

Frequently Asked Questions about the Pacific Northwest Forest Legacy Act

Q: In a nutshell, what does this bill do?

A: The Pacific Northwest Forest Legacy Act is designed to increase ecologically-based restoration thinning in overstocked plantations and fire-suppressed forests within the geographic scope of the bill. The PNW Forest Legacy Act also includes protection of late-successional forests, new contracting provisions, and requirements for community collaboration.

Q: How was this legislation developed?

A: Congressman DeFazio has been working towards a real resolution of the “forest wars” for decades. Most recently, he has worked with noted scientists (including Professor Norm Johnson and Dr. Jerry Franklin), timber industry representatives, conservation community members, community-based forestry organizations, county commissioners, and others to craft the Pacific Northwest Forest Legacy Act. Over the past year, Congressman DeFazio has taken oral and written comments and feedback on earlier versions of the legislation from dozens of interested constituencies, incorporated many of those suggestions, and has prepared the present discussion draft of the Act. This has been a much more open, transparent, and inclusive process than the way in which legislation is typically developed.

Q: What is the geographic scope of this bill?

A: The Pacific Northwest Forest Legacy Act covers national forests and Bureau of Land Management (BLM) holdings in Oregon, Washington, the portion of northwestern California covered by the Northwest Forest Plan, and a portion of the Modoc National Forest in northeastern California.

Q: How is old growth defined?

A: The Act utilizes the definitions for old growth from the Forest Stewardship Council’s Pacific Coast Standard. “Late successional forest” includes forests in “mature seral stages” and “old-growth” conditions. In turn, forests in “mature seral stages” are those forests that have surpassed the “culmination of mean annual increment” (the period of most rapid growth) and are developing old growth characteristics; within the geographic scope of this PNW Forest Legacy Act, this occurs within forests that are between 80 and 120 years of age. “Old-growth” forests begin around 200 to 250 years of age. This collection of definitions provides flexibility to managers, but also provides assurances that old growth will be protected.

Q: What can happen within late successional forests under the bill? Will ancient forests be logged?

A: Under this bill, there is a presumption that thinning is not appropriate within late-successional forests. Late successional trees – wherever they are found on the landscape – would be protected from logging. However, this is a rebuttable presumption: if credible

scientific analyses demonstrate that thinning within late successional forests is appropriate, then such a project may be proposed.

Q: What is a “credible scientific analysis”?

A: Scientific opinions that are supported by the peer-reviewed literature on the subject.

Q: How does the bill prioritize thinning treatments?

A: On the “wet” west side of the Cascade Crest and in the Klamath-Siskiyou ecological province, the Forest Service and BLM are directed to thin young managed plantations in order to accelerate the development of late successional forest conditions. In dry forests, primarily east of the Cascade Crest, the agencies are directed to enter forests that still contain late successional characteristics and thin out the fire suppressed understory, while still retaining the existing late successional forest features. If a project is located within the wildland-urban interface in dry forests, and local communities have a community wildfire protection plan, then those projects may take place before treating forests with late-successional characteristics.

Q: What happens to the Northwest Forest Plan and the Eastside Screens?

A: Under this PNW Forest Legacy Act, the land allocations of the Northwest Forest Plan, and the provisions of the Eastside Screens, are superseded by the priorities and protections of the PNW Forest Legacy Act. The Eastside Screens only provided interim protection for late successional forests, and the Northwest Forest Plan has failed to deliver on the dual expectations of a predictable supply of timber, and late successional forest protection. These goals are better achieved through the PNW Forest Legacy Act.

Q: What aquatic protections are there in this bill?

A: The Aquatic Conservation Strategy, as amended, would be implemented across the geographic scope of the PNW Forest Legacy Act.

Q: How does the bill deal with roads?

A: The PNW Forest Legacy Act stipulates that no permanent roads will be constructed, and that there will be no net increase in temporary roads at the completion of a thinning project.

Q: What about Inventoried Roadless Areas?

A: In general, the PNW Forest Legacy Act encourages federal forest management in already roaded areas, and discourages new roads. Specifically, the “Roadless Rule” (an administrative regulation) would still apply to Inventoried Roadless Areas within the geographic scope of the PNW Forest Legacy Act.

Q: What happens to the Late-Successional Reserves (LSRs)?

A: Under the PNW Forest Legacy Act, the LSRs would be superseded by the priorities and protections of the PNW Forest Legacy Act. Because late successional trees would be protected wherever they are located on federal lands within the geographic scope of PNW Forest Legacy Act, and because thinning would create more late successional forest in the future, there is no longer a need for the reserve system. Moreover, eliminating the LSR

land allocation allows for more thinning to occur wherever it is ecologically needed, not just within or outside of “circles on a map.”

Q: What is an “old forest recruitment area”?

A: Forest scientists tell us that old-growth forests that have experienced disturbances, such as wildfire, and were subsequently left unlogged, currently represent one of the most uncommon habitat conditions in our Northwestern forest landscapes. Science also tells us that the most effective path to re-establishment of fully-functional old growth is to allow recently disturbed forests that were old growth before the disturbance to undergo natural development into old-growth forests again. Therefore, the PNW Forest Legacy Act directs the Forest Service and BLM to designate “old forest recruitment areas:” old growth forests that experience natural disturbance. These areas would be designated as they occur after the date of enactment.

Q: So, would the agencies need to designate old forest recruitment areas all over the geographic scope of the PNW Forest Legacy Act right away?

A: No. Old forest recruitment areas would only be designated as they occur in the future. No areas would be designated until they were affected by fire, wind, volcanic eruption, or other natural disturbance event. The agencies have the discretion to determine how large these areas would be, but all significant areas must be designated.

Q: Is salvage logging permitted?

A: In general, salvage is not permitted within old forest recruitment areas, unless credible scientific analyses indicate that the adverse effects of inaction outweigh the adverse effects of active management.

Q: What expedited environmental and administrative review provisions are in this bill?

A: There is a categorical exclusion for thinning of trees not more than 14 inches dbh (diameter at breast height) on not more than 500 acres. In addition, the bill creates a new environmental and administrative review process that combines features of the Resource Advisory Committees from the Secure Rural Schools and Community Self-Determination Act (“county payments”) and the Healthy Forests Restoration Act.

Q: Will there be more or less administrative appeals if the PNW Forest Legacy Act becomes law?

A: The PNW Forest Legacy Act will result in far less administrative appeals of timber sales, because the legislation protects late-successional forest from logging. Logging of old forests is the main reason so many administrative appeals have been filed. In addition, the PNW Forest Legacy Act directs the federal forest agencies to log only for the purposes of ecological restoration, something that is as popular with the public as old tree logging is unpopular, so there will be less challenges of restoration thinning projects. Finally, the PNW Forest Legacy Act sets up a quicker and better alternative to administrative appeals so that conflicts can be resolved without filing a lawsuit.

Q: Will there be more or less litigation if the PNW Forest Legacy Act becomes law?

A: The PNW Forest Legacy Act is designed to result in far less litigation, for at least three reasons. First, it will be explicitly illegal to cut old growth forests. Under today's laws, it is not illegal to log old growth forests per se, unless that activity does not comply with other substantive or procedural laws...which is often a subjective determination, and gives rise to a great deal of litigation. Second, the legislation will direct federal forest agencies to concentrate on thinning that creates more old growth forest. The American public (nationally and locally) has repeatedly stated that it wants to protect old growth forests, and that they support more timber harvest that will create more old growth forests. This legislation will achieve both goals of protection and creation of old growth, and more timber harvest that benefits local mills and communities. Third, thinning projects required by this legislation will be developed collaboratively by citizen groups with diverse interests. Such collaborative groups are working in several places in Oregon, Washington, and California, resulting in the right kind of timber flowing to mills and communities, and the right kind of old trees still standing.

Q: Are the Resource Advisory Committees (RACs) in this bill the same as the ones under the Secure Rural Schools legislation?

A: No, but RACs chartered under Secure Rural Schools can be reauthorized for the purposes of the Pacific Northwest Forest Legacy Act. Whereas the RACs created by Secure Rural Schools allocated money for projects, the RACs in the PNW Forest Legacy Act would have authority to recommend projects for implementation, and would arbitrate administrative challenges to a decision to implement a project. The language in the PNW Forest Legacy Act that creates the new RACs is nearly identical to the language in the Secure Rural Schools legislation that created those RACs.

Q: Are the RACs required to monitor project implementation?

A: No, but they may do so if they choose, just as they were permitted to do under the Secure Rural Schools legislation.

Q: How will nationally recognized environmental groups meet the requirements to reside in the state in which the project is being proposed?

A: Many national environmental groups have local chapters or staff representatives that are located in the state in which a project may be proposed. For example, a representative from an Oregon chapter of the Sierra Club could fill the spot allocated to a national environmental group.

Q: Does the Regional Forester or State Director fill an additional seat on the RAC?

A: Only insofar as that individual makes a final decision implementing a project. Otherwise, they do not need to attend RAC meetings.

Q: How would a project be developed and implemented under this bill?

A: First, a member of the public or the agency (called a "petitioner") brings a short proposal for thinning to the RAC for consideration. The proposal would have to contain certain information that is much like requests for Secure Rural School RAC funding currently contain, and can be thought of as a "letter of inquiry" that grant-seekers often

prepare. Second, if the RAC recommends a project for implementation, it must inform the agency within 15 days of that recommendation, which has another 15 days to approve or disapprove the recommendation (much like with current RAC recommendations for funding of Secure Rural Schools projects, the agency is not required to accept the recommendation of the RAC). Next, once the agency approves the RAC's recommendation, the agency begins the environmental analysis and public participation process, which are the same procedures and processes required by the Healthy Forest Restoration Act. The agency has one year to complete this process, and to issue a proposed decision. Upon publication of the proposed decision, the public has 30 days to administratively challenge the decision. This challenge is made in writing to the RAC, which makes a recommended final determination on the administrative challenge and submits that final determination to the agency. The agency has 5 days to submit the final determination to the Regional Forester (Forest Service) or State Director (BLM) for his or her signature. The signature of the Regional Forester/State Director is a final agency action for the purposes of judicial review: there is no additional administrative review of a project other than that provided in front of the RAC. Implementation can take place as soon as the Regional Forester or State Director signs the decision.

Q: Are there any restrictions on judicial review?

A: No, other than existing prudential and traditional standing and exhaustion requirements.

Q: Are project petitioners required to propose a project that will result in 10-years worth of work?

A: No, but projects will be evaluated based on their ability to create a long-term program of work. One of the goals of this legislation is to create sustainable, family wage jobs, and a predictable supply of timber. Projects that are able to achieve that goal better than others will fare better in the RAC recommendation process.

Q: How much volume, and how many acres, are we talking about?

A: That's a hard question to answer definitively. However, the Forest Service estimates that there are at least 9 million acres in need of thinning, which would yield between 10 and 20 billion board feet over the long term. The BLM estimates that there are about 1.1 million acres that could benefit from thinning, and would produce about 237 million board feet annually over the next 25 years. In a recent newspaper article, a BLM manager was quoted as saying that there are 6 billion board feet of trees less than 12 inches dbh within 1,000 miles of roads that could be thinned on a single BLM Resource Area. (These are estimates only, and there are no "targets" in the PNW Forest Legacy Act.) For context, in FY 2006, the most recent year for which information is available, the Forest Service in Region 6 cut a total of 382.1 MMbf (million board feet), which is close to the six-year average (380.2 MMbf), but far below the Northwest Forest Plan PSQ of 757 MMbf per year. Similarly, over the past 6 years (2001 – 2006), BLM has cut an average of 99.3 MMbf per year; the PSQ under the Northwest Forest Plan is 203 MMbf. The actual supply of timber will be based on ecological restoration needs, which are quite substantial. It is anticipated that the Pacific Northwest Forest Legacy Act will provide more timber volume more reliably than the status quo, because the agencies will be

directed to focus their timber program on thinning noncontroversial forest stands and to protect old growth forests.

Q: Does this bill allow the use of designation by description and designation by prescription outside of the stewardship contracting authorities?

A: Yes.

Q: Can the agencies use all kinds of contracts to implement projects under this Act?

A: Yes. The agencies may use the existing stewardship contracting authorities, as well as traditional timber sales and service contracts, to implement thinning projects under this Act.

Q: Will local and non-local contractors be evaluated the same way?

A: Yes. However, contractors that are able to demonstrate community benefit by expanding local employment, processing timber locally, adding value to timber products, or similar actions will fair better during the evaluation process.

Q: What about mining, off-road vehicles and other activities now occurring on federal forestlands?

A: The PNW Forest Legacy Act directs federal forest agencies to concentrate on restoration thinning and to also protect and restore old-growth forests. It does not address other public forestland uses. The statutes, regulations, and policies that apply to such other activities would still apply.

Q: How does the PNW Forest Legacy Act address the shortage of funds plaguing federal forest agencies?

A: The agencies would have additional authority to carry out their activities in a more efficient manner (designation by description, designation by prescription, etc.) and also utilize “retained receipts” provisions that allow local administrative units to keep the revenues from the sale of timber to produce more restoration projects.

Q: How does the PNW Forest Legacy Act affect other laws pertaining to federal forest management such as the Endangered Species Act, National Forest Management Act, O&C Act, Healthy Forest Restoration Act, etc.?

A: All of these existing statutes would still be the law of the land. The PNW Forest Legacy Act would provide specific direction for forests located within a specific geographic range. It is a new method of doing business on federal forestlands within that range.

Q: Isn't the language of the bill quite detailed and specific for a congressional statute that addresses natural resource management?

A: Sometimes Congress gives broad direction and leaves vast discretion to administering agencies; for example, the National Environmental Policy Act is rather vague, while allowing the Council on Environmental Quality and other agencies to draft implementing regulations. In other cases, like with the Endangered Species Act, Congress is very specific and limits agency discretion. Because the forest types and conditions in the area

covered by the PNW Forest Legacy Act are so varied, the bill gives both specific direction to the federal forest agencies, while also allowing the agencies to exercise their discretion regarding restoration activities. The legislation is as detailed as it is because management of PNW federal forests has been very controversial, and it is time for Congress to provide specific direction regarding the management of those forests in order to move on from the gridlock that paralyzed the region for decades.

Q: Are the provisions in this bill permanent?

A: No. They last for 30 years, and then expire.