Congressional Research Service
Informing the legislative debate since 1914

Forest Management Provisions Enacted in the 115th Congress

April 17, 2019

Congressional Research Service
https://crsreports.congress.gov
R45696

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R45696

April 17, 2019

Katie Hoover
Specialist in Natural Resources Policy

Linda Luther
Analyst in Environmental Policy

Anne A. Riddle
Analyst in Natural Resources Policy

Pervaze A. Sheikh
Specialist in Natural Resources Policy

Forest Management Provisions Enacted in the 115th Congress

The 115th Congress enacted several provisions affecting management of the National Forest System (NFS), administered by the Forest Service (in the Department of Agriculture), and the lands managed by the Bureau of Land Management (BLM, in the Department of the Interior). The provisions were enacted through two laws: the Stephen Sepp Wildfire Suppression Funding and Forest Management Activities Act, enacted as Division O of the Consolidated Appropriations Act, 2018 (P.L. 115-141, commonly referred to as the FY2018 omnibus), and the Agricultural Improvement Act of 2018 (P.L. 115-334, Title VIII, commonly referred to as the 2018 farm bill).

Many of the provisions enacted by the 115th Congress affect Forest Service and BLM implementation of two laws: the National Environmental Policy Act (NEPA), and the Healthy Forests Restoration Act (HFRA). These laws, among others, authorize specific forest management activities and establish decisionmaking procedures for those activities. The enacted provisions are summarized and analyzed in the following categories: project planning and implementation, wildland fire management, forest management and restoration programs, and miscellaneous. Ongoing issues for Congress include oversight of (i) the agencies' implementation of the new laws, and (ii) the extent these provisions achieve their specified purposes, such as improving agency efficiencies, increasing the scale, scope, and implementation of forest restoration projects, and reducing hazardous fuel levels to mitigate against the risk of catastrophic wildfire.

Both the FY2018 omnibus and 2018 farm bill included provisions that affect Forest Service and BLM decisionmaking processes by changing certain aspects of the NEPA process and the interagency consultation requirements established in Section 7 of the Endangered Species Act (ESA). For example, each law specified that certain forest management projects would be considered actions categorically excluded from the requirements of NEPA. Also, both laws expanded various authorities originally authorized in HFRA intended to expedite decisionmaking for specific projects. This included reauthorizing the use of procedures intended to expedite priority projects in designated NFS insect and disease treatment areas and amending the definition of an authorized fuel reduction project to include additional activities.

The FY2018 omnibus and 2018 farm bill also contained provisions that affect federal wildland fire management. The FY2018 omnibus directed the Secretary of Agriculture to adapt the national-scale wildfire hazard potential map for use at the community level to inform risk management decisions. Both laws directed Forest Service and DOI to provide annual reports on a variety of wildfire-related metrics. The FY2018 omnibus also changed how Congress appropriates funding specifically for wildfire suppression purposes. The so-called *wildfire funding fix* authorized an adjustment to the discretionary spending limits for wildfire suppression operations for each year from FY2020 through FY2027. However, statutory spending limits are set to expire after FY2021, meaning that the adjustment is effectively in place for two years.

Congress has established specific forest restoration programs for Forest Service and BLM, or has authorized forest restoration to be one of many activities or land management objectives for some programs. Forest restoration activities address concerns related to forest health, such as improving forest resistance and resilience to disturbance events (e.g., insect and disease infestation or uncharacteristically catastrophic wildfires). The 115th Congress established two new programs for Forest Service (water source protection and watershed condition framework) and amended three others: the Collaborative Forest Landscape Restoration Program (CFLRP, available only for Forest Service), stewardship contracting authority, and the good neighbor authority. Aspects of several of these programs allow Forest Service and BLM to partner with various stakeholders in different ways to perform specified forest management and restoration activities.

Both the FY2018 omnibus and the 2018 farm bill enacted various other provisions related to land acquisition, exchange and disposal; the issuance of special use authorizations for the use or occupancy of federal lands; the payments, activities, and Resource Advisory Committees authorized by the Secure Rural Schools and Community Self-Determination Act; and forest management on tribal lands.

Contents

Introduction 1
Background 2
National Forest System 2
Bureau of Land Management Public Lands 3
National Environmental Policy Act (NEPA) 3
Healthy Forests Restoration Act (HFRA) 4
HFRA Insect and Disease Designation Areas 8
2014 Farm Bill Insect and Disease NEPA Categorical Exclusion (CE) 9
Planning and Project Implementation Requirements 10
Statutorily Established NEPA CEs 11
Wildfire Resilience CE 11
Sage Grouse/Mule Deer CE 12
Endangered Species Act Section 7 Consultation Requirements 17
Summary of Changes and Discussion 17
Wildland Fire Management 19
Suppression Spending: Wildfire Funding Fix 20
Wildfire Hazard Potential Maps 21
Reporting 22
Forest Management and Restoration Programs 23
Collaborative Forest Landscape Restoration Program (CFLRP) 24
Summary of Changes and Discussion 26
Good Neighbor Authority 26
Summary of Changes and Discussion 27
Stewardship Contracting 28
Summary of Changes and Discussion 29
Watershed Condition Framework 30
Summary of Changes and Discussion 30
Water Source Protection 30
Summary of Changes and Discussion 31
Miscellaneous Provisions 31
Wilderness Designations 31
Land Acquisition, Exchange, and Disposal 32
Rights-of-Way (ROW) and Special Use Authorization Provisions 32
Forest Service Communication Uses Fee Schedules and Processes 34
Electricity Transmission and Distribution ROWs 35
Forest Service Utility ROW Pilot Program 35
Secure Rural Schools (SRS) Payments and Modifications 36
Summary of Changes and Discussion 36
Tribal Forestry 37
Issues for Congress 38

Figures

Figure 1. Fire Regime Groups 7

Figure 2. Map of NFS HFRA Designated Insect and Disease Treatment Areas 8
Figure 3. Wildfire Hazard Potential Map 22

Tables

Table 1. Comparison of Statutorily Established Categorical Exclusions (CEs) under the National Environmental Policy Act (NEPA) 14

Table A-1. Comparison of Forestry Provisions in Prior Law to Changes Enacted in the FY2018 Omnibus (Wildfire Suppression Funding and Forest Management Activities Act) 42
Table A-2. Comparison of Forestry Provisions in Prior Law to Changes Enacted in the 2018 Farm Bill 47

Appendixes

Appendix. Enacted Forest Management Provisions Comparison to Then-Current Law 41

Contacts

Author Information 56

Introduction[1]

This report summarizes and analyzes selected forest management provisions enacted in the 115th Congress and compares them with prior law or policy. These provisions were enacted through two legislative vehicles

- The Stephen Sepp Wildfire Suppression Funding and Forest Management Activities Act, enacted as Division O of the Consolidated Appropriations Act, 2018 (P.L. 115-141, commonly referred to as the FY2018 omnibus) and signed into law on March 23, 2018.[2]
- The Agricultural Improvement Act of 2018 (P.L. 115-334, Title VIII), signed into law on December 20, 2018. This law is commonly referred to as the 2018 farm bill.

Both laws included provisions that address forest management through three general perspectives: (1) management of forested federal land, (2) federal programs to support forest management on nonfederal lands, known as *forest assistance programs*, and (3) programs to promote or conduct forestry research (to benefit both federal and nonfederal forests). This report focuses primarily on the provisions related to management of forested federal land.[3] The federal forest management provisions change how the Forest Service (FS, within the Department of Agriculture (USDA)) and the Bureau of Land Management (BLM, within the Department of the Interior (DOI)) manage their lands. FS is responsible for managing the 193 million acres of the National Forest System (NFS), and BLM manages 246 million acres of public lands under its jurisdiction.

This report begins with background information on the NFS and BLM's public lands and an overview of two laws: the National Environmental Policy Act (NEPA), and the Healthy Forests Restoration Act (HFRA).[4] These laws, among others, authorize specific forest management activities and establish procedures relevant to the respective agency's decisionmaking processes for those activities. The 115th Congress enacted provisions that affect how FS and BLM implement those activities and procedural requirements.

The report summarizes and analyzes the provisions in the following categories: project planning and implementation, wildland fire management, forest management and restoration programs, and miscellaneous. Within each of those categories, the report broadly discusses relevant issues, summarizes the changes made in the 115th Congress, and discusses potential issues for Congress related to that category. Some provisions or sections are covered in more depth than others, generally reflecting the complexity of the issue, nature of the enacted changes, or level of congressional interest. A separate section at the end of the report discusses overall issues for Congress. The **Appendix** contains side-by-side tables comparing all of the forest-related provisions in each law to prior law (including provisions related to forestry assistance programs and forestry research).

---

[1] This section—and other sections unless otherwise specified—was written by Katie Hoover, Specialist in Natural Resources Policy.

[2] The Consolidated Appropriations Act, 2019 (P.L. 116-6) amended the FY2018 omnibus and renamed the title of Division O.

[3] For more information on forest assistance programs, see CRS Report R45219, *Forest Service Assistance Programs*.

[4] The National Environmental Policy Act (NEPA): P.L. 91-190, 42 U.S.C. §§4321-4347. The Healthy Forests Restoration Act (HFRA): P.L. 108-148, 16 U.S.C. §§6501 et seq.

Background

National Forest System

Approximately 145 million acres of the 193-million-acre NFS consists of forests and woodlands.[5] Congress directed that management of the national forests shall be to protect watersheds and forests and provide a "continuous supply of timber for the use and necessities of citizens of the United States" and authorized the sale of "dead, matured, or large growth of trees."[6] Congress added recreation, livestock grazing, energy and mineral development, and protection of wildlife and fish habitat as official uses of the national forests, in addition to watershed protection and timber production, in the Multiple-Use Sustained-Yield Act of 1960 (MUSY).[7] Pursuant to MUSY, management of the resources is to be coordinated for *multiple use*—considering the relative values of the various resources but not necessarily maximizing dollar returns or requiring that any one particular area be managed for all or even most uses—and *sustained yield*, meaning maintaining a high level of resource outputs in perpetuity without impairing the productivity of the land.

The National Forest Management Act of 1976 (NFMA) requires FS to prepare and update comprehensive land and resource management plans (also referred to as *forest plans*) for each NFS unit.[8] NFMA, as amended, specifies that the plans must be developed and revised with public involvement. Plans, like all discretionary actions taken by the FS, must also comply with any cross-cutting laws that apply broadly to all federal agency actions. This includes compliance with NEPA, as well as Section 7 of Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA), among others.[9] Each forest plan broadly describes a range of desired resource conditions across the specified NFS unit but does not authorize individual projects or specific on-the-ground actions.

Projects are the on-the-ground actions that implement the forest plan prepared for that site. These may include activities such as timber harvests, watershed restoration, trail maintenance, and hazardous fuel reduction, among many others. Projects must be consistent with the resource objectives established in the forest plans. These projects must be planned, evaluated, and implemented using FS procedures intended to ensure compliance with applicable requirements (e.g., NEPA, ESA, NHPA). The timing and scope of review for a given project may vary based on the specific statutory authority underpinning each project's implementation, the types of resources that could be affected at the site, and the level of those potential effects.

---

[5] National Forest System (NFS) acreage from Forest Service (FS), *Land Areas Report - as of September 30, 2018*, https://www.fs.fed.us/land/staff/lar/LAR2018/lar2018index.html. Forest and woodland acreage data from Sonja Oswalt, Patrick Miles, and Scott Pugh, et al., *Forest Resources of the United States, 2017: A Technical Document Supporting the Forest Service 2020 Update of the RPA Assessment*, USDA, FS, 2017, https://www.fia.fs.fed.us/program-features/rpa/docs/2017RPAFIATABLESFINAL_050918.pdf, hereinafter referred to as *Forest Resources of the United States*, 2017.

[6] Act of June 4, 1897 (ch. 2; 30 Stat. 11), commonly referred to as the Forest Service Organic Act (16 U.S.C. §§475-476).

[7] P.L. 86-517; 16 U.S.C. §§528-531, 16 U.S.C. §§583 et seq.

[8] P.L. 94-588, 16 U.S.C. §§1600-1614.

[9] Endangered Species Act (ESA): P.L. 93-205, 16 U.S.C. §1531 et seq. National Historic Preservation Act (NHPA): P.L. 89-665, 54 U.S.C. §300101 et seq. Other examples include complying with the FS' decisionmaking procedures as established pursuant to the Administrative Procedure Act (P.L. 79-404, 5 U.S.C. P.L. 93-205 §§500 et seq).

Bureau of Land Management Public Lands

BLM manages 246 million acres of public lands, primarily in the western United States. Approximately 38 million acres of those public lands are woodlands and forests.[10] The public lands—forested and otherwise—are managed under the principles of multiple use and sustained yield, as directed by the Federal Land Policy and Management Act (FLPMA).[11] These principles are similar to those that govern the NFS. The 2.6 million acres of Oregon and California Railroad (O&C) Lands and Coos Bay Wagon Road (CBWR) Lands in western Oregon, however, are forested lands managed under a statutory direction for permanent forest production under the principle of sustained yield and with the purposes of providing timber, protecting watersheds, providing recreational opportunities, and contributing to the economic stability of the local communities.[12] Similar to the requirements applicable to FS decisionmaking, FLPMA directs BLM to prepare and maintain comprehensive resource management plans and to revise them as necessary.[13] Any proposed on-the-ground activities or projects must be consistent with those plans and must be planned, evaluated, and implemented using BLM's procedures for ensuring compliance with the laws that apply broadly to any federal agency action (e.g., NEPA, ESA, NHPA).

National Environmental Policy Act (NEPA)[14]

Broadly, NEPA requires federal agencies to identify the environmental impacts of a proposed action before making a final decision about that action.[15] How a federal agency demonstrates compliance with NEPA depends on the level of the proposal's impacts.[16] A proposed action that would significantly affect the "quality of the human environment" requires the preparation of an *environmental impact statement* (EIS) leading to a Record of Decision.[17] If the impacts are uncertain, an agency may prepare an *environmental assessment* (EA) to determine whether an EIS is necessary, or whether a *finding of no significant impact* (FONSI) may be issued through a Decision Notice. For actions that require an EA or EIS, an agency generally must evaluate the impacts of the proposed action and reasonable alternatives to it, including the alternative of taking no action (i.e., a *no-action alternative*). The analysis included in the EIS or EA/FONSI is used to inform the agency's decisionmaking process regarding the proposal.

---

[10] *Forest Resources of the United States*, 2017.

[11] The Federal Land Policy and Management Act (FLPMA), P.L. 94-579, 43 U.S.C. §§1701 et seq.

[12] Oregon & California Railroad Lands Act of 1937 (Act of August 28, 1937, ch. 876, also known as the McNary Act), 50 Stat. 874; 43 U.S.C. §2601a. The Oregon and California Railroad Lands (O&C lands) consists of 2.6 million acres of lands managed mostly by BLM in western Oregon; the Coos Bay Wagon Road Lands consists of 75,000 acres also managed by BLM in western Oregon. For more information, see CRS Report R42951, *The Oregon and California Railroad Lands (O&C Lands): Issues for Congress*.

[13] 43 U.S.C. §1712.

[14] This section was written by Linda Luther, Analyst in Environmental Policy.

[15] P.L. 91-109, 42 U.S.C. §§4321-4347. For more information about the NEPA process, in general, see CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*.

[16] NEPA established the Council on Environmental Quality (CEQ) in the Executive Office of the President, and CEQ issued broad, generic regulations regarding NEPA implementation. This includes requiring for all federal agencies to adopt and supplement the CEQ regulations as necessary to include detail relevant to actions *that* agency is authorized to approve (see CEQ, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," in 40 C.F.R. Parts 1500-1508 (43 *Federal Register* 55990, November 28, 1978).

[17] 42 U.S.C. §4332(2)(C).

Under NEPA implementing regulations, *categorical exclusions* (CEs) refer broadly to categories of actions that do not individually or cumulatively have a significant effect on the environment and hence are excluded from the requirement to prepare an EIS or an EA.[18] FS and BLM have identified CEs based on each agency's past experience with similar actions. Some CEs have been explicitly established in statute by Congress, as discussed in the "Statutorily Established NEPA CEs" section of this report. Individual agencies also may determine whether or what additional documentation may be required for a CE. In its list of CEs, FS distinguishes between actions that generally do not require any further documentation and those that generally require the preparation of a decision memorandum as part of an administrative record supporting the decision to approve the proposal as a CE.[19]

In their agency-specific procedures implementing NEPA, each federal agency has identified and listed actions it is authorized to approve that normally require an EIS, or an EA resulting in a FONSI, or that can be approved using a CE.[20] FS and BLM regulations also provide for and identify the resource conditions in which a normally excluded action may have the potential for a significant environmental effect and warrant further analysis in an EA or EIS.[21] The presence of these resource conditions is termed *extraordinary circumstances.* For example, FS has identified the presence of flood plains, municipal watersheds, endangered species or their habitat, wilderness areas, inventoried roadless areas, and archaeological sites, among others, as potential extraordinary circumstances that may preclude the use of a CE for an otherwise eligible project.[22]

As commonly implemented, the process of identifying potential environmental impacts pursuant to NEPA serves as a framework to identify any other environmental requirements that may apply to that project as a result of those impacts. In this way, an agency's procedures to implement NEPA may serve as an umbrella compliance process. For example, within the framework of determining the resources affected and level of effects of a given proposal, the agency's NEPA process would identify project impacts that may trigger additional environmental review and consultation requirements under ESA and NHPA, among other laws. If compliance with NEPA was waived for a given category of action, the requirements triggered by impacts to those resources under other federal laws would still apply.

Healthy Forests Restoration Act (HFRA)

HFRA, among other purposes, was intended to expedite the planning and review process for hazardous fuel reduction and forest restoration projects on NFS and BLM lands.[23] Hazardous fuel

[18] See 40 C.F.R. §1508.4.

[19] For more information on FS CEs, see *Forest Service Handbook FSH 1909.15 NEPA Handbook*, Chapter 30 - Categorical Exclusion from Documentation, September 24, 2018, https://www.fs.fed.us/im/directives/fsh/1909.15/wo_1909.15_30_Categorical%20Exclusion%20from%20Documentation.doc. Hereinafter referred to as FSH 1909.15-30. Hereinafter referred to as FSH 1909.15_30.

[20] FS regulations implementing NEPA are codified at 36 C.F.R. Part 220 and supplement both the CEQ regulations and Department of Agriculture (USDA) regulations implementing NEPA at 7 C.F.R. Part 1b. For more information on FS NEPA implementation, see also Forest Service Manual (FSM) 1950 and Forest Service Handbook (FSH) 1909.15, available from https://www.fs.fed.us/im/directives/. BLM carries out its responsibilities to comply with NEPA in accordance with DOI's regulations codified at 43 C.F.R. Part 46. For more information on DOI's NEPA implementation, see Departmental Manual (DM) Part 516, and see Chapter 11 for BLM-specific information.

[21] See 36 C.F.R. §220.6(b) for FS regulations; 43 C.F.R. §46.215 for DOI regulations (which apply to BLM).

[22] 36 C.F.R. §220.6.

[23] U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Healthy Forests Restoration Act of 2003*, report to accompany H.R. 1904, 108th Cong., 1st sess., 2003, S.Rept. 108-121; and U.S. Congress, House Committee on the Judiciary, *Healthy Forests Restoration Act of 2003*, report to accompany H.R. 1904, 108th Cong., 1st sess.,

reduction projects are intended to reduce the risk of catastrophic wildfire by removing or modifying the availability of biomass (e.g., trees, shrubs, grasses, needles, leaves, and twigs) that fuel a wildland fire through a variety of methods and measures.

HFRA defined specific hazardous fuel reduction projects and authorized an expedited planning and review process for those projects. The authorization is available to be used for projects covering up to a cumulative total of 20 million acres of federal land. HFRA defined several other relevant terms, some of which are summarized below[24]

- *At-Risk Community*: an area that is comprised of an interface community as defined in the notice published in 66 *Federal Register* 753, or a group of homes and other structures with basic infrastructure and services within or adjacent to federal land, and an area in which conditions are conducive to a large-scale wildland fire disturbance event and for which a significant threat to human life or property exists as a result of significant wildland fire disturbance event.[25]
- *Authorized Hazardous Fuels Reduction Projects (HFRA Projects)*: methods and measures for reducing hazardous fuels including prescribed fire, wildland fire use, and various mechanical methods (e.g., pruning or thinning, which is the removal of small-diameter trees to produce commercial and pre-commercial products).[26]
- *Fire Regimes and Condition Classes*: terms used to describe the relative change between the historical frequency and intensity of fire patterns across a vegetated landscape to the current fire patterns. These terms are used to prioritize and assess hazardous fuel reduction projects. For a complete definition, see the shaded text box and **Figure 1**.
- *Wildland-Urban Interface (WUI)*: an area within or adjacent to an at-risk community with a community wildfire protection plan (CWPP), or an area within a specified distance to an at-risk community without a CWPP and with specified characteristics (e.g., steep slopes).[27]

HFRA projects may be conducted in the WUI; on specified areas within a municipal watershed and with moderate or significant departure from the historical fire regimes (see shaded text box); on wind-, ice-, insect-, or disease-damaged land, or land at risk of insect or disease damage; or on

2003, H.Rept. 108-96.

[24] See 16 U.S.C. §6511 for the definitions in Title I of HFRA.

[25] USDA and Department of the Interior (DOI), "Urban Wildland Interface Communities Within the Vicinity of Federal Lands that are at High Risk from Wildfire," 66 *Federal Register* 751-777, January 4, 2001. Hereinafter referred to as 66 *Federal Register* 751-777.

[26] HFRA defines authorized projects by referencing the definition of "appropriate tools" in USDA and DOI, *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment: 10-Year Comprehensive Strategy Implementation Plan*, May 2002, p. 18, http://www.forestsandrangelands.gov/resources/plan/documents/11-23-en.pdf. The 2018 farm bill amended the definition, as discussed in the "Planning and Project Implementation Requirements" section of this report.

[27] 16 U.S.C. §6511(16). The WUI is more generally defined as the area where structures and other human development meet or intermingle with undeveloped wildland vegetation. For more information on the WUI, see FS, *The 2010 Wildland-Urban Interface of the Conterminous United States*, 2015, https://www.fs.fed.us/nrs/pubs/rmap/rmap_nrs8.pdf.; V. C. Radeloff et al., "The Wildland-Urban Interface in the United States," *Ecological Applications*, vol. 15, no. 3 (2005), pp. 799-805; 66 *Federal Register* 751-777; and CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*.

lands with threatened and endangered species habitat threatened by wildfire.[28] HFRA explicitly excluded projects that would occur on designated wilderness areas, wilderness study areas, or areas that otherwise prohibit vegetation removal by an act of Congress or presidential proclamation.[29] Also, HFRA projects must be consistent with the land and resource management plan in place for the area. Certain *covered projects*—basically, any HFRA project except those in response to or anticipation of wind, ice, insect, or disease damage—must focus on thinning, prescribed fire, or removing small-diameter trees to modify fire behavior, while maximizing large or old-growth tree retention (if retention promotes fire resiliency).[30]

Fire Regime Condition Class

Fire regime condition class is a classification that describes the relative change between the historical (prior to modern human intervention) frequency and intensity of fire patterns across a vegetated landscape and the current fire patterns. More specifically, the term *fire regime* describes fire's relative frequency and severity in an ecosystem, and *condition class* describes the degree of departure from reference historical conditions. Fires in landscapes classified into Fire Regime I occur every 0-35 years, and the fires are of low to mixed severity. Fire Regime II also has a frequency of 0-35 years, but the fires are severe, resulting in stand replacement of over 75% of the dominant overstory vegetation. Fire Regime III has a frequency of fire that ranges from 35-200 years, and the fires are of low to mixed severity. Fire Regime IV also has a frequency ranging from 35-200 years, but the fires are severe. Fire Regime V has a frequency of more than 200 years and includes fires of any severity. With respect to departure from reference historical conditions, Condition Class 1 represents no or minimal departure; Condition Class 2 represents a moderate departure and declining ecological integrity; Condition Class 3 describes a high departure and poor ecological integrity. For more information, see S. Barrett et al., *Interagency Fire Regime Condition Class (FRCC) Guidebook Version 3.0*, 2010, http://www.frames.gov/.

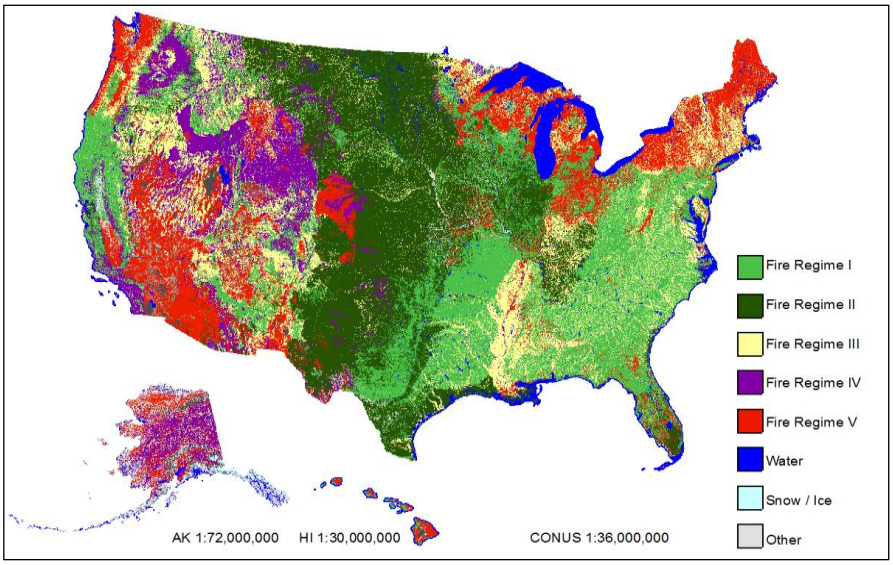
The Healthy Forest Restoration Act (HFRA) authorizes certain activities in areas classified as Condition Class 2 or 3 in Fire Regimes I, II, and III. HFRA's definition of these terms (see 16 U.S.C. §6511) is largely consistent with the above descriptions, except that HFRA defines Fire Regime III as mixed severity fires with a return frequency of 35-100 years; instead of 35-200 years. At the time of enactment, the return frequency for Fire Regime III was defined as 35-100+ years, and the classification scale has been refined as data availability, data reliability, and modeling capacity have improved.

[28] 16 U.S.C. §6512(a).

[29] 16 U.S.C. §6512(d).

[30] 16 U.S.C. §6512(e)(1)(B).

Figure 1. Fire Regime Groups



Source: Forest Service and DOI Landscape Fire and Resource Management Planning Tools (LANDFIRE) program, Fire Regime Group dataset, available from https://www.landfire.gov/frg.php.

Notes: The term "Other" includes landscapes with indeterminate fire regime characteristics, or classified as barren or sparsely vegetated.

HFRA also directed FS to establish a pre-decisional administrative review process—referred to as an objection process—for proposed HFRA projects.[31] The review is called pre-decisional because HFRA explicitly requires objections to be filed within 30 days of the agency's publication of the draft decision documents associated with the proposed project (e.g., a draft Decision Notice and final EA, or draft Record of Decision and final EIS). Objections are limited to parties that submitted specific comments during the comment periods and may only be on issues raised within those comments. If no comments were received on a project, no objections will be accepted.[32] HFRA also set forth requirements for judicial review. If the objector is still not satisfied with the agency's decision after the administrative review (i.e., objections) process has been exhausted, the next step is judicial review in federal court. However, only issues that were raised during the public comment period and the pre-decisional administrative review process may be considered during judicial proceedings, unless significant new issues arise after the conclusion of the administration review.[33]

Congress later directed FS to replace the post-decisional administrative appeals process used for non-HFRA projects with the pre-decisional objection process used by HFRA projects.[34] As a result, all FS projects fall under the same pre-decisional objection process, although there are some differences between HFRA and non-HFRA projects. For example, the Chief of the Forest Service may declare a non-HFRA project an emergency situation and proceed directly to implementation after the publication of the decision document.

[31] 36 C.F.R. §218.

[32] 36 C.F.R. §218.4.

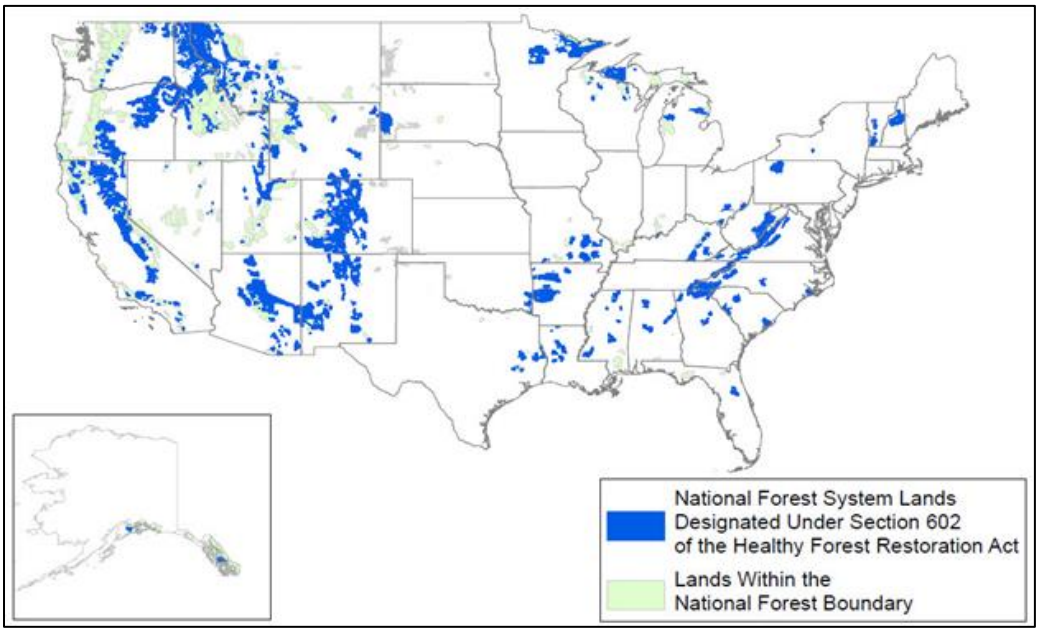
[33] 36 C.F.R. §218.14.

[34] Consolidated Appropriations Act of 2012, P.L. 112-74 §428.

HFRA Insect and Disease Designation Areas

The Agricultural Act of 2014 (the 2014 farm bill) added a new Section 602 to HFRA and authorized the establishment of landscape-scale insect and disease treatment areas within the NFS, by state, as requested by the state governor and then designated by the Chief of the Forest Service.[35] To be eligible for this insect and disease treatment area designation, the NFS area must be experiencing declining forest health based on annual forest health surveys, at risk of experiencing substantial tree mortality over the next 15 years, or in an area in which hazard trees pose an imminent risk to public safety. In total, FS has designated approximately 74.5 million acres nationwide (see **Figure 2**).[36] (Hereinafter this report refers to these designated areas as *I&D areas*.)

Figure 2. Map of NFS HFRA Designated Insect and Disease Treatment Areas



Source: Forest Service Geospatial Technology and Applications Center (2/21/2018), available at https://www.fs.fed.us/farmbill/documents/additional/NFS_Designations_HFRA_Map_20180201.pdf.

Notes: Hawaii (not shown) has no such lands. Data displayed are for informational purposes only and depict designations made under section 602 of HFRA.

[35] P.L. 113-79 §8204, 16 U.S.C. §6591a. Some may refer to this as the *HFRA Section 602 Authority*. The term "landscape-scale" is not specifically defined, but the law references subwatersheds as an example, and further defines subwatersheds as the sixth-level of the System of Hydrologic Unit Codes of the United States Geological Survey. The 2014 farm bill also authorized appropriations of up to $200 million annually through FY2024 for the program. The program has been implemented using other authorized funding sources, but never received appropriations, and the 2018 farm bill repealed the authorization for appropriations (§8408).

[36] The 2014 farm bill required FS to make the initial designations within 60 days of enactment (April 8, 2014), but also authorized FS to designate additional areas as needed. FS evaluated state requests against eligibility criteria, and generally designated areas that met at least one of the criteria. The 74.5 million acres of designated areas include state requests and additional designations made as of August, 2018, according to the FS, *FY2020 Budget Justification*, p. 171, https://www.fs.fed.us/sites/default/files/media_wysiwyg/usfs-fy-2020-budget-justification.pdf (hereinafter referred to as FS *FY2020 Budget Justification*). For more information, including state designation maps, see the Forest Service web page on Insect and Disease Area Designations at http://www.fs.fed.us/farmbill/areadesignations.shtml.

The act specified that FS may prioritize projects that reduce the risk or extent of, or increase the resilience to, insect or disease infestations within the I&D areas. The act further specified that such projects initiated prior to the end of FY2018 are to be considered hazardous fuel reduction projects pursuant to HFRA.[37] Thus, these projects also are subject to HFRA's pre-decisional objections process; must be developed through a collaborative process with state, local, and tribal government collaboration and participation of interested persons; consider the best available science; and maximize the retention of old-growth and large trees, as appropriate for the forest type and to the extent it would promote insect and disease resiliency. Also pursuant to HFRA, projects planned within the WUI require the analysis of the proposed action and one action alternative during the preparation of an EA or EIS. If the proposed action is within 1.5 miles to an at-risk community, then only analysis of the proposed action is required (i.e., the no-action alternative does not need to be analyzed). For projects outside of the WUI, the no-action alternative must also be considered.

In sum, Congress authorized FS to identify eligible NFS areas for designation as I&D areas, prioritize projects in those designated areas, and plan and implement those projects through a potentially expedited process. In some states, all eligible lands were designated. In those states, the expedited project planning procedures are thus broadly available, but any prioritization benefit is effectively nullified.

As of March, 2019, FS reports 206 projects across 59 national forests and 18 states have been proposed under these authorities.[38] Of those, FS evaluated or is evaluating 20 using the EA analysis procedures and three using an EIS. The remaining 183 projects are being processed or were processed using a CE, described below.

2014 Farm Bill Insect and Disease NEPA Categorical Exclusion (CE)

The 2014 farm bill also added a new Section 603 to HFRA, which specified in statute that certain projects intended to reduce the risk or extent of insect or disease infestations within I&D areas would be considered actions categorically excluded from the requirements of NEPA (commonly referred to as the *Farm Bill CE*).[39] (The 2018 farm bill added hazardous fuels projects as a priority project category eligible to be implemented through the CE, discussed in the "Planning and Project Implementation Requirements" section). The law specified that these projects are exempt from the pre-decisional administrative review objections process.[40]

To be eligible for the 2014 Farm Bill CE, projects must either

1. comply with the eligibility requirements of the Collaborative Forest Landscape Restoration Program (CFLRP),[41] or

[37] 16 U.S.C. §6591a(d). The 2018 farm bill extended the authority through FY2023, as discussed in the "Planning and Project Implementation Requirements" section of this report.

[38] Personal communication with FS Legislative Affairs staff (March 5, 2019).

[39] P.L. 113-79 §8204, 16 U.S.C. §6591b. Some may refer to this as the *HFRA Section 603 CE*.

[40] Challenges to farm bill CE projects must be brought in federal court rather than first attempting to resolve the issue at the administrative level, such as through the objections process. For more information, see FSH 1909.15_30.

[41] The eligibility requirements for CFLRP proposals are specified in 16 U.S.C. §7303(b). This includes requiring the proposal to have been developed through a collaborative process. It also includes a range of requirements that may not be applicable for the insect and disease treatment projects, such as identifying a work plan of projects for a 10-year period and covering a project area of at least 50,000 acres, among others. See the "Collaborative Forest Landscape Restoration Program (CFLRP)" section of this report for more information.

2. consider the best available science; maximize the retention of old-growth and large trees, as appropriate for the forest type and to the extent that it would promote insect and disease resiliency; and be developed through a collaborative process that is transparent and nonexclusive, or which meets specified requirements.[42]

Projects may not establish any new permanent roads, and any temporary roads must be decommissioned within three years of the project's completion. However, maintenance and repairs of existing roads may be performed as needed to implement the project. Projects cannot exceed 3,000 acres. The projects must be located within designated I&D areas. In addition, projects may be located within the WUI, or outside of the WUI but in areas classified as Condition Classes 2 or 3 in Fire Regime Group I, II, or III, as defined by HFRA.[43] FS policy is to document its decision on a proposal using the Farm Bill CE through a decision memorandum, after determining whether resource conditions at the site result in any extraordinary circumstances subject to further review and consultation.[44]

Planning and Project Implementation Requirements

The FY2018 omnibus and the 2018 farm bill both changed certain FS and BLM planning and project implementation requirements. For example, both laws expanded various HFRA authorities

- The FY2018 omnibus (§203) amended HFRA to expand the definition of an authorized fuel reduction project to include the installation of fuel breaks (e.g., measures that change fuel characteristics in an attempt to modify the potential behavior of future wildfires) and fire breaks (e.g., natural or constructed barriers to stop, or establish an area to work to stop, the spread of a wildfire). Thus, projects to build fuel or fire breaks may be planned and implemented using the procedures authorized under HFRA, such as requiring analysis of a specific number of alternatives depending on the proposed action's location.
- The 2018 farm bill reauthorized (through FY2023) the use of the procedures intended to expedite priority projects in I&D areas. It also added projects to reduce hazardous fuels as a priority project category (§8407(b)). This means that hazardous fuels reduction projects may be planned and implemented using the Farm Bill CE, if those actions are located within I&D areas and meet the other eligibility requirements.

In addition, both the FY2018 omnibus and the 2018 farm bill each established a new statutory NEPA CE. The 2018 farm bill also included provisions affecting the interagency consultation requirements under the Endangered Species Act (ESA).[45] These changes are each discussed in the following sections.

[42] The law references the requirements for Resource Advisory Committees (RACs) as specified in the Secure Rural Schools and Community Self-Determination Act (SRS) in 16 U.S.C. §§7125(c)-7125(f). See the "Secure Rural Schools (SRS) Payments and Modifications" section of this report for more information.

[43] 16 U.S.C. §6511.

[44] The decision memo should also include a description of the projects collaborative efforts. For more information, see FSH 1909.15_30.

[45] P.L. 93-205, 16 U.S.C. §§1531-1544.

Statutorily Established NEPA CEs

Both laws established new statutory CEs intended to expedite the planning and implementation of specific projects. The FY2018 omnibus established a CE for wildfire resilience projects, which is effectively available only for FS. The 2018 farm bill established a CE for projects related to greater sage grouse or mule deer habitat, which is available to both FS and BLM. The provisions of each CE share some similarities with the Farm Bill CE (see **Table 1** for a side-by-side comparison of the three CEs).

It is difficult to assess the potential impact of these new CEs, either on the pace of project planning and implementation or on various forest management goals. Both of the statutory CEs—as well as the 2014 Farm Bill CE—allow FS (and BLM, as applicable) to plan for larger projects (up to 3,000 to 4,500 acres) through a CE. Some say larger project sizes—with or without a CE—will allow FS to achieve landscape-level goals more efficiently.[46] Some also contend that using a CE for the environmental review will allow FS to proceed from project planning to project implementation at a faster pace, improving agency efficiency. For example, a 2014 Government Accountability Office (GAO) report found that FS took an average of 177 days to complete CEs, compared with 565 days to complete EAs, in FY2012.[47] That same GAO report found that from FY2008 to FY2012, FS used CEs less frequently and the process took longer to complete compared with other agencies. However, the analysis period occurred before Congress authorized the Farm Bill CE, and it is possible that FS trends have since changed. In contrast, others are concerned that conducting landscape-scale projects without more detailed environmental reviews and documentation, or implementing projects of additional types and larger areas through CEs, may lead to undesirable resource effects.[48]

Wildfire Resilience CE

Section 202 of the FY2018 omnibus added a new Section 605 to HFRA and established a Wildfire Resilience CE for specified hazardous fuel reduction projects.[49] The Wildfire Resilience CE is similar to the Farm Bill CE. Projects must be located within designated I&D areas on NFS lands. FS policy is to document the decision to use the Farm Bill CE through a decision memo, after determining if there are any extraordinary circumstances present that could have a significant environmental effect, as specified in the statute and consistent with FS regulations.[50]

---

[46] See for example, FS, *Toward Shared Stewardship Across Landscapes: An Outcome-Based Investment Strategy*, FS-118, 2018, https://www.fs.fed.us/sites/default/files/toward-shared-stewardship.pdf (hereinafter referred to as FS, *Shared Stewardship)*; and U.S. Congress, House Committee on Natural Resources, Subcommittee on Federal Lands, Hearing on Discussion Draft of "Resilient Federal Forests Act of 2017," 115th Cong., 1st sess., 2017, H.Hrg.115-9 (hereinafter referred to as H.Hrg. 115-9).

[47] U.S. Government Accountability Office (GAO), *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, GAO-14-370, April 15, 2014, http://www.gao.gov/products/GAO-14-370. Hereinafter referred to as GAO-14-370.

[48] See for example, Senate Committee on Environment and Public Works, *Hearing on Forest Management to Mitigate Wildfires: Legislative Solutions*, 115th Cong., 1st sess., 2017, S.Hrg. 115-112 (hereinafter referred to as S.Hrg. 115-112); House Committee on Natural Resources, *Resilient Federal Forests Act of 2017*, House Report, 115th Cong., 1st sess., October 25, 2017, H.Rept. 115-370, Dissenting Views. The full report is hereinafter referred to as H.Rept. 115-370.

[49] 16 U.S.C. §6591(d).

[50] The law specified that extraordinary circumstance procedures shall apply. See 36 C.F.R. §220.6(b) for FS extraordinary circumstances regulations. The decision memo should also include a description of the projects collaborative efforts. See FSH 1909.15_30 and 36 C.F.R. §220.6(b).

Eligible projects must either

1. comply with the CFLRP eligibility requirements,[51] or
2. maximize the retention of old-growth and large trees to the extent that the trees promote resiliency; consider best available science; and be developed through a collaborative process that is transparent and nonexclusive, or which meets specified requirements.[52]

Projects may not establish any new permanent roads, and temporary roads must be decommissioned within three years of project completion. However, maintenance and repairs of existing roads may be performed as needed to implement the project. Projects cannot exceed 3,000 acres. In addition to being located within I&D areas, the law specifies that projects located within the WUI are prioritized, but projects may be located outside the WUI if they are located in areas classified as Condition Class 2 or 3 in Fire Regime groups I, II, or III that contain very high wildfire hazard potential. The law further requires the Secretary to submit an annual report on the use of the CEs authorized under this section to specified congressional committees and GAO. FS reports that seven projects were proposed using the authority in FY2018.[53]

Many of the same location and purpose requirements for projects planned under the 2014 Farm Bill CE are required for projects that could be planned and implemented under the Wildfire Resilience CE (see **Table 1**). For example, both CEs require projects to be located within designated I&D areas. Both CEs also require projects located outside of the WUI to be in the same specified fire regime condition classes, but the Wildfire Resilience CE also specifies that those projects should be located in areas that also contain very high wildfire hazard potential. In addition, the Wildfire Resilience CE specifies that projects located within the WUI should be prioritized; the Farm Bill CE does not include that prioritization. The Wildfire Resilience CE is available only for specified hazardous fuels reduction projects, while the Farm Bill CE is also available for projects to address insect and disease infestation. In the Wildfire Resilience CE, Congress explicitly directed FS to apply its procedures for evaluating if the resource conditions identified as extraordinary circumstances are present on the project site, and if the presence of those extraordinary circumstances may thus preclude the use of the CE and require further analysis of potential impacts through an EA or EIS. Although similar legislative language was not included, FS must still also assess if there are extraordinary circumstances present that may preclude the use of the Farm Bill CE (and all other CEs).

Sage Grouse/Mule Deer CE

Section 8611 of the 2018 farm bill directs the Secretary of Agriculture, for NFS lands, and the Secretary of the Interior, for BLM lands, to establish a CE for specified projects to protect, restore, or improve greater sage-grouse and/or mule-deer habitat within one year of enactment. It also specifies requirements for applying the CE.[54] Projects must protect, restore, or improve

[51] The eligibility requirements for CFLRP proposals are specified in 16 U.S.C. §7303(b). This includes requiring the proposal to have been developed through a collaborative process. It also includes a range of requirements that may not be applicable for the wildfire resilience projects proposed under this CE, such as identifying a work plan of projects for a 10-year period and covering a project area of at least 50,000 acres, among others. See the "Collaborative Forest Landscape Restoration Program (CFLRP)" section of this report for more information.

[52] The law references the RAC requirements as specified in SRS in 16 U.S.C. §§7125(c)-7125(f). See the "Secure Rural Schools (SRS) Payments and Modifications" section of this report for more information.

[53] FS *FY2020 Budget Justification*, p. 171.

[54] For more information on the greater sage grouse and conservation efforts, see CRS Report R44592, *Sage-Grouse*

habitat in a sagebrush steppe ecosystem for either species, or concurrently for both species if the project is located in both mule deer and sage-grouse habitat.[55] Projects must be consistent with the existing resource management plan and for projects on BLM lands, comply with DOI Secretarial Order 3336.[56] The law also described the specific activities that may be part of a project, such as removal of juniper trees, cheat grass, and other nonnative or invasive vegetation; targeted use of livestock grazing to manage vegetation; and targeted herbicide use, subject to applicable legal requirements. Projects may not occur in designated wilderness areas, wilderness study areas, inventoried roadless areas, or any area where the removal of vegetation is restricted or prohibited. Projects may not include any new permanent roads, but may repair existing permanent roads. Temporary roads shall be decommissioned within three years of project completion, or when no longer needed. Projects may not be larger than 4,500 acres. On NFS lands, projects may occur only within designated I&D areas. The law directs each agency to apply its respective extraordinary circumstances procedures in determining whether to use the CE. In addition, the law directs the agencies to consider the relative efficacy of landscape-scale habitat projects, the likelihood of continued population declines in the absence of landscape-scale vegetation management, and the need for habitat restoration. The agencies must also develop a 20-year monitoring plan prior to using the CE.

This CE has some basic similarities to the other two CEs—such as requirements for projects to be developed through a collaborative process—but the project purposes and requirements differ significantly (see **Table 1**).

Conservation: Background and Issues.

[55] The law specified that activities should adhere to the guidelines specified in U.S. Geological Survey, *Restoration Handbook for Sagebrush Steppe Ecosystems with Emphasis on Greater Sage-Grouse Habitat*, Circular 1416, 2015, https://pubs.usgs.gov/circ/1416/cir1416.pdf and the habitat guidelines for mule deer published the Western Association of Fish and Wildlife Agencies, available at https://www.wafwa.org/committees___groups/mule_deer_working_group/publications/.

[56] Secretarial Order 3336, Rangeland Fire Prevention, Management and Restoration, January 5, 2015, among other items, established a Rangeland Fire Task Force to study and present a final report on policies for preventing and suppressing rangeland fire and restoring sagebrush landscapes. See DOI, *An Integrated Rangeland Fire Management Strategy*, May 2015, https://www.forestsandrangelands.gov/documents/rangeland/IntegratedRangelandFireManagementStrategy_FinalReportMay2015.pdf.

Table 1. Comparison of Statutorily Established Categorical Exclusions (CEs) under the National Environmental Policy Act (NEPA)

	Farm Bill CE 2014 Farm Bill, (P.L. 113-79 §8204)	Wildfire Resilience CE FY2018 omnibus (P.L. 115-141 §202)	Sage Grouse/Mule Deer CE 2018 Farm Bill (P.L. 115-334 §8611)
Available to	Forest Service (FS)	FS	FS & Bureau of Land Management (BLM)
Eligible lands	National Forest System (NFS) designated insect and disease treatment areas (I&D areas)	NFS I&D areas	NFS I&D areas BLM lands
Other Geographic Requirements	I&D areas, and: • Within wildland urban interface (WUI), or • Outside of WUI but in Fire Regimes I, II, III and Condition Class 2 and 3.[a]	I&D areas, and: • Prioritized in WUI; or • Outside of WUI but in Fire Regimes I, II, III and Condition Class 2 and 3 that contain very high wildfire hazard potential.	Within range of sage grouse or mule deer. If located within range of both, activity must protect, restore, or improve habitat for both species.
Prohibited Areas	Wilderness, congressionally designated wilderness study areas (WSAs), any lands where removal of vegetation is prohibited through law or presidential proclamation, or area in which the activities would not be consisted with forest plan	Same as Farm Bill CE	Same as Farm Bill CE, except: All WSAs (including those designated administratively), inventoried roadless areas on NFS lands, and any activity for the construction of a permanent road or trail
Project Purpose as described in the authorizing legislation	Projects designed to reduce the risk or extent of, or increase the resilience to, insect and disease infestation; or to reduce hazardous fuels.[b]	Hazardous fuels reduction project.	Protects, restores, or improves sage grouse or mule deer habitat as described in: USGS Circular 1416[c] or Mule Deer Working Group of the Western Association of Fish and Wildlife Agencies.[d]

	Farm Bill CE 2014 Farm Bill, (P.L. 113-79 §8204)	Wildfire Resilience CE FY2018 omnibus (P.L. 115-141 §202)	Sage Grouse/Mule Deer CE 2018 Farm Bill (P.L. 115-334 §8611)
Project Requirements	Must implement a forest restoration treatment that either: • Complies with CFLRP requirements;[e] or • Maximizes old growth/large trees as appropriate, considers best available science; and Developed through collaborative process that includes multiple interested persons, and • Transparent/nonexclusive; or • Meets RAC requirements.[f]	Same as Farm Bill CE.	Same as Farm Bill CE, and: • Will not permanently impair specific characteristics • Restores native vegetation following a natural disturbance, prevents expansion of certain species into habitat, reduces risk of habitat loss to wildfire or other natural disaster, or provides for post-disturbance emergency soil stabilization.
Other Requirements	Consistent with forest plan	Consistent with forest plan Extraordinary circumstances shall apply	Same as Wildfire Resilience CE, and: Meets standards specified in DOI Secretarial Order 3336 (1/15/15).[g] Specific activities authorized (Sec. (a)(1)(B). For example, targeted herbicide use in accordance with law, procedures, and plans; targeted livestock grazing; temporary removal of wild horse & burros; modification or adjustment of grazing permit to achieve resource management objectives, among others Consider relative efficacy of landscape scale habitat projects; likelihood of continued population declines in the absence of landscape-scale vegetation management; and the need for post-disturbance habitat restoration treatments Develop long-term monitoring plan of at least 20 years Specifies any vegetative material requiring disposal may be used for fuel wood, other products, or piled/burned
Maximum Acreage	3,000 acres	3,000 acres	4,500 acres

	Farm Bill CE	Wildfire Resilience CE	Sage Grouse/Mule Deer CE
	2014 Farm Bill, (P.L. 113-79 §8204)	FY2018 omnibus (P.L. 115-141 §202)	2018 Farm Bill (P.L. 115-334 §8611)
Roads	No new permanent roads May perform maintenance on existing roads Temporary roads must be decommissioned within three years of project completion	Same as Farm Bill CE	Defines *temporary road* and specifies activities related to maintenance, repair, rehabilitation, or reconstruction of temporary or permanent roads are covered activities. Specifies temporary roads may only be used for two years and shall be decommissioned within three years of project completion or when no longer needed, and shall include reestablishing native vegetative cover within 10 years

Source: CRS, compiled from legislative text and *Forest Service Handbook FSH 1909.15 NEPA Handbook*, Chapter 30 - Categorical Exclusion from Documentation, September 24, 2018, https://www.fs.fed.us/im/directives/fsh/1909.15/wo_1909.15_30_Categorical%20Exclusion%20from%20Documentation.doc.

Notes: The Farm Bill CE was established by the 2014 farm bill (P.L. 113-79 §8204); the Wildfire Resilience CE was established by the FY2018 omnibus (P.L. 115-141 §202); and the Sage Grouse/Mule Deer CE was established by the 2018 farm bill (P.L. 115-334 §8611).

a. For more information on Fire Regime Condition Classes, see the "Healthy Forests Restoration Act (HFRA)" section.

b. The 2018 farm bill (§8407(b)) added hazardous fuels reduction projects as an eligible project purpose.

c. USGS = U.S. Geological Survey. USGS Circular 1416 available from https://pubs.usgs.gov/circ/1416/cir1416.pdf.

d. https://www.wafwa.org/committees___groups/mule_deer_working_group/publications/.

e. CFLRP = Collaborative Forest Landscape Restoration Program. The eligibility requirements for CFLRP proposals are specified in 16 U.S.C. §7303(b). This includes requiring the proposal to have been developed through a collaborative process. It also includes a range of requirements that may not be applicable for the insect and disease treatment projects, such as identifying a work plan of projects for a 10-year period and covering a project area of at least 50,000 acres, among others.

f. RAC = Resource Advisory Committees. The RAC requirements are specified in 16 U.S.C. §§7125(c)-7125(f).

g. Department of the Interior, Secretarial Order 3336, Rangeland Fire Prevention, Management and Restoration, January 5, 2015, among other items, established a Rangeland Fire Task Force to study and present a final report on policies for preventing and suppressing rangeland fire and restoring sagebrush landscapes. See DOI, *An Integrated Rangeland Fire Management Strategy*, May 2015, https://www.forestsandrangelands.gov/documents/rangeland/IntegratedRangelandFireManagementStrategy_FinalReportMay2015.pdf.

Endangered Species Act Section 7 Consultation Requirements[57]

The Endangered Species Act (ESA) has a stated purpose of conserving species identified as endangered or threatened with extinction and conserving ecosystems on which these species depend. It is administered primarily by the Fish and Wildlife Service (FWS, in DOI) for terrestrial and freshwater species, but also by the National Marine Fisheries Service (NMFS, in the Department of Commerce) for certain marine species.[58] Under the ESA, individual species of plants and animals (both vertebrate and invertebrate) can be listed as either *endangered* or *threatened* according to assessments of the risk of their extinction.[59] Once a species is listed, a set of prohibitions applies to the species.[60] The ESA provides federal agencies with an opportunity to gain an exemption from the prohibitions under certain circumstances.[61]

Federal agencies must ensure that their actions—or the actions of nonfederal parties granted a federal approval, permit, or funding—are "not likely to jeopardize the continued existence" of any endangered or threatened species, or adversely modify their critical habitat.[62] The federal agencies must consult with either FWS or NMFS if such an action might adversely affect a listed species as determined by the Secretary of the Interior or the Secretary of Commerce. This is referred to as a *Section 7 consultation*. Where a federal action is dictated by statute, a Section 7 consultation is not required, as it applies to only discretionary actions.

If the appropriate Secretary finds that an action would neither jeopardize a species nor adversely modify the critical habitat of that species, the Secretary issues a biological opinion (BiOp) to that effect. The BiOp specifies the terms and conditions under which the federal action may proceed to avoid jeopardy or adverse modification of critical habitat. Alternatively, if the proposed action is judged to jeopardize listed species or adversely modify critical habitat, the Secretary must suggest any reasonable and prudent alternatives that would avoid harm to the species. The great majority of consultations result in "no jeopardy" opinions, and nearly all of the rest find that the project has reasonable and prudent alternatives, which will permit it to go forward.[63]

Summary of Changes and Discussion

The FY2018 omnibus enacted changes to how the Section 7 consultation requirements interact with the development of land and resources management plans for the NFS and for the O&C and CBWR lands managed by the BLM in Oregon (§§208, 209). The law specifies that the listing of a species as threatened or endangered or the designation of critical habitat pursuant to the ESA does not require the Secretary of Agriculture (for NFS lands) or the Secretary of the Interior (for the

[57] This section was written by Pervaze A. Sheikh, Specialist in Natural Resources Policy.

[58] For detailed information on the Fish and Wildlife Service (FWS) program for endangered species, see the FWS website at http://www.fws.gov/endangered/. The National Marine Fisheries Service (NMFS), a part of the National Oceanic and Atmospheric Administration (NOAA), is also sometimes referred to as *NOAA Fisheries*.

[59] P.L. 93-205, 16 U.S.C. §§1531-1544.

[60] Included in this set is the prohibition on *taking* a species. The term "take" under the ESA means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. §1532(19)).

[61] 16 U.S.C. §1536.

[62] 16 U.S.C. §1536(a).

[63] Jacob W. Malcom and Ya-Wei Li, "Data Contradict Common Perceptions about a Controversial Provision of the U.S. Endangered Species Act," Proceedings of the National Academy of Sciences, vol. 112, no. 52 (2015), pp. 15844-15849.

O&C and CBWR lands) to engage in Section 7 consultation to update or revise a forest plan, unless the plan is older than 15 years and 5 years has passed since either the date of enactment or the listing of the species, whichever is later. The law further specifies, however, that this does not affect the requirements for Section 7 consultation for projects implementing forest plans or for plan updates or amendments.

The changes in the FY2018 omnibus are controversial, because some argue that they set a new precedent for implementing ESA.[64] According to some, the provisions were needed to override a decision by the Ninth Circuit Court of Appeals that required FS to conduct re-consultation on its land management plans after critical habitat was designated for the Canada lynx.[65] Those in favor of the enacted changes contend that not requiring Section 7 consultations for existing land management plans due to a species listing or designation of critical habitat will provide more flexibility in implementing plans, allow for consistency in keeping the plans in place, and enable plan and project implementation to proceed with fewer delays.[66] The exceptions in the law would allow for changes in plans after a certain time, thereby reflecting changes to listed species and their critical habitat.

Those opposed to these provisions contend that not allowing for consultation or re-consultation to take place due to changes in listing species and critical habitat could negatively affect species if plans prescribe harmful activities and are allowed to be kept in place.[67] In addition, some contend that the time lag before consultation is required could be long enough to harm species and negatively affect their habitat. Proponents of the change, however, note that projects under a plan are still required to undergo consultation, thereby making the consultation of the plan redundant. However, critics of the provision contend that plans address projects and activities at a higher level and could influence the cumulative effect of all projects and activities under the plan.[68]

Section 7 Interagency Working Group

The 2018 farm bill also addressed the interaction between forestry issues and consultation under ESA. Under §10115 of the law, the Administrator of the EPA is to establish an interagency working group to create and implement a strategy for improving the Section 7 consultation process for evaluating the effects of pesticides on listed species and their habitat. The scope of the working group is to analyze law; recommend methods for scoping and identifying the effects of pesticides on species; review practices for consultation; and develop scientific and policy approaches to increase the accuracy and timeliness of consultation. This effort is to be directed at improving Section 7 consultations and Section 10 consultations (i.e., consultation with the private sector). The working group is to report its findings to Congress. Several stakeholders assert that this process should improve the ESA pesticide evaluation process and provide Congress with oversight over the improvements (See for example, Jake Li, Environmental Policy Innovation Center, "Farm Bill Will Improve how Endangered Species Act Evaluates Pesticides," press release, December 15, 2018, http://policyinnovation.org/farm-bill-will-improve-how-endangered-species-act-evaluates-pesticides/). Some others might contend that changes to streamline consultation might lower the level of scientific analysis needed to determine the effects of pesticides on listed species.

[64] See for example, S.Hrg. 115-112 and H.Rept. 115-370.

[65] See for example, S.Hrg. 115-112. The case is commonly referred to as the Cottonwood decision. Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv., 789 F.3d 1075, 1088-89 (9th Cir. 2015).

[66] See for example, Society of American Foresters at https://www.eforester.org/Main/SAF_News/2018/SAF_Cheers_Wildfire_Funding_Fix_and_Forest_Management_Reforms.aspx.

[67] See for example, S.Hrg. 115-112 and Defenders of Wildlife at https://defenders.org/sites/default/files/publications/FY2018-Anti-Environmental-Riders-List.pdf.

[68] See for example, H.Rept. 115-370, Dissenting Views.

Wildland Fire Management

The federal government's wildland fire management responsibilities—fulfilled primarily by FS and DOI—include fuel reduction, preparedness, prevention, detection, response, suppression, and recovery activities. The FY2018 omnibus and 2018 farm bill contained provisions that changed how Congress appropriates funding specifically for wildfire suppression purposes, added specific requirements for wildfire risk mapping (part of preparedness), and added specific reporting requirements. This section provides some background information on wildland fire appropriations and then discusses those changes in more detail. The laws also changed aspects of FS and DOI's hazardous fuel reduction programs. This included reauthorizing the use of procedures intended to expedite the priority projects in NFS areas designated as I&D areas and expanding the definition of an authorized fuel reduction project, as discussed previously in the "Planning and Project Implementation Requirements" section.

Congress provides discretionary appropriations for wildland fire management to both FS and DOI through the Interior, Environment, and Related Agencies appropriations bill.[69] Funding for DOI is provided to the department, which then allocates the funding to the Office of Wildland Fire and four agencies—BLM, the Bureau of Indian Affairs, the National Park Service, and the U.S. Fish and Wildlife Service.[70] Within FS's and DOI's respective Wildland Fire Management (WFM) account, funding is provided to the Suppression Operations program to fund the control of wildfires that originate on federal land.[71] This includes firefighter salaries, equipment, aviation asset operations, and incident support functions in direct support of wildfire response, plus personnel and resources for post-wildfire response programs. If their suppression funding is exhausted during a fiscal year, FS and DOI are authorized to transfer funds from their other accounts to pay for suppression activities; this is often referred to as *fire borrowing*.[72]

Overall appropriations to FS and DOI for wildland fire management have increased considerably since the 1990s. A significant portion of that increase is related to rising suppression costs, even during years of relatively mild wildfire activity, although the costs vary annually and are difficult to predict. FS and DOI frequently have required more suppression funds than have been appropriated to them. This discrepancy often leads to fire borrowing, prompting concerns that increasing suppression spending may be detrimental to other agency programs. In response, Congress has typically enacted supplemental appropriations to repay the transferred funds and/or to replenish the agency's wildfire accounts. Wildfire spending—like all discretionary spending—is currently subject to procedural and budgetary controls. In the past, Congress has sometimes—but not always—effectively waived some of these controls for certain wildfire spending. This situation prompted the 115th Congress to explore providing wildfire spending outside of those constraints, as discussed below.

[69] For more information on FS and DOI wildland fire appropriations, see CRS Report R45005, *Wildfire Management Funding: Background, Issues, and FY2018 Appropriations*.

[70] Wildfire appropriations to DOI used to go directly to BLM and were then allocated among the other bureaus, but since 2009 appropriations have gone to the DOI department-level Office of Wildland Fire for allocation.

[71] The term *wildfire* is defined as an unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to put the fire out. National Wildfire Coordinating Group (NWCG), "Glossary of Wildland Fire Terminology," at https://www.nwcg.gov/glossary/a-z. Suppression appropriations funding may also be used to control wildfires that originate on nonfederal lands and are under cooperative fire protection agreements.

[72] The transfer authority has been granted annually in the Interior, Environment, and Related Agencies appropriations act, specifically in the general provisions section for DOI and the administrative provisions section for FS.

Suppression Spending: Wildfire Funding Fix

In the FY2018 omnibus, the 115th Congress established a new mechanism for suppression funding, commonly referred to as the *wildfire funding fix* (§102(a)). Pursuant to the Budget Control Act of 2011 (BCA), discretionary spending currently is subject to statutory limits for each of the fiscal years between FY2012 and FY2021.[73] Enacted discretionary spending may not exceed these limits. If spending that exceeds a limit is enacted, the limit is to be enforced through sequestration, which involves the automatic cancellation of budget authority largely through across-the-board reductions of nonexempt programs and activities. Certain spending is effectively exempt from the discretionary spending limits pursuant to Section 251(b) of the Balanced Budget and Emergency Deficit Control Act (BBEDCA), because those limits are "adjusted" upward each year to accommodate that spending. Spending for specified emergency requirements and disaster-relief purposes falls into this category.[74] Section 102(a)(3) of the FY2018 omnibus amended BBEDCA to add a new adjustment to the nondefense discretionary spending limit for wildfire suppression operations. This new adjustment starts in FY2020 and continues for each year thereafter through FY2027.[75] For the purposes of the adjustment, wildfire suppression operations includes spending for the purposes of

- the emergency and unpredictable aspects of wildland firefighting, including support, response, and emergency stabilization activities;
- other emergency management activities; and
- funds necessary to repay any transfers needed for these costs.

The new adjustment would apply to appropriations provided above an amount equal to the 10-year average spending level for wildfire suppression operations as calculated for FY2015 ("FY2015 baseline"). That is, an amount equal to the FY2015 baseline would be subject to the statutory discretionary limits, and then any additional funding appropriated would be considered outside the limits and would be the amount of the adjustment. The amount of the adjustment is capped each fiscal year, starting at $2.25 billion in FY2020 and increasing by $0.1 billion ($100 million) to $2.95 billion in FY2027.[76]

Whatever amount, if any, Congress elects to appropriate for wildfire suppression over the FY2015 baseline ($1.39 billion combined)[77] effectively would not be subject to the discretionary spending limits established in the BCA for FY2020 and FY2021, up to the specified maximum. For example, in FY2020, Congress could appropriate the minimum FY2015 baseline of $1.39 billion for suppression operations, as requested by the agencies.[78] This amount would be subject to the BCA discretionary limits. But then Congress could appropriate up to an additional $2.25 billion in FY2020, effectively outside of the discretionary limits.[79] This means the agencies could

[73] P.L. 112-25. For more information, see CRS Report R41965, *The Budget Control Act of 2011*.

[74] Title II of P.L. 99-177, 2 U.S.C. §§900-922, as amended. More information on wildfire suppression spending and discretionary spending limits is available in CRS Report R44966, *Wildfire Suppression Spending: Background, Issues, and Legislation in the 115th Congress*.

[75] 2 U.S.C. §901(b)(2)(F).

[76] The BCA spending limits are currently through FY2021.

[77] The $1.39 billion figure reflects the 10-year suppression obligation averages for FY2015 as reported by FS ($1.01 billion) and DOI ($383.7 million).

[78] FS requested $1.01 billion (FS *FY2020 Budget Justification*, pp.103-114) and DOI requested $383.7 million (DOI FY2020 Wildland Fire Management Budget Justification (hereinafter referred to as DOI *FY2020 Budget Justification*), available from https://www.doi.gov/budget/appropriations/2020).

[79] According to their respective FY2020 budget requests, if the maximum amount of the cap adjustment ($2.25 billion)

be appropriated up to $3.64 billion in total in FY2020, for the same discretionary budget "score" as $1.39 billion. For context, FS and DOI combined received $2.05 billion for suppression purposes in FY2019 ($1.67 billion for FS; $388 million for DOI). Over the past 5 years, FS and DOI combined received $2.16 billion annually on average ($1.74 billion for FS; $428 million for DOI).

The enactment of the wildfire funding fix potentially removes some budget process barriers to providing additional wildfire suppression funds, at least for FY2020 and FY2021. This is because the BCA statutory limits for discretionary spending are only in effect until FY2021. If new limits are statutorily established for any year between FY2022 through FY2027, then the wildfire adjustment would still be applicable. If no new limits are enacted, though, the wildfire adjustment would no longer apply.

It is also unclear if Congress would continue to provide the fire borrowing authority to the agencies once the wildfire adjustment is in effect starting in FY2020. Section 103 of the FY2018 omnibus requires the applicable Secretary, in consultation with the Director of the Office of Management and Budget (OMB), to "promptly" submit a request to Congress for supplemental appropriations if the amount provided for wildfire suppression operations for a fiscal year is estimated to be exhausted within 30 days. This provision would give Congress notice of the likely need for additional funding but would require additional action from Congress to ensure the agencies have access to funds to enable continued federal services in response to wildfires.

The wildfire funding fix raises several potential concerns for Congress. As one example, FS did not report its 10-year suppression obligation for FY2020 since suppression appropriations are now tied to the FY2015 baseline (DOI reported its 10-year obligation average to be $403 million).[80] This may raise concerns related to accountability and oversight of suppression spending. Another concern may be that the FY2015 baseline and the annual adjustment limits are not tied to any inflationary factors. Further, the wildfire funding fix is a temporary procedural change for how Congress funds suppression operations and does not address a variety of other concerns related to suppression costs, such as improving suppression cost forecasting, evaluating the effectiveness of suppression methods, or addressing any of the drivers of increasing suppression costs, among other concerns broadly related to wildland fire management.

Wildfire Hazard Potential Maps

The Fire Modeling Institute, part of FS's Rocky Mountain Research Station, developed a Wildfire Hazard Potential (WHP) index and map to help inform strategic planning and fuel management decisions at a national scale (see **Figure 3**).[81] Using vegetation, fuels, wildfire likelihood, wildfire intensity, and past wildfire location data, the WHP is an index that reflects the relative potential for a wildfire to occur that would then be difficult to suppress or contain.[82] Based on this data, FS estimates that approximately 226 million acres of land in the continental United States are

was appropriated in FY2020, FS would be allocated $1.95 billion and DOI would be allocated the remaining $300.0 million.

[80] See p. 106 of the FS *FY2020 Budget Justification* and see p. 26 of the DOI *FY2020 Budget Justification*.

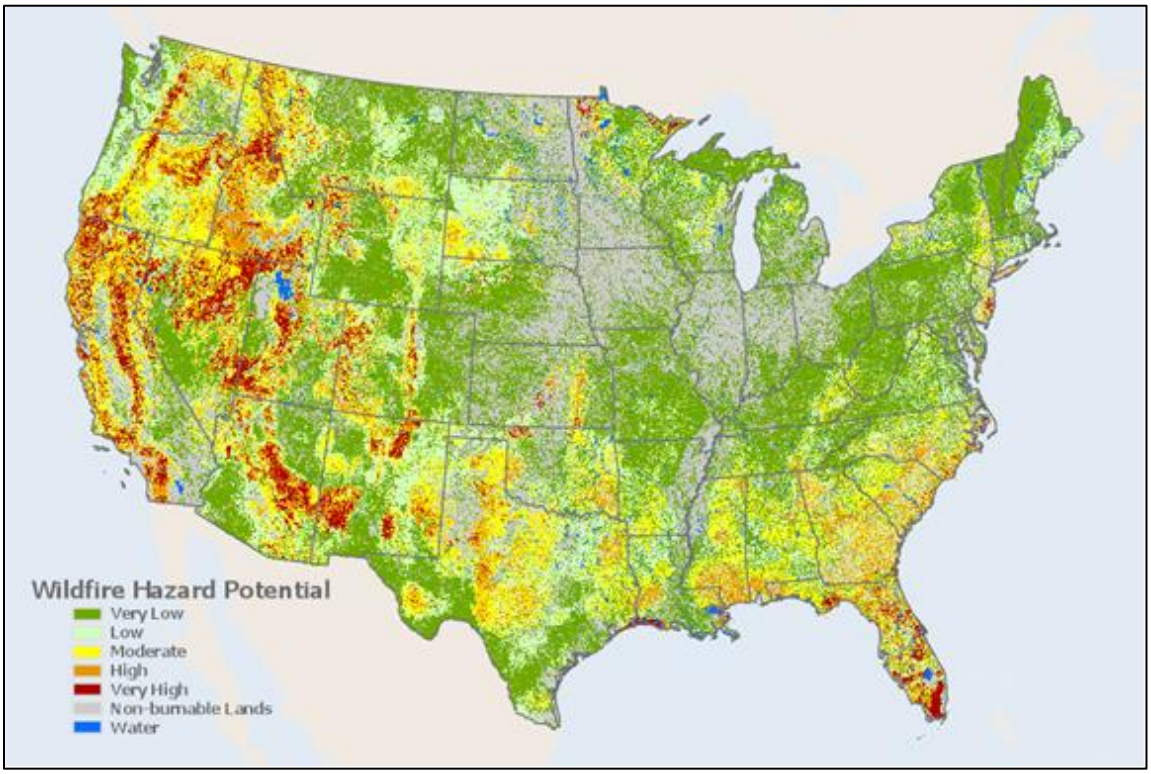
[81] For more information, see https://www.firelab.org/project/wildfire-hazard-potential.

[82] Dillon, G.K.; J. Menakis; and F. Fay, 2015, "Wildland Fire Potential: A Tool for Assessing Wildfire Risk and Fuels Management Needs," pp 60-76, In Keane, R. E.; Jolly, M.; Parsons, R.; and Riley, K. Proceedings of the large wildland fires conference; May 19-23, 2014; Missoula, MT. Proc. RMRS-P-73. Fort Collins, CO: USDA, Forest Service, Rocky Mountain Research Station, https://www.fs.fed.us/rm/pubs/rmrs_p073/rmrs_p073_060_076.pdf. Hereinafter referred to as Dillon et al., 2014.

classified at high or very high WHP. Of those lands identified at high or very high WHP, 120 million acres (53%) are federal land (58 million acres of NFS lands and 62 million acres of DOI lands), and the remaining 106 million acres (47%) are state, tribal, other public, or private lands.[83] According to the index, high or very high WHP reflects fuels that have a higher probability of experiencing extreme fire behavior given certain weather conditions. The WHP data, when paired with appropriate spatial data, can approximate the relative wildfire risk to resources and assets identified from that data.

The FY2018 omnibus directs FS to pair the WHP with the appropriate spatial data and scale for community use. Specifically, Section 210 directs FS to consult with federal and state partners, and relevant colleges and universities to develop, within two years, web-based wildfire hazard severity maps for use at the community level to inform risk management decisions for at-risk communities adjacent to NFS lands or affected by wildland fire.

Figure 3. Wildfire Hazard Potential Map



Source: FS, https://www.firelab.org/document/classified-2018-whp-gis-data-and-maps.

Reporting

Both the FY2018 omnibus and the 2018 farm bill require FS and BLM to submit reports to Congress on specified topics related to wildland fire management. Specifically, the FY2018 omnibus requires the Secretary of Agriculture (for FS) or the Secretary of the Interior to submit an annual report within 90 days after the end of a fiscal year in which the wildfire funding fix is used.[84] The omnibus also establishes requirements for the report components (§104). The first

[83] Dillon et al., 2014, Table 6.

[84] 43 U.S.C. §1748a-2.

possible report will be required by December 30, 2021, if the wildfire adjustment is used in the first possible year (FY2020). The Secretaries are to prepare the reports in consultation with the OMB Director. The report is to be available to the public and submitted to the House Committees on Appropriations, the Budget, and Natural Resources and the Senate Committees on Appropriations, the Budget, and Energy and Natural Resources. The report shall document the use of the wildfire funding fix (e.g., specific funding obligations and outlays) and overall wildland fire management spending, analyzed by fire size, costs, regional location, and other factors. The report also shall identify the "risk-based factors" that influenced suppression management decisions and describe any lessons learned. In addition, the law specified that the report shall include an analysis of a "statistically significant sample of large fires" across a variety of measures, including but not limited to: cost drivers and analysis, effectiveness of fuel treatments on fire behavior and suppression costs, and the impact of investments in preparedness activities, among others.

The 2018 farm bill also requires the Secretaries of Agriculture and the Interior to jointly compile and submit a report to Congress on wildfire, insect infestation, and disease prevention on federal land (§8706). The report must be submitted to the House Committee on Agriculture, House Committee on Natural Resources, Senate Committee on Agriculture, Nutrition, and Forestry, and Senate Committee on Energy and Natural Resources. The first report is due within 180 days of enactment of the farm bill (it is due on June 20, 2019) and then annually thereafter. The agencies shall report on the

- number of acres of federal land treated for wildfire, insect and infestation, and disease prevention;
- number of acres of federal land categorized as high or extreme fire risk;
- number of acres and average intensity of wildfires affecting federal land both treated and not treated for wildfire, insect infestation, or disease prevention;
- federal response time for each fire greater than 25,000 acres;
- total timber production on federal land;
- number of miles of roads and trails in need of maintenance;
- maintenance backlog for roads, trails, and recreational facilities on federal land;
- other measures needed to maintain, improve or restore water quality on federal land; and
- other measures needed to improve ecosystem function or resiliency on federal land.

Forest Management and Restoration Programs[85]

Forest restoration activities seek to establish or reestablish the composition, structure, pattern, and ecological processes and functioning necessary to facilitate resilience and resistance to disturbance events (e.g., insect or disease infestation, catastrophic wildfire, ice or windstorm). For example, forest restoration may include activities such as removing small-diameter trees (called *thinning*) to reduce tree density, potentially mitigating against the spread of some insect or disease infestations. Or, forest restoration may include prescribed fire to reduce the building up of understory vegetation or biomass, to mitigate the potential for a wildfire to increase in intensity and severity, and to facilitate post-fire recovery.

[85] Anne Riddle, Analyst in Natural Resources Policy, contributed to this section.

BLM's authority to conduct restoration projects is derived primarily from FLPMA. FS's authority is derived primarily from its responsibilities to:

- protect the NFS from destruction as specified in the Organic Administration Act of 1897;[86]
- manage the national forests for multiple use and sustained yield as specified in MUSY; and
- maintain forest conditions designed to secure the maximum benefits and provide for a diversity of plant and animal communities as specified in the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA.[87]

Congress also has authorized specific forest restoration programs for FS and BLM, or has authorized forest restoration to be one of many activities or land management objectives for other programs.

The 115th Congress established two new programs for FS (watershed condition framework and water source protection), and amended three existing programs: the Collaborative Forest Landscape Restoration Program (CFLRP, available only for FS), stewardship contracting authority, and the good neighbor authority. Among other provisions, aspects of these programs allow FS and BLM to partner with various stakeholders in different ways to identify forest restoration needs and perform specified forest management and restoration activities. These programs are elements of the FS's "Shared Stewardship" approach to address land management concerns at a landscape-scale and across ownership boundaries.[88] These programs are generally perceived as offering opportunities to accelerate forest restoration to mitigate against insect and disease infestations or reduce the risk of catastrophic wildfires to federal lands and surrounding communities.[89] In addition, proponents point to other potential benefits to the surrounding communities, such as providing forest products to support local industries, promoting new markets for restoration by-products (e.g., small diameter trees, woody biomass), and fostering collaboration.[90] These programs are generally supported by many stakeholders, although some have raised concerns about specific aspects of each program.[91]

Collaborative Forest Landscape Restoration Program (CFLRP)

Title IV of the Omnibus Public Lands Management Act of 2009 (P.L. 111-11) established the CFLRP to select and fund the implementation of collaboratively developed restoration proposals

[86] 16 U.S.C. §551.

[87] 16 U.S.C. §§1600-1614. See also FSM 2020, *National Forest Resource Management Ecosystem Restoration*, available from available from https://www.fs.fed.us/im/directives/.

[88] FS, *Shared Stewardship.* See also U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *U.S. Forest Service FY2020 Budget Hearing*, 116th Cong., 1st sess., 2019 (testimony of Forest Service Chief Vicki Christiansen).

[89] See for example, H.Hrg. 115-9 or U.S. Congress, Senate Committee on Energy and Natural Resources, *Federal and Nonfederal Collaboration to Reduce Wildland Fire Risk to Communities and Enhance Fire-Fighting Safety and Effectiveness*, 115th Cong., 1st sess., 2017, S.Hrg. 115-368. Hereinafter referred to as S.Hrg. 115-368.

[90] See for example, Max Nielsen-Pincus and Cassandra Moseley, "The Economic and Employment Impacts of Forest and Watershed Restoration," *Restoration Ecology*, vol. 21, no. 2 (March 2013), pp. 207-214. Hereinafter referred to as Nielsen-Pincus and Moseley, 2013.

[91] See for example, National Forest Foundation (NFF), *Collaborative Restoration Workshop Summary*, 2016, https://www.nationalforests.org/assets/pdfs/CRW-Workshop-Summary-NFF-7-11.pdf. Hereinafter referred to as NFF, *Collaborative Restoration*.

for priority forest landscapes.[92] The collaboration process must include multiple interested persons representing diverse interests and must be transparent and nonexclusive, or meet the requirements for Resource Advisory Committees (RACs, as specified by the Secure Rural Schools and Community Self-Determination Act (SRS)).[93] Priority forest landscapes must be at least 50,000 acres and must consist primarily of NFS lands in need of restoration, but may include other federal, state, tribal, or private land within the project area. In addition, the proposal area should be accessible by wood-processing infrastructure. Proposals must incorporate the best available science, and include projects that would maintain or contribute to the restoration of old-growth stands, and restoration treatments that would reduce hazardous fuels, such as thinning small-diameter trees. The proposals may not include plans to establish any new permanent roads, and any temporary roads must be decommissioned. The law requires the publication of an annual accomplishments report and submission of 5-year status reports to specified congressional committees.[94]

The law authorized the Secretary of Agriculture to select and fund up to 10 proposals for any given fiscal year, but also gave the Secretary the discretion to limit the number of proposals selected based on funding availability. FS has selected and funded 23 proposals since the program was established in FY2010.[95] Each selected proposal includes a range of individual projects to implement the proposal's forest restoration goals over the specified time period of the funding commitment. The law established a fund to pay for up to 50% of the costs to implement and monitor proposal projects, and authorizes up to $40 million in annual appropriations to the fund through FY2019. Each selected proposal can receive a funding commitment of up to $4 million per year for up to 10 years to fund project implementation, but appropriations from the fund may not be used to cover any costs related to project planning. The program received $40 million annually in appropriations from FY2014 through FY2019.

CFLRP is generally perceived as successful, achieving progress towards the specified land management objectives as well as contributing to local economies and fostering collaboration.[96] Agency staff found the dedicated funding commitment to be one of the most valuable aspects of the program, providing long-term stability and predictability for project implementation and coordination.[97] Some may note, however, that this funding commitment may direct resources away from NFS lands in areas not covered by selected projects. While the program provides some economic benefits, some feel it falls short in fostering new markets for smaller-scale wood

[92] 16 U.S.C. §§7301-7304. For more information on the program, see https://www.fs.fed.us/restoration/CFLRP/.

[93] P.L. 106-393, 16 U.S.C. §§7103-7153. For more information on the program, see CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*.

[94] These reports are available https://www.fs.fed.us/restoration/CFLRP/results.shtml.

[95] Of the 23 selected proposals, 10 were selected in FY2010 and received a 10-year funding commitment through FY2019 and 10 were funded in FY2012 with a funding commitment through FY2019. An additional three proposals were selected and also received a funding commitment through FY2019. Due to the program's limitations on the number of proposals funded per fiscal year and availability of funding, the funds for those three projects are derived from sources other than CFLRP, but are generally considered part of the program.

[96] See for example, NFF, *Collaborative Restoration*; FS, *Collaborative Forest Landscape Restoration Program 5-Year Report, FY2010-2014*, FS-1047, 2015, https://www.fs.fed.us/restoration/documents/cflrp/CFLRP_5-YearReport.pdf; and Courtney A. Schultz et al., *Strategies For Success Under Forest Service Restoration*, University of Oregon Institute for a Sustainable Environment, Ecosystem Workforce Program, 2017, https://ewp.uoregon.edu/sites/ewp.uoregon.edu/files/WP_81.pdf (hereinafter referred to as Schultz et al., *Strategies For Success).*

[97] Schultz et al., *Strategies For Success.*

products or reducing treatment costs.[98] In addition, while the program is generally perceived as improving relationships with community stakeholders and fostering collaboration, some note that much of the collaboration had focused on relatively simple and noncontroversial issues and had not made progress towards resolving more complex or controversial issues.[99]

Summary of Changes and Discussion

Section 8629 of the 2018 farm bill reauthorized the program, and authorized up to $80 million in appropriations annually through FY2023. The law authorized the Secretary of Agriculture to issue a one-time waiver to extend the funding commitment to an existing project for up to an additional 10 years, subject to the project continuing to meet the specified eligibility criteria. The law also added the House and Senate Committees on Agriculture as recipients of the five-year program status reports.

The funding commitment for the 23 selected proposals is set to expire at the end of FY2019, so the reauthorization and extension of eligibility could result in some projects continuing beyond that initial time-frame. In addition, if Congress chooses to appropriate to the new authorization level, it could also result in more projects being selected and funded.[100]

Good Neighbor Authority

The 2014 farm bill authorized FS and BLM to enter into good neighbor agreements (GNAs) with state governments.[101] The program was initially authorized as a temporary pilot on NFS land in Colorado in 2001, before the permanent authorization made it available nationwide for all NFS lands as well as BLM lands.[102]

Under an approved GNA, states are authorized to do restoration work on NFS and BLM public lands. The authorized restoration services include treating insect- and disease-infested trees, reducing hazardous fuels, and any other activities to restore or improve forest, rangeland, and watershed health. This could include activities such as fish and wildlife improvement projects, commercial timber removal, and tree planting or seeding, among others. The law prohibited treatments in designated wilderness areas, wilderness study areas, or areas where removal of vegetation is prohibited. The 2014 farm bill authorization did not include construction, reconstruction, repair, or restoration of paved or permanent roads, and did not specify any special treatment for any revenue generated through the sale of wood products from the federal lands. While states may perform the work, FS and BLM retain the responsibility to comply with all

[98] Schultz et al., *Strategies For Success,*

[99] See for example, Chelsea P. McIver, *Measuring the Benefits of the Collaborative Forest Landscape Restoration Program for Local Communities in Northeast Washington*, Bureau of Business and Economic Research, University of Montana, Working Paper No. 2, 2016, https://www.nationalforests.org/assets/pdfs/NEWA-CFLRP-WP2-Final.pdf; and Emily H. Walpole et al., "Shared visions, future challenges: a case study of three Collaborative Forest Landscape Restoration Program locations," *Ecology and Society*, vol. 22, no. 2 (June 2017).

[100] The conferees to the 2018 farm bill reported they expect the Secretary to select and fund at least 10 new projects under the expanded authorization. U.S. Congress, House Committee on Agriculture, *Conference Report*, to accompany H.R. 2, 115th Cong., 2nd sess., December 10, 2018, H.Rept. 115-1072.

[101] 16 U.S.C. §2113a. Section 8206 of the 2014 farm bill (P.L. 113-79) amended the Cooperative Forestry Assistance Act (P.L. 95-313).

[102] The original authorization was in Section 331 of the FY2001 appropriations act for the Interior and Related Agencies (P.L. 106-291).

applicable federal laws regarding federal decisionmaking, including NEPA, as well as approving and marking any silvicultural prescriptions.[103]

Generally, a Master Agreement (MA) between the state and FS or BLM outlines the general scope of the GNA, and serves as an umbrella for Supplemental Project Agreements (SPAs).[104] SPAs are tiered to the MA and outline the specific terms and conditions for project implementation. FS reports that they have executed 48 MAs in 33 states and 105 SPAs in 28 states, covering 82 national forests.[105] While many of the GNAs are broad in scope—allowing for the full suite of authorized activities—they typically have a primary emphasis on a specific project type or purpose. This includes timber production (42%), wildlife or fisheries (18%), hazardous fuels management (16%), and other or unspecified activities (19%).

The good neighbor authority is generally perceived as successful, particularly in terms of enhancing state-federal relationships and performing cross boundary restoration work.[106] Other benefits include leveraging state resources, although funding and other resource capacity varied across participating states. Some states reported concerns related to the uncertainty of sustained future GNA work, however.[107]

Summary of Changes and Discussion

Both the FY2018 omnibus and the 2018 farm bill enacted changes to the good neighbor authority. The FY2018 omnibus authorized GNA forest restoration activities to include road construction, reconstruction, repair, restoration, or decommissioning activities on defined NFS roads, and as necessary to implement authorized forest restoration services (§212). The 2018 farm bill expanded the availability of GNAs to include federally recognized Indian tribes and county governments (§8624). The farm bill further specified that, through FY2023, funds received by a state through the sale of timber under a GNA shall be retained and used by the state on additional GNA projects. In addition, the farm bill further specified that any payment made by a county to the relevant Secretary under a project conducted pursuant to a GNA is not subject to any applicable revenue-sharing laws.

The expansion of GNA to tribes and county governments has the potential to increase the use of the authority significantly. This may result in increased opportunities for achieving cross-boundary restoration work, as well as leveraging additional nonfederal resources. However, it is also possible that it increases administrative demands on FS or BLM, such as contract administration, project planning, or oversight of project implementation. Other concerns may include the distribution of receipts from the sale of timber or other wood products. Some may prefer to have the revenue from GNA projects subject to revenue-sharing with county governments.

---

[103] A silvicultural prescription is a document which has a planned series of forest management projects designed to change the current stand structure and composition of a stand to one that meets management goals. For more information, see https://www.fs.fed.us/forestmanagement/vegetation-management/silviculture/index.shtml.

[104] GNAs may also be executed through standalone project agreements.

[105] FS *FY2020 Budget Justification*, p. 172.

[106] See for example, GAO, *Additional Documentation of Agency Experiences with Good Neighbor Authority Could Enhance Its Future Use*, GAO-09-277, 2009, https://www.gao.gov/new.items/d09277.pdf; and Rural Voices for Conservation Coalition, *Understanding Good Neighbor Authority: Case Studies from Across the West*, 2018, available from https://www.ruralvoicescoalition.org/publications (hereinafter referred to as *Understanding Good Neighbor Authority*).

[107] *Understanding Good Neighbor Authority*.

Stewardship Contracting

Stewardship end-result contracting (stewardship contracting) was established as a temporary pilot program by the Department of the Interior and Related Agencies Appropriations Act of 1999, and was extended multiple times, through 2013.[108] The 2014 farm bill made the authority permanent.[109] This authority allows FS and BLM to enter into multi-year (up to 10 years), dual service and timber sale contracts or agreements to achieve specified land management goals on the lands within their jurisdiction.[110] This means that FS and BLM may combine a timber sale contract (in which the federal government sells the right to harvest federal timber) with a service contract (in which the federal government hires an entity to perform various service activities, such as removing brush and small diameter trees).[111] By combining the two contract types, the agencies can use the value of the harvested timber to offset the cost of service activities (i.e., trade goods for services). The specified land management goals include objectives such as restoring or maintaining water quality through road and trail maintenance or obliteration, improving forest health and reducing fire hazards, increasing soil productivity, restoring and maintaining watersheds, restoring and maintaining fish and wildlife, and reestablishing native plant species.

FS and BLM can deposit any timber sale revenue exceeding the cost of contracted services (referred to as excess revenue) in their respective Stewardship Contracting Fund.[112] FS and BLM may use the funds on other stewardship projects without further appropriation. The law authorized contracts to be awarded on a best-value basis, meaning FS and BLM may consider past performance, proposal quality, and other factors in addition to cost, and allows FS and BLM to give procurement preference for contractors making innovative use of wood products. FS and BLM are required to submit annual reports on the development, execution, administration, and accomplishments of stewardship contracts.

Stewardship contracting is generally perceived favorably among stakeholders.[113] The agencies report increased opportunities for accomplishing more restoration goals and improving collaborative relationships.[114] Other stakeholders report economic benefits, such as contributions to local economic activity or improved certainty in the development of new markets for woody biomass and other restoration by-products, although some may contend that more certainty or market support is needed.[115] In addition, some might report concern that that there may be a

[108] P.L. 105-277, §347; 16 U.S.C. §2104 note. Prior to FY1999, the authority was authorized as a limited pilot on specific national forests, through appropriations riders in FY1992 (P.L. 102-154) and FY1993 (P.L. 102-381). For more information on stewardship contracting, see CRS In Focus IF11179, *Stewardship End Result Contracting: Forest Service and Bureau of Land Management*.

[109] P.L. 113-79, §8205; 16 U.S.C. §6591c.

[110] See 16 U.S.C. §§6591c(a)-(i).

[111] For information on federal timber sales, see CRS Report R45688, *Timber Harvesting on Federal Lands*.

[112] BLM refers to their fund as the Stewardship End Result Contracting Fund.

[113] See for example, Pinchot Institute for Conservation, *Stewardship Contracting on Federal Public Lands*, http://www.pinchot.org/gp/Stewardship_Contracting; and Cassandra Moseley and Emily Jane Davis, *Stewardship Contracting for Landscape-Scale Projects*, University of Oregon Institute for a Sustainable Environment, Ecosystem Workforce Program, 2010.

[114] See for example, U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *U.S. Forest Service FY2020 Budget Hearing*, 116th Cong., 1st sess., 2019 (testimony of Forest Service Chief Vicki Christiansen).

[115] See for example, Nielsen-Pincus and Moseley, 2013 and Jean M. Daniels et al., "The Economic Contribution of Stewardship Contracting: Two Case Studies from the Mount Hood National Forest," *Journal of Forestry*, vol. 116, no. 3 (May 2018), pp. 245-256.

higher than appropriate incentive to remove large or high value—but ecologically important—trees to pay for more service work, or other issues related to program implementation. There may also be concern related to the distribution of receipts from stewardship contracts, as some may prefer to maintain the revenue-sharing requirements with county governments.

Other concerns include the amount of up-front financial obligations required and the perceived slow pace of implementation.[116] The initial implementation of the stewardship contracting was difficult to assess due in part to the complexity of integrating the different contract types and a lack of reliable record-keeping. After that initial period, however, the agencies began integrating their respective contracting systems, improving record-keeping, and offering more contracts annually, covering larger areas. However, a 2015 USDA Office of Inspector General (OIG) report found issues with FS' contract administration and record-keeping related to stewardship contracts.[117] Specifically, the OIG report found FS did not consistently comply with applicable procurement requirements by clearly defining the evaluation factors used when awarding contracts. FS published new guidance in 2016, partially in response to the findings of the report.[118]

Summary of Changes and Discussion

The FY2018 omnibus made several changes to the stewardship contracting authority (§§204-207). In Section 207, the FY2018 omnibus authorized FS and BLM to enter into 20-year stewardship contracts or agreements, if the majority of the federal lands are located in areas classified in Fire Regime Groups I, II, and III. The law also authorized the Secretary to give a procurement preference to a contractor that promotes an innovative use of forest products as part of the contract. In addition, the law authorized FS and BLM to include a cancellation ceiling when entering stewardship contracts.[119] FS and BLM may obligate funds for cancellation ceilings in stages which are economically or programmatically viable. The law further authorized the use of excess revenues to pay for any outstanding liabilities associated with cancelled contracts. Congressional notification is required if FS or BLM intend to enter a stewardship contract or agreement with a cancellation ceiling higher than $25 million without proposed funding for the costs of canceling the contract.

The cancellation ceiling provision allows FS and BLM to obligate funds for cancellation ceilings in stages, rather than obligating funds up-front when the contract is entered. This has the potential of resolving concerns related to those up-front financial obligations, and the ability to use excess revenue to offset costs also has potential benefits. Both the use of 20-year stewardship contracts in certain locations and procurement preference may provide for increased market certainty for forest products industries and allow for continued innovation in the use of forest restoration by-products. It is unclear if there are any potential drawbacks to the expanded time-frame.

---

[116] GAO, *Use of Stewardship Contracting Is Increasing, but Agencies Could Benefit from Better Data and Contracting Strategies*, GAO-09-23, 2008, https://www.gao.gov/products/GAO-09-23.

[117] USDA Office of Inspector General (OIG), *Forest Service: Controls Over the Stewardship Contracting Process for Land Management of National Forests*, 08601-003-31, September 2015, https://www.usda.gov/oig/webdocs/08601-0003-31.pdf.

[118] FS, *Renewable Resources Handbook Stewardship Contracting*, FSH 2409.19 Chapter 60, 2016, https://www.fs.fed.us/im/directives/fsh/2409.19/wo_2409.19_60_a_2016-1.doc.

[119] The Federal Acquisition Regulation allows agencies to cancel multiyear contracts and provide for payments to the contractor to cover specified costs up to a maximum, known as a cancellation ceiling, as specified in the terms of the contract (48 C.F.R. §§17.101-17.109).

Watershed Condition Framework

The protection of watersheds is one of the authorized uses of the NFS, and as such is an authorized activity or goal of many FS programs. As part of a regular program review, OMB cited inadequacies in FS's watershed programs in a 2006 assessment report.[120] The report cited lack of adequate water quality data and performance measures and an inconsistent national approach to prioritize watershed management on NFS lands as areas of concern. As part of the improvement plan developed from the assessment, FS committed to developing long-term, outcome-based performance measures; generating better water quality, habitat, and biological data; and developing and implementing a strategy to make watersheds a priority for management activities as the basis for program allocations. As part of this effort, FS developed a Watershed Condition Framework (WCF) to classify watershed conditions across the NFS, identify priority watersheds, and develop restoration action plans.[121] FS classified and prioritized watersheds by 2011, began to develop watershed restoration action plans in 2013, and began to implement projects to achieve the goals described in those plans soon thereafter.[122] A 2017 USDA OIG report found inadequacies in FS' management and implementation of the WCF program, such as inadequate coordination and oversight at the national level, inadequate methodologies for record-keeping generally and specifically in regard to monitoring project costs and performance towards watershed restoration.[123]

Summary of Changes and Discussion

Section 8405 of the 2018 farm bill codified the WCF program in statute, assigned specific program responsibilities, and provided guidance on program priorities. More specifically, the law authorized the Secretary of Agriculture, through the Chief of the Forest Service, to establish a WCF for NFS land. Under the framework, FS may evaluate and classify watershed conditions and establish the assessment criteria (e.g., water quality and quantity, aquatic habitat, vegetation, soil condition, among others). FS may identify up to five priority watersheds in each national forest (and two in each national grassland) for protection and restoration. In addition, FS may develop, implement, and monitor restoration action plans, in coordination with interested nonfederal landowners and other governments, to prioritize protection and restoration activities on those priority watersheds and to achieve the desired watershed conditions. The law also authorizes an emergency designation process to prioritize a watershed for rehabilitation if wildfire has had significant impact on a watershed and post-fire stabilization activities have not returned the watershed to "proper function."

Water Source Protection

Watershed protection generally—and water source protection specifically—is one of the authorized uses of the NFS. Water source protection as such is an authorized activity or goal of

[120] OMB, *Forest Service Watershed Program Assessment*, 2006, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/expectmore/detail/10003029.2006.html.

[121] For more information, see USDA Forest Service, *Watershed Condition Framework*, FS-977, May 2011, https://www.fs.fed.us/sites/default/files/Watershed_Condition_Framework.pdf.

[122] Tom Vilsack, *Watershed Condition Framework*, USDA Forest Service, FS-977, May 2011, https://www.fs.fed.us/sites/default/files/Watershed_Condition_Framework.pdf. For more information on the WCF program, see the program website at https://www.fs.fed.us/naturalresources/watershed/condition_framework.shtml.

[123] USDA OIG, *Forest Service Watershed management*, 08001-0001-21, July 2017, https://www.usda.gov/oig/webdocs/08001-0001-21.pdf.

many FS programs. As one example, the Secretary of Agriculture is authorized to enter into cooperative agreements for watershed restoration and enhancement purposes with willing federal, tribal, state and local governments, private and nonprofit entities and landowners.[124] If the Secretary determines that the expenditure of federal funds is in the public interest, then the federal government may share the costs of implementing the agreement with the nonfederal partners. The watershed restoration and enhancement purposes include activities such as improving fish, wildlife, and other resources on NFS lands within the watershed.

Summary of Changes and Discussion

The 2018 farm bill amended HFRA and authorized the Secretary of Agriculture to establish a specific Water Source Protection program on NFS land (§8404).[125] This authorizes FS to enter into multi-year water source investment partnership agreements with nonfederal partners to protect and restore NFS watersheds that serve as sources of municipal water. In cooperation with those nonfederal partners, FS may develop a water source management plan to describe proposed watershed protection and restoration projects. As part of those projects, FS shall carry out forest management activities to protect a municipal water supply and/or restore forest health from insect infestations and disease. The law authorizes FS to conduct a single environmental analysis pursuant to NEPA for the development or finalization of the water source management plan or for each project proposed pursuant to a plan. The law authorizes FS to accept and use cash, in-kind donations, services, and other forms of investment and assistance from partners—directly or through the National Forest Foundation—to implement the water source management plan; the law also specifies that contributions must be in amounts equal to the federal funding, and establishes a Water Source Protection Fund to match the partner donations. Congress authorized $10 million in annual appropriations to the Fund through FY2023.

Miscellaneous Provisions

Both the FY2018 omnibus and the 2018 farm bill enacted various other provisions related to federal forest land, such as designating NFS lands as part of the National Wilderness Preservation System. Other miscellaneous provisions are related to land acquisition, exchange and disposal; the issuance of special use authorizations for the use or occupancy of federal lands; Secure Rural Schools Act payments, activities, and Resource Advisory Committees; and forest management on tribal lands.

Wilderness Designations

Section 8626 of the 2018 farm bill designated one new wilderness area and expanded five existing areas in NFS lands Tennessee.[126] Specifically, the Upper Bald River Wilderness was established on the Cherokee National Forest, covering approximately 9,038 acres. Just over 10,500 acres were designated as additions to existing wilderness areas on the Cherokee National Forest: Big Frog (348 acres), Big Laurel Branch (4,446 acres), Joyce Kilmer-Slickrock

[124] P.L. 111-11 §3001, 16 U.S.C. §1011a.

[125] Title III of HFRA established a watershed forestry assistance program to provide technical and financial assistance to states (Section 302) and tribes (Section 303) to address watershed stewardship, protection, and restoration needs. Funding was never appropriated, and these sections were repealed by the 2014 farm bill (§8002 and §8005).

[126] For more information on wilderness designations, see CRS Report R41610, *Wilderness: Issues and Legislation* and CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*.

Wilderness (1,836 acres), Little Frog Mountain (966 acres across two additions), and Sampson Mountain (2,922 acres). The law specified that the areas are to be managed in accordance with the Wilderness Act.[127] This means that most commercial activities, motorized access and use, and other activities are prohibited within the designated areas, subject to valid existing rights.

Land Acquisition, Exchange, and Disposal

Both the FY2018 omnibus and 2018 farm bill enacted provisions that would change how FS and/or BLM acquire, exchange, or dispose of federal land.[128] These provisions established, reauthorized, or modified specific authorities. For example, Section 8623 of the 2018 farm bill established a new program authorizing the Secretary of Agriculture to lease up to 10 isolated and undeveloped parcels for administrative sites, at market value through cash or in-kind consideration. Section 302 of the FY2018 omnibus reauthorized an expired program to sell or exchange BLM lands identified for disposal and use the proceeds to acquire lands for administrative purposes (Federal Land Transaction Facilitation Act). The 2018 farm bill also reauthorized an expired program: the Forest Service Facility Realignment and Enhancement program, which authorized the conveyance of administrative sites or the conveyance of up to 10 undeveloped parcels of up to 40 acres of NFS land (§8504). The program expired in FY2016, but was reauthorized for FY2019 through FY2023. Section 8621 of the 2018 farm bill modified an existing FS program (Small Tracts Act) by expanding the eligibility requirements, among other provisions. In addition, the 2018 farm bill contained several other provisions authorizing exchanges or sales for specifically identified parcels and sometimes to specifically identified entities (§§8625, 8627, 8628, 8631, and 8707). (See the tables in **Appendix** for more specific information).

Rights-of-Way (ROW) and Special Use Authorization Provisions[129]

The Secretary of the Interior and the Secretary of Agriculture are authorized to issue rights-of-way (ROW) for the use and occupancy of BLM and NFS lands, respectively (these are sometimes referred to as special use authorizations for FS).[130] The rights-of-way allow for the specific use of those federal lands for numerous purposes. Among other activities, these purposes also generally include issuing linear rights-of-way authorizing access "over, upon, under, or through" the specified lands for facilities and systems for: various types of water infrastructure; infrastructure for the storage, transportation, or distribution of liquids, gases (with specified exceptions), and solid materials; electricity generation, transmission, and distribution infrastructure; communication systems infrastructure; roads, trails, highways, canals, tunnels and other means of

[127] 16 U.S.C. §§1131 et seq.

[128] For more information on the acquisition or sale of federal lands, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*.

[129] Anne Riddle, Analyst in Natural Resources Policy, contributed to this section.

[130] The authority is provided in Title V of FLPMA (43 U.S.C. §§1761 et seq.). In a different title, FLPMA defines rights-of-way as including "an easement, lease, permit, or license to occupy, use, or traverse" across public lands (43 U.S.C. §1702(f)). BLM also issue rights-of-way under other authorities (e.g., the Mineral Leasing Act), and FS also issues rights-of-way or special use authorizations under other authorities (e.g., the National Forest Ski Area Permit Act), not discussed in this report. BLM's rights-of-way (ROW) regulations are at 43 C.F.R. Part 2800, and FS's regulations are at 36 C.F.R. 251 SubPart B. For more information on BLM's ROWs, see https://www.blm.gov/programs/lands-and-realty/rights-of-way. For more information on FS ROWs and special use authorizations, see https://www.fs.fed.us/specialuses/.

transportation in general; and other "necessary" systems and facilities which are in the public interest.[131]

FS and BLM charge cost-recovery fees for processing and monitoring applications as well as an annual land use rental fee.[132] The processing and monitoring fees are generally based on the estimated number of hours it will take the agency to process the application (or renewal) and monitor the activity to ensure compliance with the authorization. There is a general rental fee schedule for linear ROWs, based on land value, and a separate rental fee schedule for communication uses, based on the type of communication use and population served. BLM and FS use the same schedule for the processing and monitoring fees and the same land use rental fee schedules for linear ROWs and communication sites.[133]

The 115th Congress enacted provisions directing FS to update their process and fee schedule for issuing special use authorizations for communication sites, directed FS and BLM to issue new regulations for certain activities within electricity ROWs, and also established a similar pilot process for FS for many of the same activities within utility (defined as electricity, natural gas infrastructure, or related infrastructure) ROWs.[134] In some cases, these provisions are related to concerns about wildfire ignitions within electricity transmission and distribution ROWs. For example, power line ignitions are associated with fires that burn across larger areas.[135] This is in part due to weather conditions (e.g., wind) causing vegetation (e.g., tree limbs) to come into increasing contact with power lines.[136]

Some have asserted that confusing or burdensome administrative processes prevent ROW permit-holders from conducting necessary maintenance activities (e.g., vegetation management) to mitigate the risk of ignitions on the federal lands within their ROWs.[137] In contrast, others have placed more of the responsibility on the permit holders.[138] The 115th Congress provisions are

[131] These purposes are summarized from 43 U.S.C. §1761(a).

[132] In some circumstances no fees are required, e.g., state and local agency use of land for governmental purposes where the lands continue to serve the public interest.

[133] The fee schedules are available from https://www.blm.gov/programs/lands-and-realty/rights-of-way.The Energy Policy Act of 2005 (P.L. 109-58 §367, 42 U.S.C. §15925) directed the Secretary of the Interior to update the fair market value rental fee schedule for linear ROWs, and directed the Secretary of Agriculture to adopt the same revised fee schedule for NFS lands.

[134] Section 606 of Division P of the FY2018 omnibus also enacted changes to the ROW application process for communication uses for all executive branch agencies, including FS and DOI. The law requires FS and DOI to respond to communication facilities ROW requests within 270 days of receipt, among other provisions.

[135] Alexandra D. Syphard and Jon E. Keeley, "Location, timing, and extent of wildfire vary by cause of ignition," *International Journal of Wildland Fire*, vol. 24, no. 1 (2015), pp. 37-47.

[136] Joseph W. Mitchell, "Power line failures and catastrophic wildfires under extreme weather conditions," *Engineering Failure Analysis*, vol. 35 (December 2013), pp. 726-735.

[137] See for example, U.S. Congress, Senate Committee on Energy and Natural Resources, *Hearing to Examine the Vegetation Management Requirements for Electricity Assets Located on Federal Lands*, 115th Cong., 1st sess., September 17, 2017 (hereinafter referred to as Senate ENR Hearing on Vegetation Management, September 17, 2017); U.S. Congress, House Committee on Natural Resources, *Electricity Reliability and Forest Protection Act*, hearing to accompany H.R. 1873, 115th Cong., 1st sess., June 12, 2017, H.Rept. 115-165 (provisions similar to H.R. 1873 were enacted in the FY2018 omnibus (§211)); and National Rural Electric Cooperative Association (NRECA), *Improve Federal Land Management Policies to Strengthen Grid Reliability*, February 2018, https://www.cooperative.com/programs-services/government-relations/Documents/Legislative%20Issues/fast_facts_vegetationmanagement-feb-2018.pdf (hereinafter referred to as NRECA 2018.

[138] See for example, Ivan Penn, Peter Eavis, and James Glanz, "How PG&E Ignored Fire Risk in Favor of Profits," *New York Times*, March 18, 2019, and "Judge takes oversight of PG&E's prevention plans," *Greenwire*, April 3, 2019.

perceived by some as potentially improving the processes for ROW permit holders to obtain approvals and implement vegetation management projects on federal lands.[139] Others may acknowledge that process improvements could facilitate improved land conditions but are concerned about the appropriate balance between expediting project implementation and maintaining accountability and adherence to the laws regarding federal lands.[140]

Some of the provisions specify the responsibilities for wildfire suppression costs for wildfires ignited within ROWs, costs associated with other damages, or place a cap on liability costs for ROW permit holders. Some are concerned with the breadth of these provisions and the potential implications for the federal government or others bearing a disproportionate share of the costs to suppress wildfires ignited within a ROW on federal lands.[141] Others contend that the provisions limiting damages and liability will incentivize prompt agency action on maintenance requests from ROW permit holders and also reflect that utilities should not be responsible for the full costs of a wildfire—regardless of ignition point or cause—because past agency actions have contributed to the increased fuel levels surrounding ROWs.[142] Further, others contend that limiting unexpected costs for the utilities would reduce the likelihood of passing on those costs to the ratepayers.[143]

Forest Service Communication Uses Fee Schedules and Processes

Section 8705 of the 2018 farm bill directed the Secretary of Agriculture to issue regulations revising the process to issue special use authorizations for communications uses on NFS lands within one year of enactment, defined relevant terms, and identified specific requirements for the process.[144] Among other provisions, the law specified that: the new process must be streamlined, uniform, and standardized across the NFS to the extent practicable; FS must consider and grant applications on a competitively neutral, technology neutral, and nondiscriminatory basis; and the lease terms must be for a minimum of 15 years. The law also specified that the regulations must establish a fee structure based on the cost of processing and monitoring applications and approvals, and established a new account in the Treasury for the FS to deposit and use those fees for specified activities related to managing communication sites, subject to appropriations. Such activities include preparing needs assessments or programmatic analyses relating to communications sites or use authorizations, developing management plans and training for management of communication sites, and obtaining or improving access to communication sites.

[139] See for example, Senate ENR Hearing on Vegetation Management, September 17, 2017 (testimony of Mark C. Hayden) and NRECA 2018.

[140] See for example, Senate ENR Hearing on Vegetation Management, September 17, 2017 (testimony of Scott Miller).

[141] Ibid.

[142] See for example, Senate ENR Hearing on Vegetation Management, September 17, 2017 (testimony of Mark C. Hayden) and NRECA 2018.

[143] See for example, Carolyn Kousky et al., *Issue Brief: Wildfire Costs in California: the Role of Electric Utilities*, University of Pennsylvania, Wharton Risk Management and Decision Processes Center, August 2018, https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/08/Wildfire-Cost-in-CA-Role-of-Utilities-1.pdf or Gregory D.L. Morris, *How California Got Wildfire Risk Management Right*, Risk & Insurance, October 15, 2018, https://riskandinsurance.com/wildfire-liability-bill-a-new-approach-to-hazards/.

[144] Section 606 of Division P of the FY2018 omnibus also enacted changes to the ROW application process for communication uses for all executive branch agencies, including FS. The law requires FS to respond to communication facilities ROW requests within 270 days of receipt, among other provisions.

Electricity Transmission and Distribution ROWs

Section 211 of the FY2018 omnibus amended FLPMA and established a new Section 512, titled *Vegetation Management, Facility Inspection, and Operation and Maintenance on Federal Land Containing Electric Transmission and Distribution Facilities*. The law directed FS and BLM to issue guidance for planning and implementing vegetation management, facility inspections, and operation and maintenance activities within electric transmission and distribution ROWs and identified specific requirements for those processes. The guidance must describe the process for FS and BLM to review, approve, and modify plans for vegetation management, facility inspections, and operation and maintenance activities submitted by eligible ROW permit holders (referred to as "owners").[145] The law specifies the components of the plans, authorizes owners to develop and submit those plans for approval by the appropriate Secretary and conduct activities within their ROW pursuant to an approved plan. The law also specifies circumstances when owners may conduct certain management activities without an approved plan or without the approval of FS or BLM (e.g., when trees are in imminent danger of touching a power line). FS and BLM are also directed to identify any applicable NEPA categorical exclusions for these activities. The law directed the Secretaries to propose regulations implementing the provisions within one year of enactment and to finalize the regulations within two years. Section 211 also encouraged FS and BLM to develop training programs for FS and DOI employees on vegetation management and the electrical transmission and distribution system.

The FY2018 omnibus also specified ROW permit holder liabilities related to vegetation management activities in the ROW, including addressing the relationship between permit holder liability and the plan's approval status. For ten years after enactment, the law prohibits the applicable Secretary from imposing strict liability for damages or injury greater than $500,000 resulting from activities conducted by a ROW holder pursuant to a plan under certain conditions. Those conditions include the Secretary concerned unreasonably withholding or delaying plan approval or failing to adhere to an applicable schedule in an approved plan. Within four years of the enactment, FS and BLM must report the impacts of the liability clauses to Congress.

Forest Service Utility ROW Pilot Program

Section 8630 of the 2018 farm bill established a pilot program, through FY2023, for utility ROW permit holders on NFS land, excluding national grasslands and land utilization projects and established specific requirements for the pilot program. The law defined utility ROWs to include electric transmission lines, natural gas infrastructure, or related infrastructure. Under the pilot program, participating permit holders may develop and implement vegetation management plans, subject to FS approval, for the NFS lands within their ROWs. Pursuant to those plans, pilot participants may also pay for and perform projects on specified NFS lands within and up to 75 feet from the ROW. Participants must adhere to FS and some state regulations regarding various fire prevention and vegetation removal activities when conducting projects on NFS lands. Participants are generally responsible for project costs, although FS may contribute funds at the discretion of the Secretary of Agriculture. Should a participant provide funds to the FS, the Secretary may retain those funds for implementing the pilot, subject to appropriations. The law directed FS to submit a program status report to Congress by December 31, 2020, and every two years afterwards.

Section 8630 also specified the financial responsibility of pilot participants related to wildfire: participants must reimburse FS for the costs of wildfire suppression and damage to FS resources

[145] Operators of a certain size, or whose facilities are not subject to certain reliability standards, may enter into an agreement with the Secretary of Agriculture or the Interior, as appropriate, in lieu of a plan (43 U.S.C. §1772(d)).

if the wildfire is caused by the operations of the pilot participant, under certain conditions. If the participant provides resources to suppress a wildfire caused by their operations in the ROW, the cost of those resources shall be credited toward the reimbursement costs, or if they exceed the maximum reimbursement costs, the FS must reimburse the pilot participant the excess. Section 8630 limits reimbursement costs to up to $500,000 in certain circumstances.

Although similar, the electricity ROW provisions prescribed in the FY2018 omnibus for FS and BLM differ from those in the ROW pilot program on NFS lands. The FY2018 omnibus program is specific to electricity ROWs, while the FS pilot program established under the 2018 farm bill is applicable to electricity ROWs as well as natural gas and other related infrastructure. The 2018 farm bill pilot limits participant responsibilities to wildfire and vegetation management, but does not address liability, while the FY2018 omnibus caps liability costs for program participants.

Secure Rural Schools (SRS) Payments and Modifications

Counties containing NFS, O&C, and CBWR lands receive payments from the federal government based on the revenue generated from those lands in the prior year.[146] SRS authorized an optional payment system to those counties as an alternative to the revenue-sharing payments.[147] SRS payments were based on a formula that accounted for historic revenue payments, acreage of land, and the counties' per capita income. The SRS statute specified the payments to be allocated among three categories based on payment level: Title I FS payments were to be used for funding education and roads (BLM payments were to be used for any governmental purpose); Title II payments were retained by the applicable agency to be used for projects on the lands under jurisdiction and within the county; and Title III payments were to be used for specified county programs, including fire prevention, county planning, and emergency services (e.g., search and rescue operations and firefighting). Title II also established Resource Advisory Committees (RACs) to "improve collaborative relationships and provide advice and recommendations" to the agencies, and established minimum membership requirements.[148] Specifically, the law specified that RACs members must be appointed by the applicable Secretary and must consist of a total of 15 members representing specific interests (this includes outdoor recreation interests, the timber industry, environmental organizations, and local elected officials, among others).

The authorized payment level was set in statute at 95% of the previous year's payment level. The original authorization for SRS payments expired at the end of FY2006, but the payments were extended several times through FY2015. Since payments were disbursed after the end of the fiscal year, the last authorized payment was disbursed in FY2016. When SRS payments are not authorized, counties receive a revenue-sharing payment, which is typically much less than they would receive under SRS. After the last authorized SRS payments had been disbursed in FY2016, counties received a revenue-sharing payment in FY2017.

Summary of Changes and Discussion

The FY2018 omnibus reauthorized SRS payments for FY2017 and FY2018 (§§401, 402). This act authorized payments to be made in FY2018 and FY2019, respectively; however, the revenue-

[146] The FS payments (for counties containing NFS lands) are based on 25% of the annual average of the revenue generated over the previous seven years (16 U.S.C. §500). The BLM payments (for counties containing the O&C and CBWR lands) are based on 50% of the revenue generated in the prior year (43 U.S.C. §2605, §2621).

[147] P.L. 106-393, 16 U.S.C. §§7103-7153. For more information on the program and payments, see CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*.

[148] See 16 U.S.C. §7125. Several other FS or BLM authorities reference the RAC requirements, such as the 2014 farm bill CE, Wildfire Resilience CE, and CFLRP, among others.

sharing payment for FY2017 had already been distributed at the time of enactment. The reauthorization set the FY2017 payment level at 95% of the level of the last authorized payment and specified that the payment should account for the revenue-sharing payments already disbursed. Thus, counties received a full SRS payment for FY2017 (payments made in FY2018), but the payments were essentially made in two installments. The reauthorization also changed some of the payment allocation requirements and expanded the uses for Title III funds (added law enforcement patrols, training, and equipment costs). The reauthorization expired at the end of FY2018, meaning that no additional payments are authorized after the FY2018 payments are distributed in FY2019.

In addition, the 2018 farm bill enacted changes to the SRS statute, despite the law's expiration at the time of enactment. The 2018 farm bill established a process for the applicable Secretary to modify the RAC membership requirements, and established a pilot program, through FY2023, for the Secretary to designate a regional forester to appoint RAC members in Montana and Arizona (§8702). These changes appear to be in response to concerns that the requirements for RACs to consist of 15 members were prohibitive.[149]

Tribal Forestry

The Tribal Forest Protection Act (TFPA) authorized the Secretary of Agriculture (for NFS lands) and the Secretary of the Interior (for BLM Lands) to enter into an agreement with federally recognized Indian tribes to implement specified forest or rangeland projects on Indian trust or restricted lands or on NFS and BLM lands adjacent to those tribal lands.[150] The applicable NFS or BLM land should be in need of forest restoration activities or pose a fire, disease or other threat to tribal lands or communities, and include a "feature or circumstance unique to that Indian Tribe."[151] Under TFPA, the applicable Secretary is to evaluate a tribe's request on a "best value basis" and in consideration of a set of tribally related factors. The Indian Self-Determination and Education Assistance Act (ISDEAA) authorized federally recognized tribes to enter into self-determination contracts with the federal government to operate specified federal Indian programs, such as a Bureau of Indian Affairs school or an Indian Health Service hospital.[152]

In addition to extending the good neighbor authority to tribes (see the "Good Neighbor Authority" section), the 2018 farm bill authorized the Secretary concerned to enter into self-determination contracts, on a demonstration basis, with federally recognized tribes to perform administrative, management, and other functions of the TFPA (§8703). These contracts shall be in accordance with Section 403(b)(2) of the ISDEAA.[153] The law specified that for such contracts on NFS land, the Secretary of Agriculture shall carry out all responsibilities delegated to the Secretary of the Interior. The law also requires the Secretary concerned to retain decisionmaking authority over decisions related to NEPA and TFPA.

[149] USDA OIG, *Forest Service Secure Rural Schools Program*, Audit Report 08601-006-41, 2017, https://www.usda.gov/oig/webdocs/08601-0006-41.pdf.

[150] P.L. 108-278, 25 U.S.C. §3115a(b).

[151] 25 U.S.C. §3115a(c)(4).

[152] P.L. 93-638, 25 U.S.C. §§5301 et seq.

[153] 25 U.S.C. §5363(b)(2).

Issues for Congress

Congress may consider several issues related to the forestry provisions enacted by the 115th Congress, including oversight of the agencies' implementation of the new laws. Congress may also be interested in the implication of these changes or how these provisions address concerns with federal forest management generally, and forest restoration specifically.

For example, the Forest Service has identified around 52-58 million acres of NFS lands at high or very high fire risk or insect infestation and in need of restoration treatments.[154] FS reports that they accomplish around 2-6 million acres of treatments annually.[155] At that pace, it would take at least 9 but possibly up to 29 years to eliminate the backlog of treatment needs, and that does not account for maintaining already treated areas to the desired resource conditions. Some estimate that hazardous fuels are accumulating three times faster than the rate of treatment.[156] To address these concerns, FS has proposed to increase the scale, scope, and implementation of forest management projects generally, and forest restoration treatments specifically.[157]

FS, and others, identify administrative process barriers as one of many factors impeding progress towards these restoration goals.[158] More specifically, some identify agency decisionmaking processes, particularly related to implementation of the National Environmental Policy Act and opportunities for the public to challenge agency decisions administratively and judicially, as preventing the agencies from implementing projects at the pace and scale necessary to address forest health concerns.[159] Others may point to FS-specific implementation issues related to NEPA as contributing to planning delays more than involvement from the public or administrative or judicial challenges.[160] Other stakeholders identify other administrative barriers—such as

[154] See for example, FS, *Shared Stewardship* (reporting approximately 52 million acres at high to very high fire risk and/or above-normal levels of insect and disease mortality, see p. 11); USDA OIG, *FS Wildland Fire Activities - Hazardous Fuels Reduction*, 08601-004-41, July 2016, hereinafter referred to as OIG, *FS Hazardous Fuels* (reporting 58 million acres at high risk of ecologically destructive wildfire, see p.1); and Dillon et al 2014 (reporting 58.2 million acres of NFS lands at high or very high wildland fire potential). See also S.Hrg. 115-368 (testimony of FS Chief Vicki Christiansen, reporting 94 million acres of NFS lands at moderate to very high risk of catastrophic wildfire).

[155] Range is an estimate based on several reported measures for FS acres treated annually. See for example, in FS, *Shared Stewardship*, they estimate about 1.9 million acres of NFS lands are treated annually to reduce hazardous fuels (see p. 12) and also report that around 6 million acres of NFS were treated to reduce fire risk and improve forest conditions per year for FY2016 and FY2017 (see p.23). In OIG, *FS Hazardous Fuels*, the OIG reports that FS treats about 2.9 million acres annually for hazardous fuels from FY2005 through FY2013. New reporting requirements enacted by the 115th Congress include requirements for FS to report the acres treated annually for wildfire, insect and infestation, and disease prevention which may provide for more consistency (see the "Reporting" section for more information on the new requirements).

[156] OIG, *FS Hazardous Fuels*.

[157] See for example, FS, *Shared Stewardship*.

[158] See for example, H.Rept. 115-370, and FS, *The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management*, 2002, https://www.fs.fed.us/projects/documents/Process-Predicament.pdf.

[159] See for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *Exploring Solutions to Reduce Risks of Catastrophic Wildfire and Improve Resiliency of National Forests*, Oversight hearing, 115th Cong., 1st sess., September 27, 2017, H.Hrg. 115-23 or S. Hrg. 115-112.

[160] See for example, Audrey Bixler et al., *Administrative and Judicial Review of NEPA Decisions: Risk Factors and Risk Minimizing Strategies for the Forest Service*, University of Oregon Ecosystem Workforce Program, Working Paper Number 66, 2016 (hereinafter referred to as Bixler et al 2016); Michael J. Mortimer et al., "Environmental and Social Risks: Defensive NEPA in the U.S. Forest Service," *Journal of Forestry*, vol. 109, no. 1 (2011), pp. 27-33; or Marc J. Stern, "The meaning of the National Environmental Policy Act within the U.S. Forest Service," *Journal of Environmental Management*, vol. 91 (2010), pp. 1371-1379.

inadequate program funding levels and training—as preventing the agency from implementing project planning requirements in a more efficient manner.

Many of the provisions enacted by the 115th Congress aim to improve agency efficiencies by expanding the applicability of procedures intended to expedite the planning and review process for projects, such as hazardous fuel reduction and forest restoration projects. For example, proponents of this approach contend that expanding the use of Healthy Forests Restoration Act authorities and allowing the agencies to plan more projects over larger areas under NEPA Categorical Exclusions would expedite project implementation and allow FS and BLM to achieve progress towards their restoration goals.[161] Some, however, contend that changes made to the agency's decisionmaking processes—such as through the establishment of CEs—are changing the basic legal framework for federal forest management, and making it increasingly difficult for citizens to participate or challenge government decisions.[162] In addition, some stakeholders contend that expanding the use of these authorities could result in environmental impacts that exacerbate forest health concerns.[163]

Many of these issues have been ongoing for decades. For example, concerns about deteriorating forest health conditions and high fuel levels were raised after wildfires in Yellowstone National Park in 1988. In 1994, the congressionally chartered National Commission on Wildfire Disasters recommended federal land management agencies invest more in reducing hazardous fuels in high-risk ecosystems, and observed that "the question is no longer if policy-makers will face disastrous wildfires and their enormous costs, but when."[164] A 1995 study recommended FS increase hazardous fuel treatments to up to 3 million acres per year by 2005.[165] As another example, in 1999, GAO recommended FS develop a strategy to identify long-term options for reducing fuels to address forest health issues and mitigate wildfire risk.[166] In 2006 OIG raised concerns with FS' hazardous fuels reduction program and recommended FS develop guidance and controls to identify, prioritize, implement, monitor, and report on hazardous fuels reduction projects and funding.[167] A 2016 OIG report assessed FS' progress towards implementing the recommendations from that 2006 report and found continued issues with FS prioritizing, tracking, and reporting of hazardous fuels reduction projects.[168]

Concerns about FS project implementation also have been ongoing. For example, in 2001 Congress asked GAO to evaluate the extent administrative or judicial challenges impeded FS' implementation of fuel management projects. The report found that approximately 24% of the fuel reduction decisions signed in FY2001 and FY2002 were appealed.[169] A similar GAO analysis

[161] See for example, H.Rept. 115-370, Dissenting Views.

[162] See for example, S.Hrg. 115-112 (e.g., letter submitted by Center for Biological Diversity); H.Rept. 115-370, Dissenting Views; or Martin Nie and Peter Metcalf, "National Forest Management: The Contested Use of Collaboration and Litigation," *Environmental Law Reporter*, vol. 46 (2016), pp. 10281-10298.

[163] See for example, H.Rept. 115-370, Dissenting Views.

[164] The commission was established by the Wildfire Disaster Recovery Act of 1989 (P.L. 101-286) after the 1988 wildfires in Yellowstone. R. Neil Sampson, chair, *Report of the National Commission on Wildfire Disasters*, Washington, DC, 1994.

[165] FS, *Course to the Future: Positioning Fire and Aviation Management*, May 1995.

[166] GAO, *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats*, RCED-99-65, April 2, 1999, https://www.gao.gov/products/RCED-99-65.

[167] OIG, *Implementation of the Healthy Forests Initiative*, 08601-6-AT, September 2006.

[168] OIG, *FS Hazardous Fuels.*

[169] The report identified a total of 818 signed decisions with fuel reductions as an activity. Of those 818, 194 decisions were appealed. Because more than one appeal may occur per decision, the total number of appeals was higher (285).

found that 20% of the fuel management projects identified for implementation in FY2006 through FY2008 were challenged through appeals or objections.[170] In addition, there have been several academic studies examining FS NEPA implementation.[171] Collectively, these studies suggest that projects that are more complex—in terms of scale and scope—are more likely to be challenged, but other project characteristics (e.g., timber harvests) and factors related to staffing, documentation, and implementation of the public involvement requirements also affect the likelihood of project challenges.

HFRA, passed in 2003, included provisions intended to expedite implementation of hazardous fuels reduction projects. Despite these provisions, the extent of NFS areas in need of treatment has continued to increase, and FS continues to look for ways to increase the pace of project implementation. To some, this implies that the HFRA approach to streamline agency decisionmaking has not been successful. To others, this implies that the HFRA approach needs to be more broadly applied, as it was in legislation enacted during the 115th Congress.

GAO, *Forest Service: Information on Appeals and Litigation Involving Fuels Reduction Activities,* GAO-04-52, October, 2003, https://www.gao.gov/assets/250/240305.pdf. An earlier GAO report found that through July 2001, 20 (1%) of the 1,671 hazardous fuel reductions projects identified for implementation for FY2001 were challenged. GAO, *Forest Service: Appeals and Litigation of Fuel Reduction Projects*, GAO-01-1114R, August 31, 2001, https://www.gao.gov/products/GAO-01-1114R.

[170] The report found that from FY2006 through FY2008, FS issued 1,312 decisions involving fuel reduction activities that were subject to appeal or objections, and 266 of those decisions were challenged. An additional 103 decisions were not subject to appeal or objections. Of the total 1,312 decisions, 29 (2%) were litigated in court. Some of the differences between the report findings may be attributable to the lack of a uniform definition for "hazardous fuels reduction projects." GAO, *Forest Service: Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Years 2006 through 2008*, GAO-10-337, March 4, 2010, https://www.gao.gov/products/GAO-10-337.

[171] For a review of 27 studies examining various aspects of FS NEPA implementation, see Bixler et al 2016.

Appendix. Enacted Forest Management Provisions Comparison to Then-Current Law

The following two tables provide side-by-side comparisons that briefly describe the forest-related provisions enacted by each law (the FY2018 omnibus and 2018 farm bill) to prior law, generally in the order in which they were included in the legislation, with a few exceptions for purposes of clarity. Provisions in each law that do not directly affect forest management are not included.

Table A-1. Comparison of Forestry Provisions in Prior Law to Changes Enacted in the FY2018 Omnibus (Wildfire Suppression Funding and Forest Management Activities Act)

P.L. 115-141, Division O

Prior Law/Policy	Enacted FY2018 Omnibus (P.L. 115-141, Division O)
Title I. Wildfire and Disaster Funding Adjustment	
The Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, establishes limits on discretionary spending for each year from FY2012-FY2021 and provides for additional spending through upward adjustments to those limits for specified purposes for each year, including for emergency requirements and disaster relief purposes. (2 U.S.C. 901(b)(2))	Establishes a new adjustment for wildfire suppression operations for the Forest Service (FS) and Department of the Interior (DOI) for each year from FY2020-FY2027. The amount of the adjustment is capped each fiscal year, starting at $2.25 billion in FY2020 and increasing to $2.95 billion in FY2027. The new adjustment (or additional spending) would apply to appropriations above the 10-year average spending level for wildfire suppression operations as calculated for FY2015 (FY2015 baseline). That is, an amount equal to the FY2015 baseline would be subject to the statutory discretionary limits, and then additional funding, up to the specified amount for each year, would be considered outside the limits and be the amount of the adjustment. This has been commonly referred to as the *wildfire funding fix*.[a] (§102(a)(3))
Starting in FY1980, Congress has generally authorized FS and DOI to transfer funds from other agency accounts if the amount provided for wildfire suppression operations for a fiscal year is close to depletion in the annual appropriations law.	Requires the Secretary of the Interior or the Secretary of Agriculture, in consultation with the Director of the Office of Management and Budget, to promptly submit a request to Congress for supplemental appropriations if the amount provided for wildfire suppression operations for a fiscal year will be exhausted within 30 days. (§103)
No comparable provision.	Requires the applicable Secretary to submit a report to Congress and the public within 90 days after the end of the fiscal year for any fiscal year in which the wildfire suppression adjustment was used. The report must contain several components, including but not limited to data regarding wildfire suppression expenditures and an analysis of a statistically significant sample of large fires. (§104)

Prior Law/Policy	Enacted FY2018 Omnibus (P.L. 115-141, Division O)
Title II. Forest Management Activities	
The Healthy Forests Restoration Act (HFRA, P.L. 108-148) authorizes a variety of measures intended to expedite environmental analysis, administrative review, and judicial review for specified authorized hazardous fuel reduction projects, subject to certain conditions. Projects may not occur on lands designated as wilderness or wilderness study areas, or where vegetation removal is prohibited by statute or presidential proclamation. Defines the wildland urban interface (WUI) as an area within or adjacent to a community identified as at-risk for a large-scale wildland fire disturbance event. Defines Fire Regimes I, II, and III and Condition Class 2 or 3. Sections 602 and 603 of HFRA authorize the Secretary of Agriculture, upon request from a state governor, to designate landscape-scale insect and disease treatment areas (*I&D areas)* on at least one national forest within the state and authorize the use of measures intended to expedite the planning of priority forest health projects within designated areas.[b] (16 U.S.C. §§6511-6518, §6591a, §6591b)	Adds Section 605 to HFRA and authorizes specified hazardous fuel reduction projects for purposes of Wildfire Resilience, and specifies that these projects are categorically excluded (CE) from the requirements to produce an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA, P.L. 91-109). Public notice and scoping is required for any project. Projects must be located within designated insect and disease treatment areas and may not exceed 3,000 acres. Projects located within the WUI are prioritized, or if outside the WUI, are limited to areas classified as Condition Class 2 or 3 in Fire Regime groups I, II, or III.[c] (§202, continued below)
Title IV of the Omnibus Public Lands Management Act of 2009 (P.L. 111-11) establishes the Collaborative Forest Landscape Restoration Program (CFLRP) to select and fund the implementation of collaboratively developed restoration projects for priority forest landscapes. Section 4003 establishes eligibility criteria, including requirements that proposals must be based on a complete landscape restoration strategy and include forest restoration projects that reduce hazardous fuels and restore old-growth stands, among other requirements**.** (16 U.S.C. §7303b) Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393) establishes Resource Advisory Committees (RACs) to coordinate, review, and recommend projects for implementation on federal land; specifies that RACs shall consist of members representing a balanced and broad range of specified community interests; and specifies the membership and appointment requirements. (16 U.S.C. §7125)	In addition to previously mentioned requirements, Wildfire Resilience projects must implement a forest restoration treatment that complies with the eligibility requirements for the CFLRP, or projects must: maximize the retention of old-growth and large trees to the extent that the trees promote resiliency; consider best available science; and be developed through a collaborative process that is transparent and nonexclusive, or which meets the RAC requirements specified in 16 U.S.C. §§7125(c)-7125(f). Projects may not establish any new permanent roads, and temporary roads must be decommissioned within 3 years of project completion, but maintenance and repairs of existing roads may be performed as needed to implement the project. Requires the Secretary concerned to submit an annual report on the use of the CEs authorized under this section to specified congressional committees and the Government Accountability Office (GAO). (§202, continued)
HFRA defines an authorized hazardous fuels reduction project by referencing the measures or methods described in a 2002 report (and subsequent revisions) developed pursuant to direction provided in the conference report (H.Rept. 106-914) to the Department of the Interior and Related Agencies Appropriations Act, 2001 (P.L. 106-291).[d] (16 U.S.C. §6511(2))	Amends the definition of authorized hazardous fuel reduction projects to include the installation of fuel breaks (defined as measures that change fuel characteristics in an attempt to modify the potential behavior of future wildfires) or the installation of firebreaks (defined as natural or constructed barriers to stop, or establish an area to work to stop, the spread of a wildfire). (§203)

Prior Law/Policy	Enacted FY2018 Omnibus (P.L. 115-141, Division O)
In Section 604, HFRA authorizes FS and the Bureau of Land Management (BLM) to enter into multi-year—up to 10 years—stewardship end-result contracts or agreements with entities to combine timber sale contracts and service contracts to achieve specified land management goals. Contracts may be awarded on a best-value basis. Revenue generated through a stewardship contract may be retained by the agency and used for other stewardship contracts. Requires annual reports to be submitted to congressional committees on the development, execution, administration, and accomplishments of stewardship contracts. (16 U.S.C. §6591c)	Authorizes FS and BLM to enter into 20-year stewardship contracts or agreements where the majority of the federal lands are in Fire Regime Groups I, II, and III.[c] Authorizes the Secretary concerned to give a procurement preference to a contractor that would promote an innovative use of forest products as part of the contract. Makes a technical change to the wording of the statute but makes no substantive changes to the reporting requirements. (§206, §207)
Multiyear contracting authority allows an agency to enter into contracts that extend over more than one year without the government having to establish and exercise options for each program year after the first. The Antideficiency Act generally prevents agencies from entering into multiyear contracts that extend beyond the availability of currently appropriated funds without specific statutory authority to do so. (41 U.S.C. §3903, 31 U.S.C. §§1341-1342) The Federal Acquisition Regulation allows agencies to cancel multiyear contracts and provide for payments to the contractor to cover specified costs up to a maximum, known as a cancellation ceiling, as specified in the terms of the contract. (48 C.F.R. §§17.101-17.109)	Authorizes contract cancellation ceilings for stewardship contracts (and agreements) and authorizes FS and BLM to obligate funds for cancellation ceiling or contract termination costs in stages that are economically viable, allowing FS and BLM to enter into multiyear contracts without having to obligate the full amount of the cancellation ceiling using currently available funds. Specifies that revenues derived from stewardship contracts are available to pay for any outstanding liabilities associated with cancelled contracts. Requires advance congressional notification for any multi-year contracts that include a cancellation ceiling above $25 million. (§204, §205)
The Forest and Rangeland Renewable Resources Planning Act requires FS to develop, maintain, and revise land and resource management plans (also known as *forest plans*) for the units of the National Forest System (NFS). (16 U.S.C. §1604) Section 7 of the Endangered Species Act (ESA, P.L. 93-205) requires consultation with the Fish and Wildlife Service for terrestrial and freshwater species or the National Marine Fisheries Service for certain marine species if a federal action might adversely affect a species listed as threatened or endangered. This is known as *Section 7 consultation*. (16 U.S.C. §1536)	Specifies that the listing of a species as threatened or endangered or the designation of critical habitat pursuant to the ESA does not require the Secretary of Agriculture to engage in Section 7 consultation to update or revise a forest plan, unless the plan is older than 15 years and 5 years has passed since the date of enactment or the listing of the species, whichever is later. Specifies that this does not affect the requirements for Section 7 consultation for projects implementing forest plans or for plan updates or amendments initiated for other reasons. (§208)
Specifies that the Oregon and California Railroad Lands (O&C lands) and Coos Bay Wagon Roads (CBWR) in western Oregon are to be managed by BLM for a sustained yield of permanent forest production for the purposes of providing a supply of timber, watershed protection, recreation, and contributing to the economic stability of the local community. (43 U.S.C. §§2601 et seq.) The Federal Land Policy and Management Act (FLPMA) requires BLM to develop, maintain, and periodically revise resource management plans for the lands managed by BLM. (43 U.S.C. §1712)	Specifies that the listing of a species as threatened or endangered or the designation of critical habitat pursuant to the ESA does not require the Secretary of the Interior to engage in Section 7 consultation to update or revise a land and resource management plan for O&C and CBWR lands. Specifies that this does not affect the requirements for Section 7 consultation for projects implementing resource management plans or for plan updates or revisions initiated for other reasons. (§209)

Prior Law/Policy	Enacted FY2018 Omnibus (P.L. 115-141, Division O)
FS researchers have developed and refined a Wildfire Hazard Potential (WHP) map to depict the relative potential for wildfire that would be difficult for suppression resources to contain, to aid in prioritizing fuel management needs at a national scale.[e]	Requires the Chief of the Forest Service, in consultation with the Secretary of the Interior, Administrator of the Federal Emergency Management Agency, and other relevant entities to develop and publish a geospatial map appropriate for community-level use that depicts wildfire hazard severity to inform evaluations of wildfire risk, prioritize fuel management needs, and depict the relative potential for wildfire that could be difficult for suppression resources to contain. (§210)
FLPMA authorizes FS and BLM to grant special use authorizations for right-of-way (ROW) permits across their lands, such as ROW permits for electricity transmission and distribution. (43 U.S.C. §§1761 et seq.)	Adds a new Section 512 to FLPMA and requires the Secretary of Agriculture and Secretary of the Interior to issue guidance regarding procedures and timelines for planning and implementing vegetation management, facility inspections, and operation and maintenance activities within ROWs for electricity transmission and distribution. Authorizes ROW permit holders to develop plans for those activities, specifies plan components, and directs the Secretaries to jointly develop a plan review, approval, and modification process. Directs the Secretaries concerned to identify categories of actions carried out under plans that could be developed using a categorical exclusion. Authorizes ROW permit holders with an approved plan to conduct vegetation management activities without prior approval to respond to emergency conditions and to implement proposed activities if the Secretary concerned does not respond to approval requests within specified time frames. Specifies that the Secretary concerned shall not impose strict liability for damages or injury resulting from the Secretary concerned unreasonably withholding or delaying approval of a plan or failing to adhere to the schedule specified in an approved plan. Limits the Secretary concerned to imposing strict liability for damages or injury resulting from activities conducted pursuant to an approved plan to less than $500,000 per incident. Requires the Secretaries to report requests on their websites and submit a report within 5 years of enactment on the fiscal impact of the strict liability provisions. Encourages both Secretaries, in consultation with the electric utility industry, to develop an employee training program. (§211)
The Cooperative Forestry Assistance Act, as amended, authorizes the Forest Service and BLM to enter into Good Neighbor Agreements (GNAs) with state, tribal, and county governments to allow states to perform authorized forest restoration services—excluding road construction, repair, or maintenance activities—on NFS or public lands and nonfederal land.[f] (16 U.S.C. §2113a)	Authorizes GNA forest restoration activities to include road construction, reconstruction, repair, restoration, or decommissioning activities on defined NFS roads, as necessary to implement authorized forest restoration services. (§212)

Prior Law/Policy	Enacted FY2018 Omnibus (P.L. 115-141, Division O)
Title III. Federal Land Transaction Facilitation Act Reauthorization of 2018 (FLTFA)	
FLTFA required the Secretary of the Interior to establish a program for the sale or exchange of BLM land identified for disposal in land use plans on the date of enactment—July 25, 2000. Proceeds of the land disposals were split between the state (4%) and a new Treasury account (96%). Account funds were available to both the Secretary of the Interior and the Secretary of Agriculture, without further appropriation, for acquisition of lands (and interests) and related administrative purposes. The law set out criteria and priorities for acquisitions, e.g., inholdings. The authority expired on July 25, 2011. (43 U.S.C. §§2301 et seq.)	Permanently reauthorizes and amends the authority in FLTFA. Amendments authorize current information to be used for disposal and acquisition actions, require establishment of a publicly available database of BLM lands available for disposal, and change the criteria and priorities for land acquisitions, among other amendments. (§302)
Title IV. Extension of Secure Rural Schools and Community Self-Determination Act of 2000 (SRS)	
SRS authorized optional payments to counties containing NFS, O&C, and CBWR lands as an alternative to payments based on the prior years' revenue generated on those lands. SRS payments were based on a formula which accounted for historic revenue payments, acreage of land, and the counties' per capita income. The authorized payment level decreased by 5% annually. Payments were disbursed after the fiscal year ended. Authorization for SRS payments originally expired at the end of FY2006, but was extended several times through FY2015 (the last payment was disbursed in FY2016). The SRS statute specified the payments to be allocated among three categories: Title I FS payments were to be used for funding education and roads and BLM payments were to be used for any governmental purpose; Title II payments were retained by the agency to be used for projects on those lands; and Title III payments were to be used for specified county programs, including fire prevention and county planning and emergency services, such as search and rescue operations and firefighting. Required specific payment allocations depending on payment level. (16 U.S.C. §§7101 et seq.)	Reauthorizes SRS payments for FY2017 and FY2018. Sets the FY2017 payment level at 95% of the level of the last authorized payment in FY2015. Changes the required allocations among the titles. Adds law enforcement patrols and training and equipment costs related to emergency services as authorized uses for Title III funds. The reauthorization expired at the end of FY2018. (§401, §402)

Source: CRS.

Notes: According to the version of the Conference Report to accompany H.J.Res. 31, posted on the House Committee on Rules website on February 13, 2019, Section 7 of the Consolidated Appropriations Act, 2019, would change the title of Division O of the FY2018 omnibus to the Stephen Sepp Wildfire Suppression Funding and Forest Management Activities Act. Table only includes provisions affecting forest management, and excludes unrelated provisions, for example, the adjustments to the formula for calculating disaster relief spending in Sec. 102(a)(2) and the provisions in Title V—Strategic Petroleum Reserve Drawdown.

a. The Agricultural Improvement Act of 2018 (P.L. 115-334, §8704), also known as the 2018 farm bill, made technical corrections to the text of the statute.

b. The 2018 farm bill added hazardous fuels projects as a priority project category, among other changes (§8407(b)).

c. *Fire regime condition class* is a classification that describes the relative change between the historical (prior to modern human intervention) frequency and intensity of fire patterns across a vegetated landscape and the current fire patterns. More specifically, the term *fire regime* describes fire's relative frequency and severity in an ecosystem, and *condition class* describes the degree of departure from reference conditions. Fires in Fire Regime Group I occur every 0-35 years, and the fires are low to mixed severity. Fire Regime Group II also

reflects fires with a frequency of 0-35 years, but the fires are severe. Fires in Fire Regime Group III have a frequency of fire that ranges from 35-200 years, and the fires are of low to mixed severity. Fires in Fire Regime Group IV also have a frequency ranging from 35-200 years, but the fires are severe. Fires in Fire Regime Group V have a frequency over 200 years and the fires are severe. With respect to departure from reference conditions, Condition Class 1 represents no or minimal departure; Condition Class 2 represents a moderate departure and declining ecological integrity; Condition Class 3 describes a high departure and poor ecological integrity. HFRA defines Fire Regimes I, II, and III and Condition Class 2 and 3 in 16 U.S.C. 6511. For more information, see S. Barrett et al., *Interagency Fire Regime Condition Class (FRCC) Guidebook Version 3.0*, 2010, http://www.frames.gov/.

d. The report was developed in a collaboration between the Department of the Interior, Department of Agriculture (USDA), the Western Governors' Association, and several other state, county, tribal governments and nongovernmental organizations. See *The Implementation Plan for the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment*, 2002 and revised in 2006, https://www.forestsandrangelands.gov/resources/plan/index.shtml.

e. Dillon, Greg, James Menakis, and Frank Fay, *Wildland Fire Potential: A Tool for Assessing Wildfire Risk and Management Needs*, USDA Forest Service, Rocky Mountain Research Station, RMRS-P-73, 2015, https://www.fs.fed.us/rm/pubs/rmrs_p073/rmrs_p073_060_076.pdf. For more information, see https://www.firelab.org/project/wildfire-hazard-potential.

f. The 2018 farm bill authorized FS and BLM to enter into GNAs with tribal and county governments (§8624).

Table A-2. Comparison of Forestry Provisions in Prior Law to Changes Enacted in the 2018 Farm Bill

(P.L. 115-334)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
Title VIII, Subtitle A. Cooperative Forestry Assistance Act of 1978	
Authorizes up to $10 million in annual appropriations from FY2008-FY2018 to implement the requirements for statewide forest resource assessments and strategies. (16 U.S.C. §2101a)	Reauthorizes funding at the current authorized level of up to $10 million annually through FY2023. (§8101)
Permanently authorizes up to 5% of the funds made available for all CFAA programs to be appropriated to carry out a program to support innovative regional or national forest restoration projects that address priority landscapes. The Landscape Scale Restoration program received average annual appropriations of $14 million from FY2014 through FY2018. (16 U.S.C. §2109a)	Eliminates the existing authorization and establishes a new, but similar, Landscape Scale Restoration competitive grant program to provide technical and financial assistance to encourage collaborative, science-based restoration of priority forest landscapes. Eligible projects must have a 50% cost-share match, must be submitted through the state forest agency or equivalent, must include private or state forest land, must be accessible by wood-processing infrastructure, and must be based on the best available science. Requires the Chief of the Forest Service to consult with the Chief of the Natural Resources Conservation Service and relevant stakeholders regarding program administration and to issue regulations as necessary. Establishes the State and Private Forest Landscape-Scale Restoration Fund to administer program funds and authorizes the fund to receive $20 million annually through FY2023, subject to appropriations. (§8102)
Title VIII, Subtitle B. Forest and Rangeland Renewable Resources Research Act of 1978	
Authorizes a Wood Fiber Recycling Research program and authorizes appropriations up to $10 million annually through FY1996. (16 U.S.C. §1648)	Repeals the Recycling Research program. (§8201)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
Authorizes a Forestry Student Grant program to assist minority and female undergraduate and graduate students and authorizes appropriations of such sums as may be necessary without a sunset date. (16 U.S.C. §1649)	Repeals the Forestry Student Grant program. (§8202)
Title VIII, Subtitle C. Global Climate Change Prevention Act of 1990	
Authorizes the Secretary of Agriculture, in consultation with the Secretary of Energy, to carry out Biomass Energy Demonstration Project program to demonstrate the potential of short-rotation silvicultural methods to produce wood for energy. (7 U.S.C. §6708)	Repeals the Biomass Energy Demonstration Project program. (§8301)
Authorizes the Secretary of Agriculture, upon an agreement with the Secretary of Defense, to study and develop a program to manage forests for biomass growth and carbon sequestration on military installations. (7 U.S.C. §6709)	Removes the specification for the agreement to manage for biomass growth and carbon sequestration and authorizes the Secretary of Agriculture, upon an agreement with the Secretary of Defense, to develop a program to manage forests and lands on military installations. (§8301)
Title VIII, Subtitle D. Healthy Forests Restoration Act of 2003 (HFRA)	
Directs the Secretary of Agriculture to develop an annual program of work which prioritizes **hazardous fuel reduction** projects in the NFS that would protect at-risk communities that have developed a community wildfire protection plan (CWPP), and encourages the Secretary to allocate funding for assistance programs to prioritize hazardous fuel reduction projects recommended by those communities. Defines the wildland urban interface (WUI) as an area within or adjacent to a community identified as at-risk for large-scale wildland fire disturbance event in a CWPP. Permanently authorizes up to $760 million annually in appropriations for hazardous fuel reduction activities on federal and nonfederal land and specifies that at least 50% of the funds should be allocated to projects on federal lands within the WUI. (16 U.S.C. §6511, §6513, §6518)	Authorizes appropriations up to $20 million annually through FY2023 to provide financial assistance grants to states for cross-boundary hazardous fuels reduction projects. Reduces the authorization of appropriations for hazardous fuel reduction activities to $660 million annually through FY2023. (§8401, §8402)
Authorizes the Secretary of Agriculture to provide financial assistance to offset the cost of biomass for owners or operators of facilities which use biomass as a raw material to produce energy. The Biomass Commercial Utilization Program was authorized for up to $5 million in appropriations annually through FY2008. (16 U.S.C. §6531)	Repeals the Biomass Commercial Utilization Program. (§8403)
No comparable provision.	Authorizes the Secretary of Agriculture to establish a water source protection program on NFS land. Watershed restoration or protection projects proposed under a water source management plan must be consistent with the forest plan, and any required environmental analyses may be conducted through a single analysis. Authorizes the Secretary to accept cash or in-kind donations from specified nonfederal partners. Authorizes $10 million in annual appropriations through FY2023. (§8404)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
The Forest Service developed a Watershed Condition Framework to classify watershed conditions across the NFS, identify priority watersheds, and develop restoration action plans in 2011.[a]	Requires the Secretary of Agriculture to establish a Watershed Condition Framework for NFS land. Under the framework, the Secretary is required to evaluate and classify the condition of the watersheds across NFS lands, identify up to 5 priority watersheds in each national forest (and 2 in each national grassland) for protection and restoration, and develop an action plan, in coordination with interested nonfederal landowners and other governments, to prioritize protection and restoration activities on those priority watersheds. Authorizes an emergency designation process if wildfire has significantly impacted a watershed. (§8405)
Authorizes such sums as necessary from FY2004 through FY2008, subject to annual appropriations, for rapid forest insect and disease assessments on federal and nonfederal lands. (16 U.S.C. §6556)	Removes the authorization for appropriations and specifies that the authority terminates in FY2023. (§8406)
Establishes the Healthy Forests Reserve Program (HFRP) to assist private and tribal landowners in restoring and enhancing forest ecosystems using 10-year agreements, 30-year contracts, 30-year easements, and permanent easements for the purposes of species recovery, improving biodiversity, and enhancing carbon sequestration as outlined in restoration plans. Authorizes appropriations for HFRP of $12 million annually through FY2018. (16 U.S.C. §§6571-6578)	Expands the purposes, eligibility requirements, and enrollment priorities of the program to include species recovery and habitat conservation considerations. Authorizes federally recognized Indian tribes to sell permanent easements on lands they own in fee simple. Specifies that restoration plans may include a variety of land management practices if necessary to achieve habitat restoration objectives. Reauthorizes HFRP at the current authorized level through FY2023, subject to appropriations. (§8407(a))
Authorizes the Secretary of Agriculture, upon request from a state governor, to designate landscape-scale insect and disease treatment areas (*I&D areas)* on at least one national forest within the state. Designated areas must be experiencing substantially increased tree mortality or dieback due to insect or disease infestations. Authorizes the use of procedures intended to expedite the environmental analysis, administrative review, and judicial review for specified priority forest health projects within designated areas through FY2018, including the establishment of a categorical exclusion (CE) from the requirements to produce an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA, P.L. 91-109) for those projects, under specified conditions. (16 U.S.C. §6591a, §6591b)	Adds hazardous fuels reduction projects as a priority project category, and reauthorizes the use of the procedures intended to expedite priority projects through FY2023. (§8407(b))
Authorizes appropriations of up to $200 million annually through FY2024 for I&D areas on NFS lands. The program has never received appropriations, although the program has been implemented using other authorized funding sources. (16 U.S.C. §6591a(f))	Removes the authorization of appropriations for I&D areas. (§8408)
Title VIII, Subtitle E. Repeal or Reauthorization of Miscellaneous Forestry Provisions	
The Agriculture Act of 2014 (the 2014 farm bill, P.L. 113-79) required the Secretary of Agriculture to revise the strategic plan for forest inventory and analysis within 180 days of enactment. (16 U.S.C. §1642 note)	Repeals the requirement to revise the forest inventory and analysis strategic plan. (§8501)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
The 2014 farm bill established a semiarid agroforestry research center in Lincoln, NE, and authorized appropriations of $5 million annually. (16 U.S.C. §1642 note)	Eliminates permanent authority for the research center to receive annual appropriations and instead authorizes the program to receive $5 million in annual appropriations through FY2023. (§8502)
The National Forest Foundation Act authorizes the Secretary of Agriculture to provide matching funds to the National Forest Foundation (NFF) for administrative expenses through FY2018. Section 410(b) authorizes $3 million in annual appropriations through FY2018 to provide matching funds for the NFF. (16 U.S.C. §583j)	Reauthorizes the Secretary's authority to provide matching funds for NFF administrative expenses and appropriations at the current authorized level of $3 million through FY2023. (§8503)
The Facility Realignment and Enhancement Act of 2005 established the Forest Service Facility Realignment and Enhancement program to authorize the conveyance of administrative sites or up to 10 undeveloped parcels of up to 40 acres of NFS land. Authorization expired FY2016. (16 U.S.C. §580d note)	Reauthorizes the program from FY2019 through FY2023. (§8504)
***Title VIII*, Subtitle F. Forest Management**	
Part I. Expedited Environmental Analysis and Availability of Categorical Exclusions to Expedite Forest Management Activities	
FS regulations implementing NEPA provide for extraordinary circumstances in which an action that would normally be covered by a CE may have the potential for a significant environmental effect and require additional analysis and action through an environmental assessment or environmental impact statement. FS identified extraordinary circumstances to include the potential for an effect of the proposed action on certain resource conditions (e.g., presence of federally protected species or habitat, wetlands, cultural or archaeological sites) within the project area. (36 C.F.R. Part 220.6(b)) BLM regulations implementing NEPA also provide for extraordinary circumstances to preclude the use of a CE for certain projects, although the conditions differ slightly from those for FS. For example, BLM includes the potential for a project to introduce nonnative species or have a disproportionate effect on low income or minority populations, among others. (43 C.F.R. Part 46.215)	Directs the Secretary of Agriculture, for NFS lands, and the Secretary of the Interior, for the public lands managed by the Bureau of Land Management (BLM), to establish a CE for specified projects of up to 4,500 acres to protect, restore, or improve greater sage-grouse and/or mule deer habitat within one year of enactment. Projects must protect, restore, or improve habitat for either species, or concurrently for both species if the project is located in both mule deer and sage-grouse habitat. Projects must be consistent with the existing resource management plan and may not occur in designated wilderness areas, wilderness study areas, inventoried roadless areas, or any area where the removal of vegetation is restricted or prohibited. Projects may not include any new permanent roads, but may repair existing permanent roads. Temporary roads shall be decommissioned within three years of project completion, or when no longer needed. Directs each agency to apply its respective extraordinary circumstances procedures in determining whether to use the CE. On NFS lands, projects may only occur within designated I&D areas (see above). (§8611)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
Part II. Miscellaneous Forest Management Activities	
Authorizes the Secretary of Agriculture to sell, exchange, or interchange NFS lands for lands of equal value or cash payment and to dispose of small tracts of NFS land, through sale or exchange, of up to $150,000 in value, to improve management efficiencies where NFS lands are interspersed with nonfederal mineral rights owners (40 acres maximum), relieve encroachments due to erroneous surveys (10 acres maximum), or dispose of unneeded federal rights-of-way surrounded by nonfederal lands (no specified acreage limitation). Does not specify the disposition or use of sale proceeds. (16 U.S.C. §521d, §521e)	Increases the maximum value of lands eligible for disposal to $500,000. Adds additional purposes for the Secretary to dispose of NFS lands: parcels which are isolated, inaccessible, or have lost NFS character (40 acres maximum), relieve encroachments due to unintentionally erroneous surveys (10 acres maximum), or parcels which are used as a cemetery or landfill, or for sewage treatment under a special use authorization (no maximum specified). Specifies that proceeds derived from sales related to those additional purposes are to be deposited into the Sisk Fund (as established by 16 U.S.C. 484a) and used for acquisition of land for administrative sites in the state from which the amounts were derived, for acquisitions to enhance recreational access, or to reimburse costs incurred by other small tract sales. (§8621)
Authorizes the Secretary of Agriculture, through the Chief of the Forest Service, to participate in the Agriculture Conservation Experienced Services Program to provide technical services for conservation-related programs on NFS lands. (16 U.S.C. §3851a)	Terminates the authority at the end of FY2023. (§8622)
No comparable provision.	Authorizes the Secretary of Agriculture to lease administrative sites on up to 10 isolated, undeveloped parcels of up to 40 acres each per fiscal year, through FY2023. Requires the Secretary to consult with local and state government officials and provide public notice of the proposed lease, and to provide the local or county government the right of first refusal on the lease. The lease must be for market value, but may be paid in cash or in-kind considerations. Authorizes the Secretary to retain any cash consideration and use for other leases or management of administrative sites. Excludes areas such as designated wilderness and national monuments, among others. Requires the Secretary to submit a list of anticipated and executed leases to Congress annually. (§8623)
Permanently authorizes the Forest Service and BLM to enter into Good Neighbor Agreements (GNAs) with states to perform authorized forest restoration services on NFS or public lands and nonfederal land. (16 U.S.C. §2113a)	Expands the availability of GNAs to include federally recognized Indian tribes and county governments. Specifies that proceeds from GNAs are not considered monies received from the NFS, and thus are not subject to any applicable revenue-sharing laws, and also specifies that through FY2023, funds received by the state through the sale of timber shall be retained and used by the state on additional GNA projects. (§8624)
Authorizes the Secretary of Agriculture to exchange NFS lands for nonfederal land of equal value and in the same state, if it serves the public interest. Cash equalization payments of up to 25% are authorized if the land values are not equal. (43 U.S.C. §1716(b))	Authorizes the Secretary to sell or exchange 30 tracts of NFS land in the Chattahoochee-Oconee National Forest in Georgia, totaling 3,841 acres and identified on maps, for disposal at market value. Authorizes cash equalization payment above 25% and specifies that proceeds are to be used for acquisition of NFS land in the state. (§8625)
No comparable provision.	Designates the Upper Bald River Wilderness and adds land to the Big Frog, Little Frog, Sampson Mountain, Big Laurel Branch, and Joyce Kilmer-Slickrock Wilderness areas on NFS lands in Tennessee. (§8626)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
No comparable provision.	Authorizes the conveyance of specified NFS land in the Kisatchie National Forest in Louisiana. Requires the Secretary of Agriculture to first offer the sale to the Collins Camp Properties and authorizes the Secretary to collect cost-recovery fees from the Collins Camp Properties. Requires the Collins Camp Properties to administer any existing special use authorizations according to the terms of the permit unless the permit holder agrees to relinquish rights. (§8627)
No comparable provision.	Directs the Secretary of Agriculture to sell, at appraised value, 8.75 acres of land (including improvements) administered by Natural Resources Conservation Service to the Riverside Corona Resource Conservation District in CA. Specifies that the Secretary is not required to take any remediation or abatement efforts but is required to meet the disclosure requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) for hazardous substances, pollutants, or contaminants. Further authorizes the Secretary to enter into noncompetitive leases, contracts, and cooperative agreements with the Conservation District. (§8628)
Title IV of the Omnibus Public Lands Management Act of 2009 (P.L. 111-11) establishes the Collaborative Forest Landscape Restoration Program (CFLRP) to select and fund the implementation of collaboratively developed restoration projects for priority forest landscapes. The priority forest landscapes must be at least 50,000 acres and consist primarily of NFS lands, but may include other federal, state, tribal, or private land within the project area. Only 10 proposals may be selected in any given fiscal year, and the Secretary of Agriculture has the discretion to limit the number of proposals selected based on funding availability. Once selected, requires the publication of an annual accomplishments report and submission of 5-year status reports to specified congressional committees. Establishes a fund to pay for up to 50% of the costs to implement and monitor projects on selected proposals and authorizes up to $40 million in annual appropriations to the fund through FY2019. Appropriations to the fund may not be used on project planning and may only fund up to $4 million per proposal per year for up to 10 years. The program received $40 million annually in appropriations between FY2014 and FY2018, and 23 proposals have been selected and funded since the program was established in FY2010. (16 U.S.C. §§7301-7304)	Reauthorizes the program at $80 million annually through FY2023 and adds the House and Senate Committees on Agriculture as recipients of the 5-year program status reports. Also authorizes the Secretary to issue a waiver to extend an existing project up to an additional 10 years. (§8629)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
No comparable provision.	Establishes a pilot program through FY2023, for owners or operators of utility rights-of-way (ROW) on NFS land—excluding national grasslands and land utilization projects—to develop and implement vegetation management plans, subject to approval, and pay for and perform projects on specified NFS lands within and up to 75 feet from the ROW. Establishes specific requirements for participants to be liable for or reimburse FS for the costs of wildfire suppression and damage to FS resources for wildfires caused by the operations of a pilot participant, under certain conditions, while limiting reimbursement costs to up to $500,000 in some circumstances. Requires participants to adhere to FS and some state regulations regarding various fire prevention and vegetation removal activities. (§8630)
No comparable provision.	Directs the Secretary of Agriculture to convey 150 acres of NFS land in Mississippi to the Scenic Rivers Development Alliance, upon its request, for cash consideration at fair market value. Authorizes the Secretary to collect cost recovery fees and retain the sale proceeds. (§8631)
Establishes a program to conduct national and state-level inventories of public and private forest lands and resources. (16 U.S.C. §1642(e))	Requires the Chief of the Forest Service to find efficiencies in the inventory and analysis program through improved use and integration of remote sensing technologies. The Chief is to partner with states and interested stakeholders. (§8632)
Part III. Timber Innovation	
No comparable provision.	Defines *innovative wood product*, *mass timber*, and *tall wood building* and establishes a research, development, education, and technical assistance program—including a competitive grant program—to facilitate the use of innovative wood products for building and construction purposes. (§8641, §8642)
Using existing general authorities, such as the Rural Revitalization Technologies program (7 U.S.C. §6601, see below), granted to dispose of hazardous fuels and other wood residues from the NFS and other forest lands in a manner that supports wood energy and wood products markets, FS issued a request for proposals to receive grants or cooperative agreements to substantially expand and accelerate wood energy and wood products markets ("Forest Service Request for Proposals: 2016 Wood Innovations Funding Opportunity" (80 *Federal Register* 63498, October 20, 2015)).	Establishes a 50% cost-share Wood Innovation Grant program to advance the use of innovative wood products as described in the 2015 request for proposals to expand and accelerate wood energy and wood product markets to support forest management needs on the NFS and other forested lands. Specifies that proposals that use or retrofit sawmill facilities located in counties with average annual unemployment above the national average shall be prioritized for funding. (§8643)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
Authorizes financial assistance for communities to plan and install wood energy systems in public buildings and authorizes appropriations of $5 million annually through FY2018. The program has never received appropriations. (7 U.S.C. §8113)	Changes the name to the Community Wood Energy and Wood Innovation Program and expands it to provide financial assistance for the installation of public or private wood energy systems or the construction of manufacturing or processing plants that use or produce innovative wood products, including mass timber. Cost-share grants may cover up to 35% of the capital cost for installing a community wood energy system or building an innovative wood product facility, capped at a total of $1 million, or up to 50% if special circumstances, as established by the Secretary of Agriculture, apply, such as if the project involves a school or hospital in a low-income community, capped at a total of $1.5 million. A maximum of 25% of the annual grant funds may go to projects proposing innovative wood products facilities. Specifies criteria the Secretary shall consider for awarding the grants, including the extent to which the proposal would displace conventional fossil fuel generation, minimize emission increases, and increase delivered thermal efficiency. Authorizes the program to receive $25 million annually through FY2023, subject to appropriations. (§8644)
Title VIII, Subtitle G. Other Matters	
Authorizes up to $5 million annually through FY2018 for the Rural Revitalization Technologies program to provide technical and financial assistance to facilitate biomass and other small-diameter wood product development and use, specifically for small-scale or community-based business enterprises. The program is funded through allocations from FS's hazardous fuels management program. (7 U.S.C. §6601(d)(2))	Reauthorizes the program at the current authorized level of up to $5 million annually through FY2023. (§8701)
Establishes local Resource Advisory Committees (RACs) to coordinate, review, and recommend projects under Title II of the Secure Rural Schools and Self-Determination Act of 2000 (SRS, P.L. 106-393) to the Secretary concerned to implement projects on NFS lands and specified BLM lands through FY2018 and specifies that RACs shall consist of 15 members, with five members representing a balance of specified community interests. Members must reside within the state in which the RAC has jurisdiction. (16 U.S.C. §7125)	Establishes a process for the Secretary concerned to modify the RAC membership requirements and establishes a pilot program, through FY2023, for the Secretary to designate a regional forester to appoint RAC members in Montana and Arizona. (§8702)
The Tribal Forest Protection Act (TFPA) authorizes the Secretary concerned to enter into an agreement with federally recognized Indian tribes to implement forest or rangeland projects on tribal lands or on federal lands adjacent to tribal lands. (25 U.S.C. 3115a(b)) The Indian Self-Determination and Education Assistance Act (ISDEAA) authorizes federally recognized tribes to enter into contracts or agreements with the federal government to perform specified services. (25 U.S.C. §§5304 et seq.)	Authorizes the Secretary concerned and federally recognized Indian tribes, on a demonstration basis, to enter into ISDEAA contracts to allow tribes to perform administrative, management, and other functions of the TFPA. Specifies that for ISDEAA contracts on NFS land, the Secretary of Agriculture shall carry out all responsibilities delegated to the Secretary of the Interior; the Secretary concerned shall make any decisions required to be made under TFPA and NEPA; and all contracts or projects shall be in accordance with Section 403(b)(2) of the ISDEAA. (§8703)

Prior Law/Policy	Enacted 2018 Farm Bill (P.L. 115-334)
The Wildfire Suppression Funding and Forest Management Activities Act, enacted as Title I of Division O of the FY2018 Consolidated Appropriations Act (P.L. 115-141), establishes a new mechanism for funding federal wildfire suppression activities.	Makes technical corrections. (§8704)
Authorizes the Secretary of Agriculture to issue special use authorizations for the use and occupancy of NFS lands and charge cost recovery fees for processing and monitoring applications and an annual land use rental fee based on fair market value. Directs the Secretary of the Interior to update the fair market value rental fee schedule by August 8, 2006, and directs the Secretary of Agriculture to adopt the same revised fee schedule for NFS lands. (43 U.S.C. §1761, 42 U.S.C. §15925)	Directs the Secretary of Agriculture to promulgate regulations revising the process to issue special use authorizations for communications sites or rights-of-way on NFS lands within one year of enactment. Specifies that the new process must be streamlined, uniform, and standardized across the NFS to the extent practicable; that applications are to be considered and granted on a competitively neutral, technology neutral, and nondiscriminatory basis; and that lease terms must be for a minimum of 15 years. Establishes a fee structure based on the cost of processing and monitoring applications and approvals and establishes a new account for FS to deposit and use those fees, subject to appropriations, for specified activities related to managing communication sites. (§8705)
No comparable provision.	Directs the Secretary of Agriculture and Secretary of the Interior to submit annual reports to Congress on specified wildfire and forest management metrics, such as the number acres treated for wildfire, insect infestation, or disease prevention; number of acres of federal land categorized as a high or extreme fire risk; the federal response time for each fire on greater than 25,000 acres; the miles of roads and trails in need of maintenance or decommissioning; the backlog of maintenance activities for roads, trails, and recreational facilities on federal land; and other measures as needed to maintain, improve, or restore water quality on federal land or improve ecosystem function or resiliency on federal land. (§8706)
No comparable provision.	Authorizes the Secretary of Agriculture to convey 3.61 acres of NFS land (the West Fork Fire Station Conveyance Parcel), upon request from Dolores County, CO, for specified purposes, subject to a reversionary clause, and for no consideration. (§8707)
Establishes a competitive grant program for forestry research. Entities eligible for funding include state agricultural experiment stations, colleges and universities, research organizations, federal agencies, private organizations, and corporations capable of conducting forestry research. (16 U.S.C. §582a-8)	Adds forest restoration as a funding priority in addition to forestry research. Forest restoration grants are to be competitively awarded and may be used to support programs that restore native tree species. (§708)

Source: CRS.

Notes: Table only includes provisions affecting forest management (all of the provisions in Title VIII), and excludes unrelated provisions.

a. For more information, see USDA Forest Service, *Watershed Condition Framework*, FS-977, May 2011, https://www.fs.fed.us/sites/default/files/Watershed_Condition_Framework.pdf.

Author Information

Katie Hoover
Specialist in Natural Resources Policy

Anne A. Riddle
Analyst in Natural Resources Policy

Linda Luther
Analyst in Environmental Policy

Pervaze A. Sheikh
Specialist in Natural Resources Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.