Infrastructure bill. On July 1 the House approved a [\\$1.5 trillion infrastructure package](#) known as the “Moving Forward Act.” The package includes a \$500 billion “green” transportation bill passed by the House Transportation and Infrastructure (T&I) Committee on June 18. The Moving Forward Act also

includes \$100 billion for affordable housing programs, \$100 billion for infrastructure investments at high-poverty schools, an additional \$100 billion for broadband deployment, and \$75 billion for clean energy initiatives. The bill passed on a 233-188 vote (largely along party lines) but faces long odds in the Republican-controlled Senate.

AFRC worked with Congressman Peter DeFazio (D-OR), chairman of the House T&I Committee, to increase the funding available for Forest Service roads under the transportation bill. The Forest Service currently receives almost \$20 million for public highways annually under the Federal Lands Transportation program. This compares to \$300 million received by the National Park Service under the same program. The House transportation bill would direct \$50 million annually to the Forest Service for public highways, which make up about 65,000 miles of its 385,000-mile road system. This additional funding would likely free up discretionary funds for non-highway road projects important to maintaining access for forest management activities. The House transportation bill would also create a \$400 million discretionary grant program to help fund road infrastructure projects on public lands. If funded, the Forest Service could compete with other agencies for this funding.

After a grueling two-day markup largely conducted via video, the House transportation bill emerged as a highly partisan bill lacking Republican support. This makes it difficult sell in the Senate, where the Environment and Public Works Committee unanimously passed a bipartisan transportation bill last summer. At this point in the election cycle, it is difficult to see both parties and the President coming to an agreement on any major transportation and infrastructure package.

Cottonwood. As noted in the [May AFRC News](#), addressing the nonsensical Ninth Circuit *Cottonwood* decision remains a high priority for AFRC. On June 10, AFRC and the Federal Forest Resource Coalition (FFRC) [sent a joint letter](#) to Agriculture Secretary Sonny Perdue, Interior Secretary David Bernhardt, and Commerce Secretary Wilbur Ross urging the Administration to take regulatory action to close the *Cottonwood* litigation hook. The letter included suggested changes to the specific regulations clarifying that a forest plan is not an ongoing federal action – consistent with the position taken by the Obama Department of Justice. While high level discussions are taking place about the need for a regulatory fix, it is unclear when the agencies might move forward with a proposed fix.

Meanwhile, on June 24 Senator Steve Daines [announced](#) the introduction of [legislation](#) to address the *Cottonwood* “new information” trigger for the re-initiation of plan-level consultation, one of four outlined in endangered species regulations. Senators Jim Risch (R-ID), Mike Crapo (R-ID), and Kevin Cramer (R-ND) cosponsored the legislation and companion legislation is likely in the House. However, with no Democrat cosponsors it is difficult to see the legislation moving forward. /Heath Heikkila

SCOTUS Opinion Protects Forest Service Jurisdiction Over NFS Lands

On June 15, the U.S. Supreme Court issued the much-anticipated [opinion](#) in the *Cowpasture* case relating to the construction of a pipeline on federal lands. AFRC joined 16 forestry associations in filing an [amicus brief](#) in the Court last December, urging Justices to reverse the Fourth Circuit’s decision due to the case’s potential negative implications to active forest management on U.S. Forest Service lands across the country. Our forestry coalition previously urged the Court to take the case in an earlier [filing](#).

The question before the Supreme Court was whether the Forest Service had the authority to grant rights-of-way permitting through lands traversed by the Appalachian Trail within national forests. In 2018, the Fourth Circuit Court of Appeals in Richmond, Virginia [vacated the permit](#), reasoning the Trail fell within

the jurisdiction of the National Park System, even though it is located on National Forest System lands that operate under different laws and management guidelines.

Consequently, the Fourth Circuit effectively removed the Trail footprint from the George Washington National Forest and transferred it to the National Park Service. If the ruling was upheld, vast swaths of the National Forest System could have been instantly transferred to the Park System, and would no longer be subject to Forest Service direction and authorities.

In our amicus brief, AFRC and other coalition members indicated there are 60 National Forest System Units that were potentially affected by the case since they are transected by trails administered by the Secretary of the Interior. Fifteen of these trails stretch almost 38,000 miles across 32 states. In some instances, the Forest Service could have been asked to create ‘buffers’ for trails that are not consistent with governing forest plans.

An adverse ruling could have impeded the ability of the Forest Service to grant rights of way, and could have severely impacted needed forest management projects. By potentially transferring jurisdiction of substantial chunks of the National Forest System to the National Park System, the ruling could create additional obstacles to harvesting timber and restoring forest health on national forests.

The opinion, written by Justice Thomas and joined by seven of the nine Justices, avoids all these consequences. It also puts guardrails on future litigation by holding that Congress will use “unequivocal and direct language” if it wants to transfer land from one agency to another. */Nick Smith*

Tenth Circuit Upholds the Hyde Park WUI and Pacheco Canyon Forest Resiliency Projects Under the Farm Bill Insect and Disease CE

On June 12, a three-judge panel of the U.S. Court of Appeals for the Tenth Circuit issued a [decision](#) upholding the Hyde Park Wildland Urban Interface Project (Hyde Park Project) and the Pacheco Canyon Forest Resiliency Project (Pacheco Project), two thinning projects located on the Santa Fe National Forest.

The Hyde Park Project covers 1,840 acres of treatment and the Pacheco Canyon Project covers 2,042 acres of treatment, both of which overlap with various inventoried roadless areas. The project areas comprise of densely stocked ponderosa pine in need of treatment since they are vulnerable to insect and disease outbreaks. The thinning activities would mainly target trees that are less than 16 inches diameter breast height (DBH), and trees larger than 16 inches DBH may be treated through controlled burning.

The Tenth Circuit held that the 2014 Farm Bill CE does not require the Forest Service to perform extraordinary circumstances review, making it the first Circuit Court to squarely address this issue. The Ninth Circuit, in both the appeal of the [Sunny South Project](#) on the Tahoe National Forest and the [Lostine Project](#) on the Wallowa-Whitman National Forest, merely assessed the adequacy of the Forest Service’s extraordinary circumstances review without deciding the threshold question of whether the Farm Bill CE requires such a review in the first place.

The Tenth Circuit also agreed the Forest Service used the best scientific information to protect the northern goshawk and Abert’s squirrel, and that treatments would maximize the retention of old growth and/or large trees, as required under the 2014 Farm Bill.

The decision affirms the U.S. Forest Service's ability to use congressionally-approved policy tools to expedite restoration projects on forests impacted by wildfire, insects and disease. /Sara Ghafouri

Montana Logging Association and AFRC Unite to Defend the Flathead Revised Forest Plan

On June 22, Judge Molloy from the U.S. District Court in Montana granted Montana Logging Association (MLA) and AFRC's motion to intervene in consolidated cases, *WildEarth Guardians et al. v. Steele et al.*, and *Swan View Coalition et al. v. Bernhardt*, which challenge the Flathead National Forest's Revised Forest Plan.

The 2.4 million acre Flathead National Forest adopted its Revised Forest Plan on January 28, 2019. The pre-existing plan was more than 30 years old, which dramatically exceeded the 10-15 year time-frame to revise its forest plan as directed by the National Forest Management Act. Highlights of the Forest Plan revisions include fire and fuels management direction emphasizing active vegetation management near communities, as well as new analyses needed for timber production opportunities. The revisions also address conservation of wildlife and aquatic habitat, including updated direction for grizzly bear habitat management and Inland Native Fish Strategy. It also identifies areas for recommended wilderness and Wild and Scenic river designations.

The 1986 Forest Plan had a projected timber sale quantity (PTSQ) of about 28 MMBF annually. The Revised Forest Plan's PTSQ was increased to 38 MMBF annually for the first decade, and 38.9 MMBF annually for the second decade. This increase in the timber sale quantity will help maintain the local forest products infrastructure.

There are two important legal issues at play in the case. First, the case involves preserving the ability of the Forest Service to loosen road construction and closure requirements in Plan revisions. This is the first plan under the 2012 Planning Rule to face a significant challenge and the plaintiffs' position implies that wildlife standards, once tightened, cannot be loosened. Second, the challenge involves reaffirming the importance of tiered consultation and the calculation of "take" at the Plan level.

Currently, there are about eight projects that have either been approved or are currently being planned under the Revised Forest Plan. AFRC and MLA support the Revised Forest Plan and intervened to protect interests in overall forest health and increase in timber supply, both of which would be adversely affected if the revised plan were somehow enjoined or vacated due to the litigation. MLA and AFRC will file Cross-Motion for Summary Judgment on October 6 and the hearing will occur in early 2021. /Sara Ghafouri

Flat Country Draft ROD Signed

When it was adopted in 1994, the Northwest Forest Plan (NWFP) provided guidance for the U.S. Forest Service to manage roughly 16% of its land base to provide a sustainable timber supply to meet the public's need for wood products. This management structure included a combination of intermediate thinnings and regeneration harvests. This mixture of treatments was adapted to the ecology of native tree species such as Douglas-fir that require the full sunlight provided by a regeneration harvest in order to grow a new forest of young seedlings.

However, during the subsequent 26 years the Forest Service largely deferred those regeneration harvest treatments. Since 2000, less than 5% of the acres treated with timber harvest on the Willamette National

Forest have been through regeneration harvest. This extreme disparity has compromised the Forest Service’s ability to deliver the sustainable supply of timber that was prescribed under the NWFP.

Over the past few years, the Willamette National Forest has been the leader in reversing this trend and addressing the flawed and unsustainable management paradigm adopted by incorporating regeneration harvest treatments back into their management portfolio. In 2016 the Willamette approved the Green Mountain Project that considered approximately 300 acres of regeneration harvest—a modest number but an important first step. This month, the Forest published a Draft Decision on a project called Flat Country that recognizes the Willamette’s commitment toward implementing the forest management activities that the NWFP described back in 1994.



The Flat Country project proposes roughly 950 acres of regeneration harvest as well as over 1,500 acres of thinning. The regeneration component of the project will be implemented using a silvicultural tool known as a “shelterwood,” where a significant portion of the overstory trees (25 trees per acre) will be retained on site to provide a seed source for the new forest to be established. This photo (*left*) was taken in an adjacent watershed to the Flat Country project and represents a shelterwood treatment implemented by the Forest Service in the past. It provides a visual idea of what portions of those 950 acres on the Flat Country project may likely look like

following treatment.

If implemented, the project will not only address the need for a sustainable supply of timber, it will also generate quality early seral forest habitat for wildlife as illustrated in the photograph. AFRC plans to support the Willamette’s proposal and hopes to help inform the public about what sustainable forest management really looks like on public lands. If you are interested in the project, you can find the [appropriate documents here](#). /Andy Geissler

Good Neighbor Authority Continues to Grow in Washington

The implementation of Good Neighbor Authority projects continues to grow in Washington State. The Department of Natural Resources (DNR) Federal Lands Program and the U.S. Forest Service signed the Good Neighbor Agreement back in 2017 ([June 2017 newsletter](#)) and have been working on a variety of projects since that time.

The DNR is now implementing projects on the five primary National Forests in Washington state: the Colville, Gifford Pinchot, Mount Baker Snoqualmie, Olympic, and the Okanogan-Wenatchee National Forests. DNR reports that discussions are underway to explore cross-state pilot projects with other National Forests and the Bureau of Land Management.

Revenue for operations of the GNA program comes from several sources. The Washington State Legislature provided a one-time allocation of \$2 million dollars and currently the GNA program receives

\$724,000 in ongoing State funding. The Forest Service at both the Regional and individual Forest level have contributed another \$3.4 million dollars. And as of this June the program has developed \$1.6 million of program revenue on three of the five National Forests it works on. This funding has allowed DNR to hire 15.75 FTEs to work on GNA projects. These employees are a mix of permanent, project, and non-project positions and includes two full-time engineers to support the program work.

To date DNR has completed six projects. There are an additional 20 ongoing projects and 20 projects in the planning phase. Of these 46 total projects, 26 are non-commercial in nature and 20 are commercial or revenue producing. Project types include hazardous fuels mitigation, salmon recovery/aquatic restoration, habitat monitoring, forest road work, rock source development, and commercial timber harvest. Twelve sales have been awarded since the inception of the program, amounting to 36.4 MMBF. The Federal Lands Program at DNR is also piloting a project with Skamania County to assist in road repairs on a heavily used road system, thereby helping to support county infrastructure.

The Federal Lands Program has been working to grow its capacity in a conservative manner, given the levels and types of funding it receives. Over the next three years, the program plans to complete 11,500 acres of treatments on federal lands that contribute to the State's [20 Year Forest Health Strategic Plan](#), produce at least 26 MMBF in merchantable timber from federal lands statewide, and to complete at least five projects on federal lands in western Washington priority Landscapes that are designated within the Forest Action Plan.

The DNR website has a lot of useful information about the [Good Neighbor Authority](#) program in Washington State. Additionally, DNR has created this [Spring 2020 update](#) on the status of GNA in Washington. AFRC will continue its work with the various national forests in Region 6, the DNR Federal Lands Program, and other stakeholders to achieve our shared goals. /Matt Comisky

Condition Based NEPA and DNA

As the Forest Service and Bureau of Land Management work to increase the pace and scale of forest management, two innovative NEPA planning tools are being used. These new tools are: Determination of NEPA Adequacy (DNA) and Condition Based NEPA.

Determination of NEPA Adequacy

The BLM could already use the DNA analysis method, while the Forest Service had included it in their draft regulation changes. A DNA is a means by which an agency can use existing NEPA to cover a proposed action without conducting additional NEPA. It's a way to create planning efficiencies by using existing analysis and work.

In making the determination whether NEPA analysis performed for the *previous* proposed action can suffice for a *new* proposed action, the agency needs to answer several questions:

- Is the new proposed action similar to a previously analyzed proposed action or alternative analyzed in detail in previous NEPA analysis?
- Is the range of alternatives previously analyzed adequate under present circumstances?
- Is there any significant new information or circumstances relevant to environmental concerns that would substantially change the analysis in the existing NEPA document(s)?
- Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document(s)?

- Agencies will still need to document their decisions and follow through on public notice/comment and administrative review processes for a DNA.

The DNA approach is a powerful tool that can help federal land managers accelerate treatments in our unhealthy forests. Expensive and time-consuming NEPA completed on one project can now be transferred to a similar landscape if conditions are basically the same. For example, if NEPA is planned for a project in one watershed with no significant impacts, that NEPA can be transferred to a project in another watershed exhibiting the same characteristics with minor adjustments for specific differences without reinventing the wheel. A practical use for this approach might be in the hundreds of thousands of acres of second growth stands that are of a similar age and require commercial thinning.

Condition Based NEPA

AFRC has been tracking several projects in Forest Service Region 1 that are using a Condition Based approach to NEPA. The Condition Based approach, which we support, has mostly been used in the past on large projects such as noxious weed spraying covering thousands of acres where conditions are very similar, and likely to change over time. However, it is now being considered for use in forest management applications as well.

When analyzing a project, the Forest may issue an implementation guide outlining that “If these conditions are present, then this is the action will be taken.” One of the success stories where Condition Based Management has been used in recent years is in the Black Hills, where there are similar ponderosa

pine stand conditions found over a large landscape. In the Black Hills case, management was needed due to pine beetle infestations. NEPA guidelines stating that “if these conditions are present, these types of actions will be taken” worked very well.

Card VM-03
Activity: Salvage Cut and Sanitation Cut
<p>Description: Salvage treatments remove dead, damaged, or dying trees because of agents other than competition, to recover economic value that would otherwise be lost. Sanitation treatments remove trees to improve stand health by stopping or reducing the actual or anticipated spread of insects and disease. Sanitation and salvage treatments often occur simultaneously and in similar conditions.</p> <ul style="list-style-type: none"> • These treatments are used in stands experiencing current infestations of insects or disease. • Treated stands generally remain stocked with a live overstory component but stocking levels may vary depending on stand conditions. Openings may occur where damaged, diseased and dying trees are removed. • Canopy gaps may create conditions favorable for a future mosaic of age and size classes. • In stands with high mortality, there may be a need to follow treatments with prescribed fire for natural or artificial regeneration. <p>Objectives: The objective is the removal of trees to improve stand health by stopping or reducing actual or anticipated spread of insects and disease and to reduce future fuel levels by removing dead and damaged trees.</p>
When would this activity be implemented?
<p>Sanitation and salvage treatments are implemented in stands that are experiencing insects and disease activity and/or related mortality.</p> <p>Examples include, but are not limited to:</p> <ul style="list-style-type: none"> • mixed conifer stands with mountain pine beetle activity in lodgepole pine • Stands where Douglas fir beetle is active in Douglas-fir • readily accessible stands of dead trees that could provide forest products through a commercial firewood sale <p>Integration Opportunities: Timber harvest will provide opportunities to perform road maintenance and implement BMP's to improve road conditions.</p>

In Region 1 several projects are currently being planned using the Condition Based Management Approach. Those include the Piquett, Mud Creek and Bitterroot Front projects on the

Bitterroot National Forest and the End of the World and Pete King Wildlife Habitat Improvement projects on the Nez Perce-Clearwater. In addition to issuing implementation guidelines, the Forests also prepare activity cards which outline specific treatments and when they would be used.

These activity cards (*examples above*) gives Forests the flexibility to finalize unit sizes and silvicultural treatments when the actual field work is being done, rather than when planning documents are being prepared which may be two or three years prior. As a consequence, treatments are more specific to current needs.



This picture of the End of the World Project shows a basin of contiguous stands of grand fir in the South Fork of the Clearwater River that has taken over the landscape. Condition Based Management calls for a specific number of acres to be treated, but the location of those acres will be determined when the Silviculturist makes the final decision of stand needs at the time of layout and marking just before project implementation. AFRC believes this not only will expedite NEPA, but will more accurately direct treatments to those acres needing it the most. / *Tom Partin*

Forest Economics and Federal Policy Shifts

The ever progressive Idaho Forest Restoration Partnership (IFRP) recently sponsored a webinar on forest economics. Professor Greg Latta, currently the interim director for the Policy Analysis Group for the University of Idaho Forest Economics department, presented the webinar. Although the program was specifically geared to Idaho, the fundamentals are broadly applicable to any states that have a significant forest products industry and have a reliance on federal lands for raw materials.

Professor Latta and the University of Idaho Policy Analysis Group have examined how federal forests fit in with forest economics in Idaho. The Idaho forest sector provided \$2.2 billion GDP, or 24 total jobs per million board feet, in 2018. Because the federal forest land base is so large in Idaho, and throughout the West, there are significant implications tied to federal policy changes in harvest volumes. The example Professor Latta used was effects of the Northwest Forest Plan tied to the endangered species listing of the Northern Spotted Owl. Declining harvests in the Northwest led to an increase in harvests in the Southeastern U.S. Timber managers in the southeast responded by planting more trees and increasing the inventory of standing timber. Southeastern timberlands are extremely productive with short rotations, so consequently much of that timber is currently coming online for utilization. At the same time, increases in federal timber supply are occurring as a result of various policy changes and initiatives such as Shared Stewardship.

During the webinar a brief refresher in Forest Economics 101 was provided, highlighting how local markets are affected by changes in raw material supply. More raw materials on the market results in a price drop for consumers and a price drop for producers. These effects are also felt throughout the supply chain, both direct and indirect, and the responses will vary by area, county, region and landowner. Professor Latta emphasized to webinar participants the complexities in market responses especially in a global marketplace.

This webinar is a must for Forest Service personnel, collaboratives, and anyone involved or interested in forest policy, forest management, or the forest products sector. The webinar is about 50 minutes and can be viewed [by clicking here](#). /Irene Jerome

President Trims Marine National Monument off New England, Attempting to Evade Legal Challenge

A presidential [proclamation announced](#) in Bangor, Maine on June 5 opened the New England Canyons & Seamounts National Monument to commercial fishing. The modification addresses some elements of a pending legal challenge to the monument but was issued only once the government had successfully defended the monument as an exercise of presidential power. The Monument was [declared](#) by President Obama in September 2016.

Covering nearly 5,000 square miles or 3.2 million acres, it is the first [marine Monument](#) in the Atlantic, resting at the edge of Georges Bank about 130 miles southeast of Cape Cod. It came shortly after President Obama expanded the [Papahānaumokuākea Marine National Monument](#) off the coast of Hawai'i by 442,781 square miles, creating the world's largest marine protected area. The Hawai'i monument was initially [created](#) by President George W. Bush in 2006.

Northeast Canyons and Seamounts has been the subject of a [legal challenge](#) filed in 2017 by five commercial fishing associations—the Massachusetts Lobstermen's Association; Atlantic Offshore Lobstermen's Association; Long Island Commercial Fishing Association; Garden State Seafood Association; and Rhode Island Fishermen's Alliance. The groups are represented by the Pacific Legal Foundation.

The D.C. Circuit [rejected](#) the challenge in late 2019. Though it reaffirmed that Monument proclamations are reviewable for claims that they are legally invalid, the court rejected all the fishing associations' arguments. The court determined that although the Monument is entirely ocean, it is still "land" within the meaning of the Antiquities Act because the Supreme Court has repeatedly [recognized](#) that submerged lands are subject to the Act. It also rejected the argument that the [National Marine Sanctuaries Act](#) displaced the Antiquities Act. The court found no conflict, much like the case in 2002 ([Tulare County v. Bush](#)) where it found no conflict between NFMA and the proclamation of Giant Sequoia National Monument.

In another unique maritime issue, the court found that the portion of the monument within the U.S. Exclusive Economic Zone (EEZ) was still sufficiently controlled by the Federal government to fall within the Antiquities Act. The EEZ is from 12 to 200 nautical miles offshore where the U.S. has claimed exclusive rights to resources under international law, itself established through a [Proclamation](#) by President Reagan. Finally, the court determined that the fishing groups had not been specific enough to state a claim that the monument was not the "smallest area compatible" with management as required by the Antiquities Act.

Any petition for *certiorari* is due to the Supreme Court by July 27. At the same time, a flood of environmental groups have already filed a [new suit](#) challenging the June 5 revision to the monument. This raises many of the same issues as in groups' challenges to revisions to Bears Ears and Grand Staircase-Escalante, cases initially filed in 2017 which are nowhere near resolution (AFRC News, December 2017). AFRC staff (and EEZ [enthusiasts](#)) will continue to monitor developments. /Lawson Fite