



## Legislative & Policy Update – August 2019

Published August 28, 2019

The [Council of Western State Foresters \(CWSF\) Legislative & Policy Update](#) provides information on issues of importance to the CWSF. Policy and Legislative Updates are found on the CWSF webpage [here](#). Please note that the items highlighted in these updates are only a selection of the issues the CWSF and Western Forestry Leadership Coalition (WFLC) are monitoring. Keep an eye out for our monthly newsletter that will provide summaries on other key legislative and programmatic issues. If you have not yet subscribed, you can do so [here](#). For more information, please contact Danielle Okst, Associate Policy and Grants Director, [dokst@westernforesters.org](mailto:dokst@westernforesters.org).

House members began their August recess on July 25th. Senators followed a week later on August 1st. Both chambers are scheduled to return on September 9th. Despite the lawmakers' absence from Washington, D.C., there has been movement on several key issues since late July.

### **Bipartisan Budget Act of 2019**

On July 25th, the House voted 284-149 in favor of passing the Bipartisan Budget Act of 2019 ([HR 3877](#)). This spending cap agreement prevents the automatic sequester cuts set to take place in fiscal year (FY) 2020 by the [Budget Control Act of 2011](#). It increases discretionary spending caps for FY 2020 and FY 2021 and allows an additional \$324 billion in spending over the next two fiscal years. For FY 2020, it allows for a \$22 billion increase (3.1% from current levels) in total defense spending over FY 2019 levels and a \$27 billion increase (4.3% from current levels) for non-defense spending. Discretionary defense spending for FY 2020 would total \$738 billion, and non-defense spending would total \$632 billion.

The measure also suspends the limit on public debt for two years, through July 31, 2021. Immediately prior to the summer recess on August 1st, the Senate passed HR 3877 with a vote 67-28, and President Trump signed the measure into law on August 2nd. Markups on FY 2020 appropriations bills are expected to occur in the Senate upon the Senators' return in September. Appropriators will need to move swiftly to complete and pass all appropriations bills prior to the end of the FY, making the passage of a Continuing Resolution the more likely scenario. While the House has already passed 10 of the 12 appropriations bills, the budget cap deal agreement for non-defense spending is approximately \$15 billion lower than the total spending in the passed bills. The House will have to make adjustments to meet this new agreement, which may impact the FY 2020 levels seen so far for the Interior, Environment, and Related Agencies bill.

### **Fostering Opportunities for Resources and Education Spending through Timber Sales Act of 2019 (FORESTS Act)**

Introduced on July 25th by Representatives [Cathy McMorris Rogers](#) (R-WA) and Dan Newhouse (R-WA), the [FORESTS Act](#) promotes active forest management. It requires the Secretary of Agriculture to establish at least one Forest Active Management Area (FAMA) in each unit of the National Forest System and further

requires the Forest Service to produce at minimum half of the sustainable timber yield therein each year. Active management projects developed through a collaborative process would be eligible for arbitration instead of litigation under this Act. The bill encourages public-private partnerships and extends the [Stewardship End Result Contracts](#) from 10 to 20 years. It also reauthorizes the [Secure Rural Schools](#) (SRS) program through FY 2020 and resets the authorization amount back to the 2010 level of \$405 million.

### **The Climate Stewardship Act**

Introduced by Corey Booker (D-NJ) on August 8th, the [Climate Stewardship Act](#) is a climate strategy [proposal](#) focused on conservation, reforestation, and restoration. The legislation aims to plant over 4 billion trees by 2030, and 15 billion trees by 2050, on a combination of federal, state, local, tribal, and non-governmental lands. This level of tree planting is the largest reforestation measure ever introduced in Congress. Grants would be submitted to the State Forester, but administrative overhead would be limited to 10%. The bill also aims to plant over 100 million of these trees in urban neighborhoods. Reestablishment of the Civilian Conservation Corps is sought, which would provide youth from low-income communities, indigenous communities, and communities of color with skills and work experience in forestry and wetlands restoration. You can view the section-by section details of the Act [here](#).

### **National Environmental Policy Act (NEPA)**

The public comment period for the USDA Forest Service's (Forest Service) [proposed changes to NEPA rules](#) closed on August 26th after a 14 day extension to the original 60 day comment period. The proposal is based on the Forest Service's desire to increase efficiency and ensure wise use of financial and human resources for environmental reviews, while still complying with NEPA's legislative requirements.

New categorical exclusions (CEs) would be created under the proposed changes, eliminating the need for environmental analysis for future actions when they have a history lacking any resulting significant environmental impacts. These new CEs would apply to restoration projects, such as removing disease-killed trees or restoring streams, and infrastructure activities, such as removing old roads or trails. Codifying the existing practice of condition-based management to provide a clear and consistent understanding is another proposed change, defining it as "A system of management practices based on implementation of specific design elements from a broader proposed action, where the design elements vary according to a range of on-the-ground conditions in order to meet intended outcomes." USDA Forest Service Chief Vicki Christiansen discussed these changes and the extended deadline in the [Leadership Corner](#). All comments can be viewed online [here](#), and the National Association of State Foresters Policy Team's comment can be viewed [here](#).

### **Endangered Species Act (ESA)**

Secretary of the Interior, David Bernhardt, [announced revisions in regulations for the ESA](#). The rulemaking changes apply to section 4 of the ESA, which covers the addition and removal of species from ESA's protections and designation of critical habitat and section 7, outlining consultations with other federal agencies. The revised regulations can be viewed in full [here](#).

The sole criteria to add or remove a species from the threatened or endangered list is "On the basis of the best scientific and commercial information." The revisions clarify the same five statutory factors for listing a species on the threatened or endangered list should also be used to reclassify or delist a species, applying the same level of analysis to both processes. With regard to critical habitat designation, these regulations

prioritize evaluation of areas where threatened or endangered species are present at the time of the listing above unoccupied areas. There is also a heightened standard for unoccupied areas to receive a critical habitat designation. An unoccupied habitat must be essential to the conservation of the species and “Contain one or more of the physical or biological features essential to the species’ conservation.”

The revisions to section 7 increase efficiency in the requirement for federal agencies to consult with U.S. Fish and Wildlife Service and National Marine Fisheries Service. Alternative consultation mechanisms are listed and informal consultations are given a deadline. Clarity is provided for definitions within this consultation section as well. The U.S. Fish and Wildlife Service is now in line with the National Marine Fisheries Service in not applying automatic protections to threatened species identical to endangered species protections, unless specified. For future threatened species, U.S. Fish and Wildlife Service will craft species-specific rules.

Subsequent to the announcement of these ESA revisions, eight environmental groups have [filed a complaint](#) in District Court in California. The lawsuit alleges the Administration violated the National Environmental Policy Act by failing “To consider and disclose the significant environmental impacts from these regulations.” Additionally, it argues the final rules included changes not present in the initial proposal and, therefore, the public never had a chance to comment on those provisions.