



Legislative & Policy Update – October 2019

Published October 23, 2019

The [Council of Western State Foresters \(CWSF\) Legislative & Policy Update](#) provides information on issues of importance to 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 CWSF and the 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 at dokst@westernforesters.org.

The release of changes to Endangered Species Act (ESA) regulations has begun a battle of both pro and anti-revision efforts. After a long history of litigation, proposed Alaska-specific rules exempting the Tongass National Forest (Tongass) from the [2001 Roadless Area Conservation Rule](#) (Roadless Rule) were released for public comment this month. The USDA Forest Service (Forest Service) halted their historical practice of outspending their firefighting budget for fiscal year (FY) 2019. Congress is working on passing FY 2020 appropriations bills, including the fire funding fix, before the end of the Continuing Resolution on November 21.

ESA Modernization Update

In August, Secretary of the Interior David Bernhardt [announced revisions in regulations for the ESA](#). These revisions make changes to the sections on the addition, removal, or reclassification of species as endangered or threatened, designation of critical habitat, and consultation with other federal agencies. The updated regulations can be viewed in full [here](#) and an explanation of the changes can be found in the [August policy update](#).

Following the announcement of these ESA revisions, a [lawsuit](#) was filed by environmental groups, including Earthjustice, the Sierra Club, Defenders of Wildlife, and the Natural Resources Defense Council. Democratic attorneys general for 17 states have joined the opposition to these changes, filing a [complaint](#) against the Interior and Commerce departments. The suit claims these proposed revisions violate the National Environmental Policy Act by not considering the environmental impacts, violate the purpose of the ESA and subsequent court case decisions, and lack any reasoned basis under the Administrative Procedure Act. Both lawsuits seek a determination that would halt application of the new rules and reinstate the previous ESA regulations.

[H.R. 4348](#) was introduced by Representative Raul Grijalva (D-AZ) in September as a legislative vehicle for blocking changes to the ESA. The bill was discussed during a [legislative hearing](#) held by the House Natural Resources Subcommittee on Water, Oceans, and Wildlife. That same day, the Congressional Western Caucus hosted a roundtable to discuss and unveil their pro-ESA reform vision, including a [legislative package](#) that

bundles together 19 bills. In addition to those sections which codify the proposed changes to ESA rules, some notable sections within this package are:

- [Improving Species Health Through Active Management Act](#): includes provisions aimed at preventative measures and active management that reduces the risk of catastrophic wildfires, such as categorical exclusions for hazard trees, forest restoration, and to expedite salvage operations in response to catastrophic events and certain critical response actions.
- [Localizing Authority of Management Plans Act](#) (LAMP Act): allows the Secretary of the Interior to enter into cooperative agreements with states, local governments, Indian Tribes, and other non-federal persons to manage species and improve habitat conservation. When certain conditions are met, a state may take the lead in preserving and managing species under their already present species conservation plans.
- [Ensuring Meaningful Petition Outreach While Enhancing Rights of States Act](#) (EMPOWER Act): ensures federal agencies making decisions on ESA listings consult states prior to listing species and requires an explanation be provided when decisions differ from the findings or advice of states.

Alaska Roadless Rule Update

The Forest Service published a [notice in the Federal Register](#) regarding the proposed exemption of Alaska's Tongass National Forest from the [Roadless Rule](#) and requested public comment. The Roadless Rule prohibits timber harvest and road construction/reconstruction in National Forest System lands with limited exceptions. Alaska filed a complaint challenging the initial rule's application in Alaska, which ended in a settlement in 2003 that temporarily exempted Tongass from the Roadless Rule. However, this was followed in 2011 by a court decision which again applied the Roadless Rule to Tongass. This decision was ultimately [upheld](#) in 2015 by the Ninth Circuit Court of Appeals.

Alaska petitioned for an exemption in January 2018, and the Secretary of Agriculture agreed to address the state's concerns through a rulemaking process. This led to the formation of the Alaska Roadless Rule Citizen Advisory Committee. This committee submitted a [report](#) in November 2018 which helped inform Alaska's input to the Forest Service about this state-specific Roadless Rule. The proposed exemption would not be a blanket authorization of activities but rather would return decision-making authority to local Forest Service officials to make case-by-case determinations. The Chugach National Forest would also be impacted by allowing modification of the roadless area boundaries (not a full exemption like the Tongass) to remedy clerical errors, accommodate improvements in mapping technology, and conform to statutory changes or changes due to land adjustments. Comments on this newly proposed rule for the Tongass and Chugach National Forests [can be submitted](#) until December 16, 2019.

Forest Service Within Fire Budget for FY 2019

In contrast to recent years, the Forest Service was able to stay within their firefighting budget for FY 2019 and did not have to resort to taking money from other non-fire accounts to cover expenses ("fire borrowing"). A relatively slow fire season overall and additional Congressional appropriations for fire operations appear to have halted fire borrowing for this FY. This news comes right before the wildfire funding fix will take effect in the Forest Service's budget for FY 2020, freezing the suppression budget line item at the FY 2015 10-year average (\$1,011 million) and providing an additional \$1.95 billion for Forest Service's use if suppression funding is exhausted. The hope in implementing the wildfire funding fix is to put an end to the fire borrowing practice so other non-fire operations are not impacted when additional funds are needed during intense fire years.

FY 2020 Appropriations Update

President Trump signed the [Continuing Resolution \(H.R. 4378\)](#) into law after it passed the Senate at the end of September, providing Congress additional time to negotiate FY 2020 appropriations bills before the Thanksgiving break. That same week, the FY 2020 Interior, Environment, and Related Agencies (Interior) bill was [approved by the Senate Committee on Appropriations](#). The full committee report can be examined [here](#), with the Forest Service beginning on page 99 and State and Private Forestry beginning on the bottom of page 102. The budget is structured differently than previous years with the intent of working towards increased transparency through the elimination of cost pools and the addition of dedicated budget line items for salaries and expenses. The difference in budget appearance represents the continued work of the Forest Service and Congress to determine the format that will best clarify which dollars are being spent on the ground as opposed to on operations. In looking at the proposed appropriated funds within the committee report, please keep in mind that “funds provided for Forest Service programs appear substantially different after cost pools and salaries and expenses have been removed; however, programs are funded at no less than the fiscal year 2019 enacted level.”

Senate Majority Leader McConnell (R-KY) filed cloture motions on two House appropriations packages, including [H.R. 3055](#), a five-bill minibus containing the Interior bill. Those spending packages will serve as the vehicle for the Senate to substitute their versions of the bills for consideration by the entire Chamber. While the Senate Committee on Appropriations has passed most of their appropriations bills, none have yet passed the full Senate. The Senate resumes consideration of the H.R. 3055 on October 23.