OPPOSE THE WESTERMAN ANTI-SCIENCE AND ANTI-ACCOUNTABILITY 'FIX OUR FORESTS' ACT

Background

This legislation is ostensibly about forest management and fire, but in reality, it's about stifling citizen voices, removing science from land management decisions, and a large-scale rollback of the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) on millions of acres of federal lands. Its sweeping provisions remove standards and accountability in service of the short-term interests of extractive industries, which will likely exacerbate wildfires. The bill contains essentially no standards or provisions to maintain, or even consider, the long-term health and resilience for millions of acres of public lands. It would leave these areas open to unlimited logging and divert resources from protecting communities and implementing smart wildfire strategies now underway, while providing no funding to carry out its mandates or activities necessary to increase community resilience. This is yet another example of industry and its congressional allies using popular ideas like 'forest management' as a trojan horse for weakening environmental laws and forest protections that ultimately benefit their profits, not the public.

Eliminating Science from Decision Making

- The legislation provides massive 10,000 acre new categorical exclusions from NEPA, ESA, and the National Historic Preservation Act, exclusions that remove a hard look at the scientific justification for and effects of decision making.

- While no one argues against the importance of protecting communities from wildfires, the bill promotes unlimited logging and other ecologically damaging activities on an unprecedented scale under the guise of wildfire risk reduction. It allows for any activities, including clearcut logging, within designated fireshed management areas (typically 250,000 acres or larger) to proceed under "emergency" exemptions from ESA Section 7 consultation designed to insure against a likelihood of jeopardizing endangered and threatened species, as well as NEPA review designated to promote informed decision making and avoid needless environmental harm.

- The definitions in the legislation are so vague that covered projects are not required to be for the purpose of fire risk mitigation.

- The bill has no standards to protect old growth forests or long-term forest health and resilience.

- The U.S. Forest Service already uses Categorical Exclusions for 85% of land management projects. Authorizing massive logging projects without objective environmental review, public engagement, and the use of best available science, is unacceptable.

Stifling Citizen Voices, Increasing Litigation

- Section 121 inappropriately interferes with the power of federal courts to say what the law "is" and provide appropriate redress to litigants, including limiting their right to even seek justice in court. For example, it changes the standard for injunctive relief to favor the timber industry and allows some forest management projects to proceed even when a court finds a plan legally insufficient under the law. This section also imposes a severely short 120-day judicial review window, which places an undue burden on communities with limited resources, such as frontline communities and Tribes. This short window to file suit will likely have the unintended consequence of leading to more litigation, not

less, as interested parties may be forced to prematurely file suit to protect their legal rights rather than attempting to resolve disputes administratively with the agency. Finally, these provisions are a solution in search of a problem. The preeminent study on Forest Service litigation and NEPA reviews showed that only 0.6% of all Forest Service NEPA reviews were challenged in the courts between 2001-2013. Excessive litigation is not the problem.

Removing ESA Protections for Forest Plans

- Section 122 of the bill guts the ESA by broadly exempting the Forest Service and the Bureau of Land Management from the regulatory requirement under Section 7 of the ESA to reinitiate consultation when new information indicates that implementation of land management plans may be harming threatened or endangered species in a manner that was not previously anticipated.
    - Reinitiation of consultation at the forest plan level is imperative because it provides the only mechanism to change management practices and apply them uniformly at the landscape scale, thereby avoiding extinction-by-a-thousand-cuts from consultation that occurs solely at the project level.
    - Re-initiation of plan-level consultation is not objectively burdensome. An analysis of the Forest Service's own data shows that reinitiation of consultation for new information has occurred 10 times since 2011, or on average once per year.
    - Even as national forests suffer more and more effects from the worsening climate crisis, this provision would exempt the Forest Service from modifying forest plans to protect listed species from changing climate conditions or other changed conditions.

2019 Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases, John C. Ruple, Kayla Race.