



FIX AMERICA'S FORESTS

Reforms to Restore National Forests and Tackle the Wildfire Crisis

How markets and partnerships will promote forest ecosystem health and reduce wildfire risk



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Large and destructive wildfires are becoming more common across the West, with new records set almost every year. Although several factors contribute to this trend, a significant one is the declining health of the nation's forests. The U.S. Forest Service, which manages 193 million acres of land, reports a backlog of 80 million acres in need of restoration and 63 million acres facing high or very high risk of wildfire.

While improving forest health and mitigating wildfire risk will require long-term policy changes, forest restoration projects offer a way to address these issues in the short term. By promoting landscapes with healthy forests and diverse forest types, restoration projects can reduce the risk of megafires and provide other conservation benefits. Drawing lessons from successful partnerships, *Fix America's Forests* recommends actionable reforms that can help the Forest Service work better with states, tribes, and private partners to fix America's forests.



A view of the Forest Resilience Bond project site in Tahoe National Forest in California.
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Recommendations

- Improve and expand categorical exclusions
- Limit Endangered Species Act consultations to projects with on-the-ground impacts
- Require lawsuits to be filed quickly and clarify fire risk effects on injunction decisions
- Exclude prescribed burns from state emissions calculations
- Allow the Forest Service to enter longer-term contracts and cooperative agreements
- Promote and expand Good Neighbor Authority
- Establish a Forest Service restoration fund for long-term cost-share partnerships
- Open timber markets for export

Encourage Collaboration Rather Than Conflict

1. Make categorical exclusions easier to apply and expand acreage limits.

- The NEPA process and resulting uncertainties make it difficult for states, tribes, conservation groups, and other stakeholders to partner with the Forest Service on forest management projects.
- Acreage limits on categorical exclusions under NEPA for forest restoration projects should be increased.
- Categorical exclusions for wildfire resilience projects should be made easier to apply by clarifying or eliminating vague standards that invite conflict. (See 16 U.S.C. § 6591(d).)

2. Avoid analysis paralysis by limiting Endangered Species Act consultations to projects with on-the-ground effects to protected species.

- The Ninth Circuit's *Cottonwood* decision and other precedents subject the Forest Service and its partners to continually changing rules. The Obama administration's Forest Service even asked the Supreme Court to overturn the Ninth Circuit's holding for this reason.
- Congress could overturn *Cottonwood* and adopt the Tenth Circuit's approach nationwide, under which consultation is not required for a forest plan nor for similar decisions with no immediate on-the-ground impacts to imperiled wildlife. Individual projects would still be subject to full consultation requirements.

3. Make litigation less disruptive by requiring lawsuits to be filed quickly and clarifying how fire risks and forest health should affect injunction decisions.

- While litigation can be a source of frustration for Forest Service personnel, the added expenses, delays, and uncertainty may be even more disruptive for private partners.
- Congress should require lawsuits challenging forest restoration projects to be filed soon after a project is approved and expedite cases concerning such projects by limiting how long preliminary injunctions can remain in place before a court ultimately decides a case.
- Congress should impose a heavier burden to justify blocking a forest restoration project in areas of high fire risk that border populated areas, such as limiting injunctions to cases where moving forward would be objectively reasonable.

4. Allow prescribed burns to be excluded from state emissions calculations.

- Smoke from prescribed burns counts against state Clean Air Act compliance, despite both the EPA and states recognizing prescribed burns are an important forest restoration tool that reduces dangerous air pollution overall from wildfires.
- Smoke from prescribed burns should be excluded from state emission calculations, in effect crediting them for avoiding worse air pollution from a later wildfire. A reform like the proposed National Prescribed Fire Act would codify this process.

Increase the Forest Service's Ability to Partner with Others

5. Scale up public-private partnerships by empowering the Forest Service to enter longer-term contracts and cooperative agreements.

- Current stewardship contract authority allows the Forest Service to enter into 10-year stewardship contracts with outside entities, and, in some high-risk fire areas, contracts can even be extended for up to 20 years. (See the 2003 Appropriations Act, P.L. 108-7.)
- However, 10 years often isn't enough. Stewardship contract authority should be amended to grant the Forest Service authority to enter into longer-term contracts and cooperative agreements for forest restoration work with the flexibility to easily extend contracts.

6. Allow the Forest Service to be a "Good Neighbor" through longer, more flexible partnerships with states, tribes, and counties.

- Good Neighbor Authority has helped the Forest Service partner with states, tribes, and counties to restore national forests as part of a broader, landscape-level approach and should be used more often.
- Current restrictions on GNA funding being spent only on federal lands should be amended to allow money to be spent on state, tribal, county, or private lands within the GNA project boundary.
- While states, counties, and tribes can all enter into GNA agreements with the Forest Service, only states can receive a share of revenues or federal compensation. Rules should be updated to treat counties and tribes as equal partners. (See proposed S.4127, Treating Tribes and Counties as Good Neighbors Act of 2020.)

Open Markets

7. Promote innovative wood markets by establishing a Forest Service restoration fund for long-term cost-share partnerships.

- Under the Antideficiency Act and appropriations rules, the Forest Service cannot obligate funds in advance of appropriations or after funding has expired.
- Private actors are unlikely to make the substantial investments required to expand milling capacity and innovate processing methods for small-diameter wood without long-term financial commitments to restoration projects.
- Congress and the Forest Service should work with the National Forest Foundation to create a flexible endowment fund that could be used for long-term cost-share forest restoration agreements.

8. Open timber markets for export.

- Longstanding legislation restricts timber exports from federal lands across the West to ensure a continuous supply of timber to local mills and maintain local capacity.
- However, due to a shift in federal forest management, harvest volumes have fallen substantially, and there is not enough local mill capacity to remove the vegetation needed to reduce fire risks.
- Removing export and substitution restrictions, such as those in the Foreign Assistance Act of 1968, the Interior and Related Appropriations Act of 1974, and the Forest Resources Conservation and Shortage Relief Acts of 1990 and 1997, would open western timber markets to more buyers, increasing the potential for forest restoration.

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