



Washington, DC Update



Congress and the White House were unable to reach agreement on additional COVID relief legislation prior to the November election. Senate Republicans objected to the cost of the \$2.2 trillion measure sought by House Speaker Nancy Pelosi (D-CA) and instead focused on the confirmation of Judge Amy Coney Barrett to the U.S. Supreme Court – a “win” for the Republican base as they seek to hold onto their precarious majority.

When Congress returns for a *Lame Duck* session it will likely take up COVID relief legislation, which is expected to include an extension of the Paycheck Protection Program (PPP), another round of direct payments to most Americans, and federal funding for Coronavirus testing, distribution of an anticipated vaccine, and other COVID-related activities. Democrats continue pushing for aid to state and local governments facing a loss of revenue.

The federal government is also operating under a Continuing Resolution (CR) that runs through December 11, so Congress will need to agree on Fiscal Year 2021 appropriations or pass another CR to give the next Congress time to complete this unfinished business. The White House and Congress may also push for supplemental appropriations in response to recent natural disasters, including Western wildfires that have burned millions of acres this year. Restoration, reforestation, and infrastructure repair costs on burned Forest Service and Bureau of Land Management (BLM) lands could stretch into the billions of dollars.

Senator Lisa Murkowski (R-AK), Chair of the Senate Energy and Natural Resources Committee, recently signaled her desire to move forestry reform legislation authored by Senators Diane Feinstein (D-CA) and Steve Daines (R-MT). So far Senate Democrats have been unwilling to consider additional forest management reforms and will likely be even less willing to pass legislation during a *Lame Duck* Congress if they capture the Senate and/or White House. AFRC has provided suggestions for strengthening the Feinstein-Daines bill and stands ready to work with Republicans and Democrats to provide our federal land management agencies with the tools they need to restore the health of overstocked, fire-prone federal forests.

Cottonwood. The U.S. Fish and Wildlife Service and NOAA Fisheries have submitted [proposed regulations](#) for addressing the *Cottonwood* litigation hook to the White House Office of Management and Budget. This has been a priority for AFRC as anti-forestry groups have used *Cottonwood* “new information” claims to block critical forest restoration projects (see [AFRC one-pager](#)). It likely mirrors the limited fix that was included in the 2018 Omnibus, which AFRC strongly supported. We are hopeful this regulatory fix can be adopted as soon as possible. We are also urging the Administration to finalize the Forest Service [NEPA reforms](#) that have been in the works since early 2018.

2020 election. Within days we will know the outcome of the 2020 election, including which party will control the White House, Senate, and House of Representatives, as well as potential down-ballot effects on state and legislative races. The results may also provide a snapshot of the mood of Americans following months of pandemic-driven lockdowns, economic and social upheaval, and heightened racial tensions. Like four years ago, the polls suggest Democrats are set to have a big night. Of course, we all know how that turned out.

Most observers expect Democrats to maintain control of the U.S. House as Republicans face a wave of retirements, a growing disadvantage in campaign fundraising, and an incumbent president. Control of the U.S. Senate will likely hinge on tight races in North Carolina, Georgia, Montana, and Iowa – all states President Trump easily carried in 2016. Several of those states are now considered toss-ups in the Presidential race. Republican incumbents face longer odds to retain their seats in Maine, Colorado, and Arizona, while Democrats are likely to lose a seat in Alabama.

Many in the forest products industry will be paying close attention to the results in Montana, where incumbent Republican Senator Steve Daines faces term-limited Democrat Governor Steve Bullock. Daines has been an outspoken advocate for reform legislation to improve the health of overstocked, at-risk federal forests through active forest management. Polls indicate that the race is very close. Montana's U.S. House seat is also up for grabs as current Republican Congressman Greg Gianforte is likely to recapture the Governor's seat for Republicans after a 12-year run for Democrats. Polls show that the race to succeed Gianforte is close between Republican State Auditor Matt Rosendale and Democrat Kathleen Williams.

There are several House races to watch in the Northwest. In Oregon, long-time Congressman Peter DeFazio faces a real challenge from Republican Alek Skarlatos, who helped stopped a gunman on a train during a 2015 incident in Europe. Mr. Skarlatos has made the lack of forest management and the loss of jobs one of the key issues in his campaign. Having served since 1987, Congressman DeFazio has pointed to his long background on forestry issues and his seniority in Congress as Chairman of the House Transportation & Infrastructure Committee.

In southwest Washington's third congressional district, Republican Congresswoman Jaime Herrera Beutler faces a tight rematch with Democrat Carolyn Long. The District includes rural communities dependent on the forest products industry and other natural resources, but also includes Portland suburbs in Vancouver and Clark County. Herrera Beutler has been a strong supporter of sound forest management. */Heath Heikkila*

Forest Service Proposes Updates to its Handbook and Manual

The Forest Service has published proposed updates to portions of its directives included in their Handbook and Manual as part of its larger Forest Products Modernization (FPM) effort. The FPM aims to improve efficiency in how the agency manages forests, delivers forest products, and carries out timber sales to increase acres treated and volume produced. Many of the directives proposed for amendment have been in place since the 1990s and are ripe for updates to align with modern policy, regulation, and authorities.

Due to the volume of directives in need of updates, the Forest Service is publishing them in three "batches." The first batch, which is currently published in the [Federal Register](#), includes updates on eight chapters of the Timber Sale Administration Manual (2409 series) and five chapters of the Timber

Management Handbook (2400 series). These chapters include directives that address timber cruising and scaling, contract administration, bidding practices, and contract adjustment practices.

AFRC has reviewed the chapters proposed for amendment, which can be found [here](#), and will be working through the Federal Timber Purchasers Committee (FTPC) to submit substantive comments that will encourage the Forest Service to address all of the necessary updates that are warranted at this time. Comments are due by November 16. /*Andy Geissler*

AFRC Submits Data and Exclusion Request on Critical Habitat for the Spotted Owl

In 2013, an AFRC-led coalition challenged the 2012 Northern Spotted Owl Critical Habitat rule that designated more than 9.5 million acres as critical habitat for the owl. After seven years of litigation, including a successful appeal to the D.C. Circuit, the coalition was ultimately able to drive the U.S. Fish and Wildlife Service to agree to reevaluate the rule and potential exclusions. See [April Newsletter](#).

The 2012 rule is an outlier in terms of the amount of unoccupied habitat it reserves, the extent of areas that are not “habitat” but instead are “potential” habitat or “capable” of being habitat, and the Service’s blunt refusal to consider any economic impacts of the designation. Section 4(b)(2) of the ESA, however, requires the Service to consider “the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.” It also permits the Service to exclude any area if the costs of designation outweigh the benefits.

The 2018 Supreme Court *Weyerhaeuser* decision affected these issues—it established that critical habitat must be *habitat* in the first place, and it allows parties to challenge arbitrary decisions not to exclude areas. It also put the spotlight on the many ways in which the 2012 rule was arbitrary, contrary to law, and not based on the best available data.

On August 11, the Service [proposed](#) excluding 200,000 acres of BLM-managed and Tribal forests in Western Oregon. The Service also sought comment on other areas that should be excluded. AFRC supported this exclusion and requested the Service exclude a minimum of 2.5 million additional acres. These include O&C lands, Matrix that is unoccupied/non-habitat, or “uninhabitable,” dry forests where significant increases in active management are urgently needed, and fragmented checkerboard areas where maintenance of large habitat blocks is impractical. Even if all these acres were excluded, the critical habitat designation would still be twice the size of Connecticut.

[AFRC’s comments](#) also incorporated an economic study from The Brattle Group. The study shows that designation of uninhabited Forest Service Matrix and BLM lands has disastrous consequences – including losses of up to \$1.2 billion with little or no corresponding conservation benefit.

Conversely, benefits of exclusion are significant, including \$55 million in additional timber harvest in Oregon, which would generate \$70 million in state GDP and \$46 million in worker earnings. Across California, Oregon, and Washington, increased timber harvest results in benefits from exclusion of \$100 million in GDP, \$66 million in worker earnings, and 1,286 jobs annually. Put another way, the eight years of the current designation have already caused an economic impact of \$800 million, including \$528 million of lost wages. The study found that every dollar equivalent of timber harvested created \$2.24 in total economic impact.

The Service is under court order to submit a final rule to the Federal Register by December 23 with publication likely in early 2021. AFRC appreciates the support of our partners in this effort and will continue to work toward aligning critical habitat designations with the law and science. /*Lawson Fite*

Legal Victory: Challenge to DNR's Management of State Trust Lands Dismissed

A coalition of Washington state counties, schools, fire districts and others won a key legal victory on Oct. 2 when Thurston County Judge Erik D. Price dismissed a lawsuit filed by anti-forestry groups against the Washington Department of Natural Resources (DNR).

The anti-forestry groups' lawsuit, *Conservation Northwest et al. v. Commissioner of Public Lands et al.*, sought to undermine the DNR's fiduciary obligations to manage Washington state trust lands for designated beneficiaries, which provides timber revenue to support county services, K-12 school construction, public safety and other community services.

The ruling is related to the beneficiary coalition's own legal challenge against the DNR regarding two management plans for state trust lands, which [the coalition says](#) violates DNR's duties and will adversely harm the delivery of critical public services.

The coalition's lawsuit, [filed in Skagit County](#), alleges the DNR and Board of Natural Resources violated the state constitution and state laws in developing and adopting a Sustainable Harvest Calculation (SHC) and a Long Term Conservation Strategy (LTCS) for the Marbled Murrelet that unlawfully reduces annual timber harvest levels on state trust lands. The coalitions' writ of certiorari claim, however, has been transferred to Thurston County.

In addition to the coalition's lawsuit, the anti-forestry groups brought their own case to King County, later transferred to Thurston County, challenging the DNR's fiduciary responsibility to manage state trust lands. Judge Price dismissed that challenge.

The coalition had intervened in the Thurston County litigation because the case was an impermissible attempt to rewrite the Washington Supreme Court's decision in *Skamania County v. State* (1984), which ruled that state forest trusts "are real, enforceable trusts that impose upon the State the same fiduciary duties applicable to private trustee." In dismissing the case, Judge Price's ruling affirms that *Skamania* is clear: The Department of Natural Resources has a clear mandate to manage its state trust lands for its beneficiaries.

On October 28, the anti-forestry groups appealed Judge Price's decision to the Washington Supreme Court. The next day, the anti-forestry groups moved to intervene in the coalitions' challenge in Thurston County, making the same argument that they had just lost before Judge Price. The hearing on the motion to intervene is scheduled for November 6. /*Sara Ghafouri*

Montana Forest Action Plan Seeks to Increase Pace, Scale of Management

In September, the Montana Forest Action Advisory Council (MFAAC), representing a diverse coalition of interests and perspectives, released the [Montana Forest Action Plan](#). The 2020 revision of the plan serves as the state's roadmap for addressing forest health and wildfire risk across all 23 million forested acres. The plan promotes better planning and coordination among federal, state and private forest landowners to increase the pace and scale of active management.

Forest Action Plans originated with the passage of the 2008 Farm Bill, which required states and territories to develop an assessment of the conditions of their forests every 10 years, regardless of forestland ownership, and develop strategies that align with the Forest Service’s State and Private Forestry program’s national priorities. States are required to complete these plans to maintain eligibility for State and Private Forestry program funding.

The Montana Forest Action Plan has three main objectives:

- Create a shared understanding of the conditions of all forested lands in Montana.
- Identify priority areas to address forest health and wildfire risk based on those conditions.
- Recommend strategies to create an efficient, effective, and comprehensive response to those conditions primarily, but not exclusively, within those priority areas.



To focus on the forested acres in Montana in most need of treatment, the MFAAC used information from Forest Health and Wildfire Risk data sets, as well as road density information for access and vegetation type mapping. Using these overlays, the MFAAC identified 3.8 million acres of forested land in the greatest need of attention, including those most conducive to landscape-scale, cross-boundary forest restoration and management activities. This includes approximately 500,000 acres in the Wildland Urban Interface (WUI) and 123,000 acres in watersheds that are sources of drinking water.

The plan sets a framework for coordinated, targeted actions and investments that will be critical to reducing wildfire risk and improving forest health conditions across the 3.8 million acres identified to benefit from management. While the plan does not outline specific treatment areas, the MFAAC hopes that local land managers and collaboratives will use the plan to focus on areas that need treatment and find ways to leverage resources and staff to meaningfully address the most pressing forest health and wildfire risk areas.

The MFAAC recommendations for projects designed under the plan are to focus on Wildfire Risk, Working Forests and Economies, Biodiversity and Habitat Conservation, Human and Community Health, and Sustaining Cross-Boundary Work in Montana. To assure the plan is implemented over its 10-year lifespan, the MFAAC will form an implementation advisory committee that will be administratively attached to the Montana Department of Natural Resources and Conservation. AFRC would like to thank

the members of the MFAAC for all of their hard work and we look forward to working with the National Forests of Montana as they begin to develop projects under the plan. / *Tom Partin*

Washington State Releases New Forest Action Plan

On October 26, the Washington Department of Natural Resources released its updated Forest Action Plan for Washington State. The Forest Action Plan identifies a broad suite of issues and goals to address related to forests in the state. These include wildfire and forest health work, urban forestry, expansion of community forests, economic development around forest products, aquatics issues, and carbon sequestration and storage.

Washington had a 2019 Forest Action Plan, however, between various state planning efforts like the 20-year Forest Health Strategic Plan and the need to prioritize where work will be accomplished, the plan was updated. Because of this, DNR approached the update with three primary strategies:

- Demonstrate and clarify alignment across existing strategies and plans.
- Identify programmatic and geographic priorities for forest health and resilience.
- Foster coordinated planning and implementation at a scale commensurate with the threats facing forests.

The 20-year Forest Health Strategic Plan appears to be the primary tool to identify and prioritize landscapes in eastern Washington, while DNR used a variety of tools to identify priority landscapes in western Washington. Most of these are closely aligned where existing planning processes are either underway or will be soon.

DNR did seek some level of public engagement, primarily through an online survey, but there was not the robust collaborative stakeholder involvement as seen in Montana, or the 20-year Forest Health Strategic Plan.

We are continuing to review the Forest Action Plan for how it intersects with the AFRC's work and how it may affect our members organizations. To learn more about the Forest Action Plan you can download a copy [here](#). / *Matt Comisky*

Roadside Hazards Persist in Light of Ninth Circuit Ruling

The 2020 fire season was devastating for California—burning over 4.1 million acres and destroying over 5,200 structures. All but three of the top 20 largest wildfires in California have occurred since 2000, with five of these large and damaging wildfires occurring this year. But in the wake of California's worst wildfire season, the Ninth Circuit denied petitions to rehear the appeal of the Ranch Fire Hazard Tree Removal Projects.

Before the 2020 wildfire season, the 2018 Ranch Fire was the largest fire in California's history, burning over 400,000 acres and impacting 770 miles of National Forest System roads. As reported in our [August Newsletter](#), the Mendocino National Forest had authorized a series of commercial timber sales, one of which was purchased by AFRC member Sierra Pacific Industries to remove dead, dying or structurally unsound trees that were within striking distance of the road in order to protect public safety.

The Ranch Fire Projects were authorized under the Forest Service's "repair and maintenance of roads" categorical exclusion, 36 C.F.R. § 220.6(d)(4) (road maintenance CE), which allows for expedited environmental analysis under NEPA. The Forest Service commonly relies on this CE to address the

removal of hazard trees along roads, and the Mendocino had ensured that the hazard tree removal complied with the selection criteria outlined in its regional guidance documents.

On August 3, with a 2-1 decision, the Ninth Circuit concluded that under the “one-and-one half tree height distance from the road” criteria for the Ranch Fire Projects, some of the trees selected for removal “pose no imminent hazard” and could not possibly strike the road.



The majority panel’s decision impermissibly second-guessed the agency’s technical expertise on evaluating hazard trees, effectively acting as a panel of scientists. The panel simply assumed that a fallen tree would land directly next to the stump without striking any other trees or rolling, and ignored the Forest Service’s finding that an extra tree-height distance was needed to account for other variables “such as wind, force of breakage, and steep slopes.” The opinion also impedes on the Forest Service’s efforts to adequately protect the public (including Forest Service personnel, third-party contractors, and firefighters) from the dangers posed by standing dead and dying trees after a catastrophic wildfire event.

Given the problematic nature of the panel’s decision, AFRC filed a petition for panel rehearing and rehearing *en banc* on behalf of SPI, and the government similarly filed a petition for panel rehearing. In our petition, AFRC argued that the panel had refused to afford the appropriate deference to the agency’s factual determination as to which trees along the roadway were hazards.

The panel ignored that the Forest Service’s determination was consistent with important guidance documents—the 2012 Hazard Tree Guidelines for Forest Service Facilities and Roads in the Pacific Southwest Region and the 2011 Marking

Guidelines for Fire-Injured Trees in California. Those regional guidelines address the potential strike zones for hazard trees, establishing a presumptive strike zone of one to one-and-one-half tree lengths to account for the potential of fallen trees to strike other nearby trees, acknowledging that “[w]hen a tree or tree part fails, it may strike other trees or debris on the ground and fling material a considerable distance.” To emphasize this point even further, the government submitted a video (*photo*) to demonstrate how far tree debris may travel: View the video by [clicking here](#).

Unfortunately, on October 27, in another 2-1 split, the Ninth Circuit voted to deny the panel rehearing. Interestingly, Judge Lee (the author of the dissenting opinion) voted to grant panel rehearing but voted to deny *en banc* rehearing. With the preliminary injunction now in place, the case will go back to the U.S. District Court for the Northern District of California before Judge Chen to address the merits. However, because it has been over two years since the Ranch Fire, the projects may not be able to move forward since it may be unsafe for third-party contractors to conduct the commercial hazard tree removal work. The Forest Service may then be forced to close miles of road and recreation areas on a long-term basis, to the detriment of the public.

But what does this mean for the future of hazard tree removal projects authorized under the “road repair and maintenance CE”? Although the use of the road maintenance CE has not been foreclosed, if National Forests would like to continue to rely on the repair and maintenance CE by using the one-and-one-half tree height distance criterion, the agency will need to provide more evidence in the administrative record explaining tree falling dynamics and the need to prioritize the removal merchantable timber for public safety reasons, among other things. /Sara Ghafouri

AFRC Submits Comments on the Eastside Screens EA

On October 12, AFRC submitted [comments](#) in response to a Preliminary Environmental Assessment (PEA) published by the Forest Service that considers amendments to a set of guidelines known as the Eastside Screens. The PEA specifically proposes amending that portion of the Eastside Screens that prohibits harvest of any tree over 21 inches in diameter. See [August Newsletter](#) for a summary of the findings in the PEA.

Our comments urged the Forest Service to adopt the alternative that best meets the goal of the EA, which is described as “maintaining the abundance and distribution of old forest structure.” The effects analysis outlined in the PEA was based on a robust review of scientific literature and concluded that the Adaptive Management Alternative would permit the “development of more open late old structure than all other alternatives.” As such, AFRC expressed our full support for adoption and implementation of the Adaptive Management Alternative in order to maximize the attainment of the goals of the proposed amendment and the goals of the Eastside Screens.

We are hopeful that AFRC is not alone in its support for the scientifically supported replacement for the 21-inch rule and that the Forest Service adopts this alternative that will allow its forest management professionals the flexibility to effectively manage the diverse forest ecosystems in eastern Oregon without the burden of an arbitrary diameter limit. /Andy Geissler

Environmental Groups Seek to Reverse BLM Decisions Under Pendley

On September 25, Judge Morris, from the U.S. District Court for the District of Montana, ruled that William Perry Pendley, BLM Deputy Director for Policy and Programs, improperly held the position of Acting BLM Director. The court stated that any “function or duty” of the BLM Director that Pendley performed as Acting Director “would have no force and effect and must be set aside as arbitrary and capricious.” The court reasoned that Pendley’s position was unlawful because Interior Secretary Bernhardt empowered Pendley for 424 days by circumventing the Appointments Clause of Constitution and the Federal Vacancies Reform Act. BLM has since removed “exercising the authority of director” from Pendley’s title.

The court subsequently issued an [order](#) on October 16, setting aside three Resource Management Plans (RMPs): the Lewiston RMP, the Missoula RMP, and the Mile City RMP Amendment. The court denied conservation groups’ motion for leave to file an *amicus curiae* brief to provide “information on a range of [] projects throughout the West and beyond.” Instead, the court suggested the group was free to file a separate suit to address their claims. Several environmental groups did precisely that, filing a new action in the U.S. District Court for the District of Colorado that focuses on the legality of the Uncompahgre RMP.

Motivated by the ruling, environmental groups are asking Secretary Bernhardt to retract several RMPs, decisions, rulemakings, and regulations made during Pendley’s tenure, including actions for which Pendley was indirectly involved. Their [letter](#) specifically argues that even the rules and policies not

signed by Pendley are unlawful and should be set aside, including the recently proposed Timber Salvage Categorical Exclusion Rule (CX). The proposed CX, which provides a much-needed overhaul for BLM's forest management practices, allows the salvage of up to 5,000 acres of fire- or storm-damaged timber.

The CX also improves forest conditions by reducing the number of compromised trees that become fuel for future fires, and provides an important source of timber for the milling infrastructure that ultimately funds reforestation activities. *See [AFRC comments](#)*. Undoing BLM's proposed CX would have important ramifications for timber management, given the increased need for expedited treatment after this unprecedented wildfire season. AFRC will continue to monitor litigation challenging BLM decisions made under Pendley. /Heidi Logan

Amanda Astor Moving to AOL, Stays in Forest Products Family

Note: AFRC thanks Amanda for her service to our members and staff. We look forward to working with Amanda in her new role at Associated Oregon Loggers. Meanwhile, we'll continue to serve our members in Southwest Oregon and will provide updates on future staffing. Here, we ask Amanda to share more about her transition:

Although I was only with AFRC for a little over two and a half years, it has felt like much longer. The connections I have made with my coworkers, our members, our partners, and public lands staff are deep and meaningful. This year has thrown us all into challenging times, yet I found comfort in my work. Knowing that I was making a difference and that the team at AFRC and our Board would be backing each other around every turn because this industry truly is a family. Like every family, we all play our role and find balance in our drive for common goals, challenging each other to do better and be better along the way.

Although the decision to move to Associated Oregon Loggers (AOL) was filled with mixed emotions and overwhelming feelings, I am proud to make this transition knowing AFRC members and partners are being served by an extremely capable, effective, and well-rounded team.

In my new position as Forest Policy Manager at AOL, I will continue to fight for Oregon's forest management tools and the timber industry's voice. I will be focused on strategies to inform the Oregon legislature and agencies about policies affecting private land management, creative approaches to increase and defend forest management on public lands, broad advocacy for the work of AOL member employers, and communications efforts for the whole forest sector. Of course, none of this work will be done in a vacuum and I look forward to coalescing around solutions with other forestry groups, associations, and organizations in Oregon including continued work with AFRC. I plan to use my connections to grow AOL's relationships with other forest sector and agricultural partners, increasing mission attainment through creative collaboration and a new perspective.

It has truly been an honor to work on such a high functioning team, for people I care deeply about, and on issues I have extreme passion for. It has been a pleasure helping others better understand the genuine necessity and importance of the timber industry in our lives and communities. I can't wait to continue educating our state about the bright spot we have in our forest sector. I will be working in AOL's office in Salem and can be reached via my new email: aastor@oregonloggers.org. /Amanda Astor