



A Message from AFRC President Travis Joseph

The West Coast timber industry has shared in the catastrophic and unimaginable loss due to the historic wildfires ravaging the West.

Our families, friends, neighbors, and the communities we work and live in are suffering. Lives have been lost. Countless homes and businesses burned to the ground. Equipment and property have been destroyed. Our air is filled with toxic smoke and our extraordinary landscape has been dramatically altered.

The women and men of our industry have been honored to join communities across the West in protecting our most vulnerable and serving those impacted by the fires. We are proud of our colleagues who stepped up to join our heroic firefighters on the front lines with equipment and manpower to save lives, homes, and property in dangerous conditions.

We're inspired by and grateful for our colleagues and community members who have provided immediate and overwhelming support – shelter, food, medicine, clothing, transportation, basic necessities, animal/pet care, tools, and protective equipment – to our firefighters and those who have lost everything in the fires.

In the face of this ongoing tragedy, AFRC and its members pledge our renewed and continued commitment to practical solutions and actions we can take right now to put out these dangerous fires, protect our fellow citizens, and restore and rebuild the communities and natural places we love.

This is an all hands-on deck emergency that will require sustained cooperation, partnership, empathy, and hard work. We will play our role with urgency, professionalism, and passion, including:

- Helping reduce heavy fuels loads in our forests, especially on federal lands, which contribute to unnaturally severe wildfires;
Ensuring access to support firefighting, first responders, public safety, and forest management;
- Implementing proven forest management tools like logging, thinning, and prescribed fire to reduce the risks of severe fires, toxic smoke, and massive fire-driven carbon emissions; and
- Manufacturing and transporting climate-friendly wood products to rebuild our homes and communities.

Our thoughts and prayers go out to all those directly and indirectly impacted by the wildfires and hazardous smoke. As our industry continues to lend a hand to those in need and help our neighbors and strangers alike, we are hopeful for a stronger, more resilient, more sustainable future.

The following article provides a high-level update on the major fires that continue to burn in Washington, Oregon, and California. For more fire-specific information and updates, we strongly recommend you visit [InciWeb – the Incident Information System](#). /Travis Joseph

Wildfires Bring Unprecedented Devastation to the West



2020 has seen a scale and degree of wildfire across the region that in many ways is incomparable to recent years. Of particular note are those fires burning in California and western Oregon. In addition to the personal losses suffered by so many, these fires will likely have a lasting and profound impact on our forest resources for years to come.

In western Oregon, historic east winds fueled several large and intense wildfires leaving many communities and homes destroyed. Combined, the **Holiday Farm**, **Beachie**, and **Riverside** Fires have consumed over half a million acres across multiple ownerships in Lane, Linn, Marion, and Clackamas Counties. These wind-driven fires destroyed multiple communities along the McKenzie and North Santiam Rivers and resulted in the evacuation of many others. The Holiday Farm fire extended so far that even sections of Springfield were placed on Level-1 notices. Further to the east, the **Lionshead** Fire impacted nearly 200,000 acres extending to both sides of the Cascade divide. In Douglas county, the **Archie Creek** Fire has burned over 130,000 acres northeast of Roseburg.

Among the impacted forestland is over 110,000 acres of BLM land managed under the principles of long term sustained yield as mandated by the O&C Act. The BLM's current Resource Management Plan (RMP) requires the agency to conduct timber salvage following wildfire on a portion of those acres where economically viable. Early assessments indicate that this portion comprises about 35% of the burnt acreage. Conversely, the RMP strictly prohibits timber salvage on the remaining 65% of the burnt land base. This unfortunate prohibition in the RMP will likely result in over 70,000 acres of burnt forestland remaining untreated. The inability to remove standing dead timber will not only contribute to high fuel loads in the future but may also complicate the agency's ability to safely and effectively reforest these acres with new trees.

Additionally, nearly 325,000 acres of forestland managed by the U.S. Forest Service were impacted by these five fires. The Willamette and Mt. Hood National Forests saw the majority of the fires' impacts, with significant losses on the Detroit and Clackamas River Ranger Districts.

In western Washington, the **Big Hollow** Fire on the Mt. Adams Ranger District of the Gifford Pinchot National Forest was last reported at 24,995 acres. According to [Inciweb](#) the fire started early on Tuesday, September 8 and grew to over 10,000 acres in the first 48 hours. The fire was initially burning mostly in older timber, including old growth. The fire has since impacted and damaged standing and felled timber on both Forest Service and State Trust Lands managed by the Washington Department of Natural Resources.

In California, multiple fires exacerbated by high winds have caused evacuations across the state including the town of Paradise, which was destroyed by the Camp Fire only two years ago. In northern California, the **North**, **August**, **Slater**, and **Red Salmon** fires have alone impacted over 1.4 million acres. In

southern California, the **Bobcat, SQF, Creek, and Dolan** fires have impacted nearly 700,000 acres. Two hundred thirty-four Marines from the 7th Engineer Support Battalion, 1st Marine Logistics Group, 1st Marine Expeditionary Force based out of Camp Pendleton, California have been deployed in support of the Creek fire. Crews from both Canada and Mexico are also supporting suppression efforts across the state.

Many of AFRC's members live and work in the communities impacted by these fires. In addition to the personal losses, the millions of acres of forestland affected will have a profound effect on the timber products and logging industry for years to come. The livelihood of our forestry sector and the communities it helps support is dependent on healthy and productive forests across all land ownerships and as such, AFRC is eager to assist our federal and state land management agencies in structuring and developing a practical and successful strategy for post-fire activities. This includes capturing damaged timber value, reducing hazardous fuel loadings, and ensuring adequate reforestation for future needs.

/Andy Geissler, Amanda Astor, Matt Comisky, Steve Brink

Washington, D.C. Update

Western wildfires. This summer's tragic wildfire season has once again resulted in dueling calls in Washington, D.C. for better forest management versus the need for climate change legislation. President Trump and Republicans continue focusing on the need to thin overstocked, unhealthy forests made more vulnerable to catastrophic wildfire by decades of neglect, drought, and insect infestations. Former Vice President Joe Biden, Washington Governor Jay Inslee, and many Democrats have used the wildfires to level attacks at the President and his party on climate change.



Feinstein-Daines Legislation. With the extensive fire damage and impacts of wildfire smoke to California, Oregon, and Washington still in the news, the Senate Energy & Natural Resources Committee subcommittee on Public Lands, Forests, and Mining held a [September 16 hearing](#) on the Emergency Wildfire and Public Safety Act of 2020 ([S. 4431](#)). Senator Diane Feinstein (D-CA), who introduced the legislation with Senator Steve Daines (R-MT), attended the hearing to testify in support of the bill that [includes modest, reasonable reforms](#) to encourage forest health treatments.

Chris French, Deputy Chief of the U.S. Forest Service, spoke to the impact of the wildfires and noted that in places like California the agency needs to be treating 2-3 times more acres than it is currently accomplishing. French called the Feinstein-Daines legislation a “comprehensive bill designed to increase wildfire preparedness, post-fire response through a variety of measures including a categorical exclusion” and noted that the agency fully supports the “intent and goals of the bill.” The Forest Service has provided written suggestions for improving the bill language. AFRC has also provided the Daines and Feinstein offices suggestions for improving and strengthening the legislation.

AFRC President Travis Joseph provided a statement of support ahead of the hearing:

“This month’s devastating wildfires have impacted communities across the West, many of which are home to our collective friends, families, and member companies. It is past time to

move beyond political posturing and advance real solutions to address the bureaucracy and gridlock contributing to a growing forest health crisis impacting our federal lands. We thank Senators Daines and Feinstein for their bipartisan leadership and support for active forest management tools like logging, thinning and prescribed fire, which are more important than ever to make our overstocked forests more resilient in the face of drought, insect infestations, and a changing climate.”

With the Senate now focused on President Trump’s Supreme Court nomination to fill the vacancy created by the passing of Ruth Bader Ginsburg, it is unlikely the Senate will take up forestry legislation ahead of the election. Senate Democratic leadership has also been reluctant to give Senator Daines another legislative “victory” since he faces a tough challenge from Montana Democratic Governor Steve Bullock that could determine control of the Senate.

AFRC will continue supporting efforts of allies on Capitol Hill to move additional forest management reforms during a Lame Duck Congress, including a fix to the disastrous *Cottonwood* decision that is being used by anti-forestry litigants to block needed forest management treatments. In a recent [opinion piece](#) on foxnews.com, Congressman Bruce Westerman (R-AR) – a professional engineer and licensed forester – wrote in part:

“Because forests are dynamic, growing ecosystems that are in constant flux, a decision to “do nothing” is still a management decision. More often than not, it is a bad decision, but it is a decision that, when made, turns overall management to nature. Nature is harsh. Her tools are insects, disease, wind, lightning and wildfire, unleashed with an insatiable desire to restore an elusive balance.”

Prescribed fire legislation. On September 17, Senator Ron Wyden (D-OR) was joined by Senators Maria Cantwell (D-WA) and Joe Manchin (D-WV) in introducing the “National Prescribed Fire Act of 2020” (S. 4625). According to a [Wyden press release](#) the intent of the legislation is to “help prevent the blistering and destructive infernos destroying homes, businesses and livelihoods and becoming all too common as the climate crisis grows.” The reality is that many overstocked, at-risk forests in central, eastern, and southern Oregon must first be mechanically thinned before prescribed fire can be returned to the landscape. Prescribed fire is also unlikely to play a large role in reducing fuel loads on forests in western Oregon, where much of this year’s fire activity in Oregon occurred.

On September 14, Senator Wyden delivered a Senate floor speech that was the subject of a recent [Oregonian article](#). In his remarks the Senator observed that “this debate has been going on for too long, with misguided priorities on both sides.” Wyden went on to comment that “on one side, some in the timber industry skipped past active management to pursue the golden calf of the elimination of environmental laws. On the other side, misguided non-management priorities beat back every attempt to manage our forests based on science.”

In the days and weeks ahead the full toll of the fires will become clearer. We will also learn more about the role litigation, paperwork protests, and analysis paralysis played in delaying projects that were proposed to reduce fuel loads on our federal forests. As reported in the [August AFRC Newsletter](#), the White River Fire on the Mt. Hood National Forest burned areas that were proposed for treatment through the Crystal Clear Restoration (CCR) project. CCR was recently blocked by the Ninth Circuit Court of Appeals after the BARK environmental group successfully argued that the Forest Service’s proposed use of variable density thinning for the purpose of reducing large-scale fire risk was “highly controversial and uncertain.” More certain was the catastrophic result of inaction.

COVID-19. House Democrats recently released a new COVID-19 relief bill in the hopes of jumpstarting stalled negotiations with the Trump Administration and Senate Republicans. The new offering from Speaker Pelosi and House Democrats would direct about \$2.2 trillion into a myriad of COVID-19 relief measures, including an extension of the Paycheck Protection Program, additional direct payments to most Americans, over \$400 billion in aid to state and local governments, and an extension of the additional \$600 in federal unemployment benefits. Treasury Secretary Steven Mnuchin has been heading up negotiations for the Administration, which is believed to favor a package with an approximate price tag of \$1.5 trillion. Earlier this month, a \$500 billion package written by Senate Republicans failed to garner sufficient support from Senate Democrats.

Reaching an agreement won't get easier with the election just weeks away and growing partisan rancor following the passing of Justice Ginsburg. However, both parties will also want stem a further erosion in the economy and investor confidence. Domestic airlines are also poised to layoff tens of thousands of employees as the requirement to maintain employment levels that was a condition of receiving funding from CARES Act expired at the end of September. */Heath Heikkila*

Forest Service Region 6 Hits 2020 Target

2020 has been a tumultuous year for our federal land management partners. The COVID-19 pandemic, multiple quarantines, and a record-setting summer of wildfires have all combined to create a significant challenge to the Forest Service delivering its assigned annual outputs. Despite that, Region 6 succeeded in attaining its timber volume targets for the fiscal year.

FY20	Actual Performance (MMBF)			Progress to Target	
Forest	Total Volume Sold	FY20 No-Bid Volume	FY20 No-Bid Volume Sold	Assigned Target (MMBF)	Pct of Annual Target
Deschutes	39.7	0	0	45.0	88%
Fremont-Winema	71.1	3.0	0.85	64.0	111%
Gifford Pinchot	51.4	8.4	8.4	50.0	103%
Malheur	70.8	4.8	4.8	75.0	94%
Mt Baker-Snoqualmie	19.0	0	0	31.5	60%
Mt Hood	24.8	0	0	36.0	69%
Ochoco	11.8	0	0	14.0	84%
Olympic	33.7	0	0	54.2	62%
Rogue River-Siskiyou	42.1	15.4	11.7	45.0	94%
Siuslaw	42.1	0	0	45.0	94%
Umatilla	16.0	2.2	0	29.0	55%
Umpqua	31.0	10.6	0	42.6	73%
Wallowa-Whitman	16.4	11.0	0	28.2	58%
Okanogan-Wenatchee	45.2	0	0	32.0	141%
Willamette	81.9	5.0	5	88.0	93%
Colville	124.1	0	0	65.0	191%
Regional Total	721.2	60.4	30.7	744.5	100%
Washington Office Assigned Target				720.0	

The role that public land management agencies have in supporting rural communities in the region is crucial, particularly this year with the economic impacts from the pandemic. These accomplishments are commendable and reflect the emphasis that the Forest Service places on providing renewable resources to the country and supporting the forestry economy in Oregon and Washington.

Five years ago, the Region provided 585 MMBF of timber. Since then, this number has increased by nearly 25%. We hope to see this trend continue in future years with the help of our federal partners and a robust rural economy supported by responsible natural resource management. /*Andy Geissler*

Court Allows New NEPA Rules to Go Into Effect

The Council on Environmental Quality's [new NEPA rules](#) passed their first test. On September 11, Judge James Jones of the U.S. District Court for the Western District of Virginia denied a motion by a number of environmental groups for a nationwide preliminary injunction against the rules. This permitted the rules to go into effect on schedule on September 14. Any project still in progress can use the new rules at the discretion of the agency.

Significant changes include replacing the former "[ten factors of death](#)" for deciding whether to do an EIS with a more holistic analysis of a project's effects. This includes eliminating the "controversy" element, which had allowed groups to exercise a veto over actions by strident opposition. One example is the Crystal Clear Restoration project on the Mt. Hood National Forest, where groups convinced the Ninth Circuit that an EIS should be prepared based on non-existent fire risk. Unfortunately, this project area was damaged by the White River Fire, so the question may be moot.

AFRC and the Federal Forest Resource Coalition intervened in the Virginia lawsuit as part of a coalition with the US Chamber of Commerce and other industry groups and participated in the September 4 hearing in front of Judge Jones. On September 23, the coalition filed a motion to intervene in another challenge to the regulations in the Southern District of New York (Manhattan). Additionally, environmental groups and 23 states have filed suit in the Northern District of California (San Francisco). Litigation is expected to continue on all fronts. /*Lawson Fite*

AFRC Comments on Proposed Definition of "Habitat" Under the ESA

As reported in our [August Newsletter](#), the U.S. Fish & Wildlife Service and the National Marine Fisheries Service proposed a definition of "habitat" under the Endangered Species Act (ESA), which is not currently defined by either the ESA or the regulations implementing the law. The definition of "habitat" is important because it serves as a starting point for any agency determination of critical habitat for a listed species.

This proposed definition is in direct response to the 2018 Supreme Court's unanimous decision in *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361 (2018). In *Weyerhaeuser*, the Supreme Court ruled that ESA "Section 4(a)(3)(A)(i) does not authorize the Secretary [of the Interior] to designate [an] area as critical habitat unless it is also habitat for the species," meaning that "[o]nly the 'habitat' of [an] endangered species is eligible for designation as critical habitat," not areas that might develop into habitat in the future.

To implement *Weyerhaeuser*, the Services solicited comments on two alternative definitions:

The physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species.

or

The physical places that individuals of a species use to carry out one or more life processes. Habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist.

The proposed rule clarifies that the definition of habitat is intended “to fully encompass both the occupied and unoccupied prongs of the definition of ‘critical habitat’ in the Act.” The deadline to receive comments was September 4 and the agencies received over 160,000 comments.

AFRC joined a coalition of industry in supporting comments led by Western Legal Resources Center, and also submitted our own [comments](#) on the proposed definition. In AFRC’s comments, we proposed a third definition of habitat that more closely aligns with *Weyerhaeuser*, the text of the ESA, and legislative history:

“Locations that presently contain all of the attributes necessary to support the existence of a species, such that no development or modification of the locations is needed, either by human action or natural processes, for the attributes to exist.”

It is important the Services’ definition of habitat does not allow for unoccupied, potential future habitat to qualify as “habitat” under the ESA. This is particularly relevant for old-growth dependent species like the Northern Spotted Owl, where the Services’ had previously designated younger forests as “areas anticipated to develop into suitable habitat in the future.” A final rule is expected to be issued by the end of the year. /Sara Ghafouri

AFRC Provides Creative Solutions on the Wild Rivers Coast Forest Collaborative



The Wild Rivers Coast Forest Collaborative is based out of Gold Beach, Oregon and has been involved with natural resource management projects on the Siskiyou side of the Rogue River-Siskiyou National Forest (RR-SNF) since 2012. Recently, the collaborative moved to a board structure, and AFRC’s Amanda Astor serves on the board as a voice for its members’ needs.

The collaborative has identified its top project priorities and AFRC is working to find creative ways for the Forest Service to utilize available tools in order to work with the

collaborative, while also maintaining capacity to achieve its flagship targets of volume and fuels acres treated.

Of particular interest is the use of Good Neighbor Authority (GNA). The RR-SNF has begun engaging in GNA projects (timber sales and service work such as non-commercial fuels management) on most of its Districts. A high priority for the collaborative is a restoration and fuels project on the Burnt Ridge/Corral Meadows area. AFRC has suggested utilizing program revenue from the FY21 GNA sales on the Powers

and Gold Beach Ranger Districts to help fund an Oregon Department of Forestry (ODF) contracted categorical exclusion project.

Under this arrangement, ODF would add capacity to the Forest Service by taking over many of the NEPA tasks which will allow the Forest Service to work on future salvage efforts and green sale projects. This strategy also helps create a cyclical GNA program for ODF on the Siskiyou side of the Forest where they can infuse program income from the sale of the Burnt Ridge/Corral Meadows commercial material back into additional revenue to support future projects.

AFRC's involvement ensures the hard questions are asked related to funding, capacity, and Forest Service targets. AFRC's knowledge of federal tools and programs fosters true collaboration that adds to the agency's mission rather than slowing it down. /*Amanda Astor*

Idaho and Montana Prepare Shared Stewardship Projects

Two projects, one in Idaho and one in Montana, are being developed under the Forest Service's new Shared Stewardship Authority that permits the Forest Service, states and other landowners to work jointly to reduce the risk of wildfire and improve forest health in a cross-boundary approach. The Shared Stewardship model was first proposed in August 2018 and it is based on seven principles:

1. Working with states to co-manage risk across broad landscapes;
2. Using new scenario investment planning tools for targeted investments;
3. Focusing our work on broad outcomes;
4. Capitalizing on the authorizing environment created by recent legislation;
5. Changing the Forest Service's own internal processes to get more work done on the ground;
6. Using a full suite of active management tools, including the right kind of fire at the right times in the right places;
7. Applying a risk-based response to wildfire.

The two projects being developed meet many of the seven principles outlined and will bring much needed treatments to a diverse landscape spanning multiple ownerships.

Idaho

The goal of Shared Stewardship is to double the number of acres treated on National Forest System lands by 2025. To accomplish this, nearly \$5 million has been invested in Shared Stewardship: \$3.9 million in grants and funding sources for cross-boundary projects, \$800,000 in federal grants to help fund salaries, contractors' costs and operating expenses to administer the cross-boundary projects, and \$250,000 was allocated by the State of Idaho to facilitate Shared Stewardship treatments on private lands.

The **Scattered Lands Project** area is located on the Idaho Panhandle National within Southwestern Bonner County, Idaho. The 175,644-acre landscape includes a mix of National Forest System, state and private lands and many have high fuel loads adjacent to structures. The treatment areas are within the wildland-urban interface (WUI) and fire regime groups II and III. It is a high priority to reduce the hazardous fuel loading that increase the risk for high-severity wildfires, especially adjacent to state and private lands. Proposed treatments include: A) Forest Service: 3,270 acres of commercial and 3,700 acres of noncommercial treatments; B) Bonner County Hoodoo Valley Hazardous Fuels Project: 184 acres; C) Idaho Department of Lands: Timber Sales 1,000 acres/year and 400 acres/year of hazardous fuels reduction; and D) Natural Resource Conservation Service working with private landowners to treat 500 acres/year of hazardous fuels.

Montana

In April 2019, the Forest Service Northern Regional Forester and the Director and State Forester of the Montana Department of Natural Resources and Conservation (DNRC) signed a Shared Stewardship letter agreeing to closely coordinate wildfire response, increase the resilience of forested landscapes, and make communities more fire-adapted to reduce the threat from catastrophic wildfires. They agreed to focus on projects to bolster landscape scale restoration and help protect and enhance wildlife and aquatic habitat, watersheds, communities and infrastructure while producing fiber.

The **Kootenai Wildland Urban Interface Shared Stewardship Project** will designate a 5-year plan within the WUI in Lincoln County, Montana as a separate planning unit within the Kootenai National Forest under the direction of the Forest Supervisor and staff as follows:

- Use the revised 2021 Lincoln County Wildfire Protection Plan (CWPP) as a planning tool to create a 5-year strategic plan to prioritize treatment areas in the county as recommended by the Lincoln County Fire Safe Council.
- The DNRC, through Good Neighbor Authority (GNA), will coordinate and support project planning, NEPA/MEPA, layout, implementation and administration of projects on Federal and State lands, and will comply with Kootenai National Forest Plan direction.
- The County and Natural Resource Conservation Service (NRCS) will coordinate treatment on private lands.
- The goal is to increase pace and scale of WUI treatment through joint planning, resource sharing, cross boundary, large landscape community protection.



Photo: Dense stand of timber in Kootenai Wildland Urban Interface-showing need for treatment.

Lincoln County has the largest WUI area in the nation with 394 square miles, the largest percentage of homes built inside the WUI (50.7%), and the highest number of second homes inside the WUI (24.1%). Upon approval of the 5-year plan by the Forest Supervisor, cross-boundary planning, funding and implementation will be coordinated through the Fire Safe Council who will provide oversight for project need and feasibility. Additionally, the DNRC will continue to treat Montana State lands within the WUI, the Natural Resources Conservation Service and Lincoln County will provide planning and project management on private lands, and may be assisted by the Forest Service through shared resources and personnel, the Resource Advisory Committee, Agriculture Conservation Experienced Services Program and other various funding sources.

AFRC applauds both of these projects as examples of using the new tools that are available to the agencies to reduce wildfire risk and increase the pace and scale of restoration. We look forward to following both projects during implementation. *Tom Partin*

Washington DNR Update – Reiter Foothills and Middle May

In our [August Newsletter](#), we informed you about the ongoing challenges to active forest management of DNR managed trust lands in the Reiter Foothills and the Middle May timber sale. Opponents to trust land management had continued to work to have Snohomish County seek reconveyance of 5,300 acres of State Forest Transfer Lands in the Reiter Foothills to the county for a park. This group was also in opposition to the Middle May timber sale, which the Board of Natural Resources was set to approve at their September meeting.

The Middle May timber sale was presented at the September Board meeting as part of the normal sale packet for approval by the Board for the October auction week. After significant discussion by the Board, the entire sale packet was approved with one caveat. Superintendent Reykdal, asked for the auction of Middle May to be delayed by 90 days. His reason was he felt this would provide time for the opponents of the sale to try and work out a solution. However, the Sultan School District has continued to advocate for Middle May to proceed as the District has been anticipating the revenue for its needs. This delay will continue to push revenue distribution to the Sultan School District and other Junior Taxing Districts into the future. The Sultan School District recently had to take out a \$1 million loan to conduct unforeseen repairs to one of its buildings. The timber sale revenue from Middle May would help offset that cost.

It is anticipated that Middle May will be offered at a special auction on November 30. Unfortunately, there is no clear way of determining the economic impact to delaying the sale due to any market changes between the original October 23 auction date and the now expected November 30 auction date.

The reconveyance effort in the Reiter Foothills appears to have died down at this time as well. Opposition from the Tulalip tribe and Snohomish County Junior Taxing Districts appears to have cooled efforts to have the County Council seek reconveyance. No means of compensating the Junior Taxing districts for foregone revenue, both for current and future revenues, was ever put forward by the opponents. Nor was there any effort to address the loss of volume and jobs in the local economy and surrounding area, including volume to support the effort to create a wood innovation center in Darrington. The clarity of how the ability of the Tulalip tribe would be able to continue to exercise its treaty rights in this landscape if reconveyance was to occur was also not addressed.

DNR staff has done an exceptional job to inform and educate members of the Board of Natural Resources and the County Council on the importance of active management in the Reiter foothills. They have shown not only the importance of the timber sale program to the purchasing community and the revenue it generates for services in the community, but also, the interconnected nature of the land management and timber sale program to the recreation opportunities DNR works to provide in the Reiter Foothills. Guided by a recreation plan for the Reiter Foothills, developed with stakeholder engagement, DNR recreation staff seeks ways to leverage the timber sale program to make recreation development cost-effective on trust lands. Recreation and active timber management is not a binary choice for the same landscapes and can, with planning, occur in a way as not to diminish the value of the trust to the beneficiaries. *Matt Comisky*

The Passing of Justice Ginsburg Could Reshape U.S. Supreme Court

Supreme Court Justice Ruth Bader Ginsburg passed away on September 18, at the age of 87. Appointed by President Clinton in 1993, Justice Ginsburg was only the second woman to serve on the Court. Her legal career was notable for the cases which established Constitutional requirements to treat women and men equally. During her time on the Court, Justice Ginsburg wrote [more opinions](#) than any other Justice and was the quickest opinion writer.

Justice Ginsburg often held a liberal position on environmental issues, favoring expansive federal authority under statutes like the Clean Water Act and the Clean Air Act. She also favored a liberal reading of the Endangered Species Act's protection of endangered and threatened species and the prohibition against "take." However, she rarely authored significant environmental cases. Her most significant opinions in the area include [Friends of the Earth v. Laidlaw](#) (2000), a case on standing, and a [dissent](#) in the Navy sonar case that preserved the "sliding scale" allowing injunctions to be issued more easily in some instances. As a strong advocate of civil rights, she joined Justice Scalia in a number of decisions regarding due process, and wrote a strong dissent in [Wilkie v. Robbins](#) (2007), where the majority of the Court refused to give a Wyoming rancher any recourse after a sustained harassment campaign by BLM to force him to hand over an easement. Justice Ginsburg's absence leaves many asking how the eight remaining justices will handle environmental cases in the interim, and what the future holds for the next Supreme Court term.

With a Supreme Court seat open, President Trump nominated Judge Amy Coney Barrett on September 26 to fill Justice Ginsburg's vacancy. President Trump previously appointed her to the Seventh Circuit Court of Appeals in 2017, which handles federal appeals from courts in Wisconsin, Indiana, and Illinois.

Judge Barrett is an "originalist" whose scholarship focuses on constitutional law, originalism, and statutory interpretation. She is also a professor of law at the University of Notre Dame, where she has taught since 2002. Her ideology closely resembles that of Justice Thomas or the late Justice Scalia, and her confirmation would bring the Supreme Court from a 5-4 to a 6-3 conservative majority.



AFRC is presently involved in two environmental cases pending before the Court. The first case, *Fish and Wildlife Service v. Sierra Club*, addresses whether a jeopardy biological opinion can be withheld as a deliberative document under the Freedom of Information Act's disclosure requirements. Oral argument is scheduled for November 2, just one day before the presidential election on November 3.

Judge Barrett's confirmation has become a central focus for both President Trump and the Senate, but it is doubtful that Judge Barrett will sit to hear oral argument for the case even if confirmed prior to the election. More than likely, the Court will hear the case with only eight justices, which increases the chances of the Court reaching a 4-4 split decision, affirming the Court of Appeals decision below. AFRC, joined by partners in the regulated community, filed an *amicus* brief in support of affirming the Court of Appeals.

The Court has still not decided whether to hear the second case in which AFRC is involved, *Massachusetts Lobstermen's Association v. Ross*. The case involves fishing groups' challenge to President Obama's proclamation of the Northeast Canyons & Seamounts National Monument, focusing

on separation-of-powers issues that are germane to AFRC's challenge to the Cascade-Siskiyou Monument. AFRC's *amicus* brief in support of the petition highlighted the importance of precluding the president from rewriting land-management statutes. Successful petitions are rare, usually only about 5%, and the Supreme Court may be more reluctant to take on cases while only eight justices sit on the bench.
/Heidi Logan