

OUTDOOR ALLIANCE

November 15, 2024

Senator Joe Manchin
Chair, Energy and Natural Resources
Committee
306 Hart Senate Office Building
Washington D.C. 20510

Senator Debbie Stabenow
Chair, Committee on Agriculture,
Nutrition, and Forestry
731 Hart Senate Office Building
Washington, D.C. 20510

Senator John Barrasso
Ranking Member, Energy and Natural
Resources Committee
307 Dirksen Senate Office Building
Washington, DC 20510

Senator John Boozman
Ranking Member, Committee on
Agriculture, Nutrition and Forestry
555 Dirksen Senate Office Building
Washington, DC 20510

Re: H.R. 8790, Fix Our Forests Act

Chairs Manchin and Stabenow and Ranking Members Barrasso and Boozman:

On behalf of the human-powered outdoor recreation community, we write to share our perspectives on H.R. 8790, the Fix Our Forests Act (FOFA), which recently passed the House. As frequent visitors to our nation's public forests, the outdoor community supports science-based actions needed to build resilience to wildfire across our communities and ecosystems. While a number of provisions in FOFA would further this goal, others would unacceptably weaken environmental analysis and stakeholders' ability to inform forest management projects on federal lands. As a result, although we support some elements of the bill, Outdoor Alliance cannot support FOFA as written. We have outlined our concerns and recommendations below with the goal of informing a potential wildfire and forestry component of a year-end public lands package.

Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain



OUTDOOR ALLIANCE

bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation's public lands, waters, and snowscapes.

The outdoor recreation community and the outdoor economy are profoundly affected by the wildfire crisis. While wildfire is an essential ecological process across many landscapes visited by recreationists, fire suppression, removal of Indigenous burning, logging, climate change, and other changes over the past two centuries have altered the fire environment, causing an increase in extreme and destructive wildfires in many areas of the U.S. Severe wildfires degrade the outdoor recreation experience through closures, smoke, damage to scenic values and recreation infrastructure, and other economic and ecological impacts.¹ As these trends intensify, the outdoor community is increasingly invested in wildfire resilience at both the community and landscape scale. In this regard, we especially support the consensus-based recommendations of the Wildland Fire Mitigation and Management Commission (hereinafter the "Commission"), which range from building resilient landscapes, to strengthening our fire response, to hardening communities, to workforce development, to post-fire rehabilitation, and beyond.²

FOFA would address various aspects of the wildfire crisis, particularly around fuels reduction on federal lands. We note that the House-passed version of FOFA is considerably improved over earlier drafts, and we appreciate the bill sponsors' willingness to remove some of the most problematic sections of the discussion draft of the bill. Still, we remain strongly opposed to the House-passed bill's provisions on litigation reform, expanded categorical exclusions, and Endangered Species Act consultation. We have described these concerns in detail below.

Additionally, FOFA does not address a number of urgent wildfire policy needs identified by the Commission, particularly around expanding beneficial fire, protecting public health, and building a sustainable wildland fire workforce. Outdoor Alliance strongly supports the following bills which are built directly from the Commission's recommendations and would address these needs:

- National Prescribed Fire Act of 2024 (S. 4424/H.R. 8557)

¹ See, Jamie Ervin, *Wildfire and Outdoor Recreation in the West: How Recreationists Can Support a Fire-Resilient Future*, Policy Report, Outdoor Alliance, Washington, D.C. (2023).

² See, Wildland Fire Mitigation and Management Commission, *ON FIRE: The Report of the Wildland Fire Mitigation and Management Commission* (2023).



OUTDOOR ALLIANCE

- Modernizing Wildfire Safety and Prevention Act of 2024 (H.R. 8656)
- Enhancing Mitigation and Building Effective Resilience Act (S. 4628)
- Wildland Firefighter Paycheck Protection Act of 2023 (S.2272/H.R. 5169)
- Fire Ready Nation Act (S. 4237/H.R. 8449)

We recommend that these bills, or key components thereof, be included in a year-end package.³

Our concerns, recommendations, and support for select sections of FOFA are outlined below.

Support for Select Sections of FOFA:

Despite these overarching critiques, there are a number of provisions in FOFA that we support. These include:

- **Sec. 102. Fireshed Center:** Establishes an interagency center to aggregate data around wildfire management and to provide cross-government coordination related to wildfire decision support.
- **Section 103. Fireshed Registry:** Establishes a modern publicly-accessible data repository for wildfire and forest health information.
- **Section 105. Fireshed Assessments:** Requires federal land managers and partners to collect certain data related to wildfire risk and to use this data to plan strategic wildfire mitigation activities.
- **Sec. 113. Intra-agency strike teams:** Creates strike teams to assist project planning and implementation for fireshed management projects.
- **Sec. 201. Community wildfire risk reduction program:** Establishes an interagency program for reducing wildfire risk in the wildland-urban interface and creates a one-stop grant portal for certain wildfire funding sources.
- **Sec. 202. Community wildfire defense research program:** Expands the Joint Fire Science Program's work to identify strategies for home and community hardening.

³ See, Outdoor Alliance, Outdoor recreation community support for wildfire legislation, Letter to Bipartisan Wildfire Caucus (Aug. 1, 2024), available at https://static1.squarespace.com/static/54aabb14e4b01142027654ee/t/66abb364faa8593eaa7f30b5/1722528612392/OA+Wildfire+Legislation+Support_FINAL.pdf.



OUTDOOR ALLIANCE

- **Sec. 302. Accurate hazardous fuels reduction reports:** Increases transparency related to hazardous fuels management on federal lands.
- **Sec. 401. Wildland Fire Management Casualty Assistance Program:** Establishes a Department of Interior casualty assistance program for families of wildland firefighters who are killed or injured in the line of duty.

Additionally, although we support several portions of Title I, Subtitle A, Addressing Emergency Wildfire Risks in High Priority Firesheds, this subtitle would benefit from additional language expanding on the factors that land managers consider when planning and prioritizing wildfire mitigation and forest health projects. As written, Sections 101, 103, and 105, focus heavily on addressing wildfire exposure to the built environment and municipal watersheds, as well as the risk of forest conversion due to wildfire. We support these objectives and recommend that these sections be expanded to encourage land managers to also plan and prioritize treatments based on additional factors like protecting recreation infrastructure and facilitating the reintroduction of beneficial fire. This could be accomplished by expanding the list of secondary objectives from Section 105(a)(1)(B)(ii) and incorporating this list into Sections 101 and 103.

Opposition to Select Sections of FOFA:

While we are pleased that several of the most problematic sections of the earlier iterations of FOFA have been removed, the House-passed bill still contains several provisions that we cannot support. These are described below:

Section 106. Emergency Fireshed Management

Section 106 addresses environmental analysis as it relates to fireshed management projects directed by Title I of FOFA. Specifically, Section 106 establishes that existing emergency authorities for NEPA, the Endangered Species Act (ESA), and the Historic Preservation Act, apply to fireshed management projects. This section also expands several existing NEPA categorical exclusions (CEs) from the Healthy Forests Restoration Act and the Infrastructure Investment and Jobs Act from 3,000 to 10,000 acres and clarifies that these expanded CEs apply to fireshed management projects.



OUTDOOR ALLIANCE

In our experience, landscape scale forest management projects require thoughtful planning to ensure that treatments are designed strategically. The NEPA process is the primary way that outdoor recreationists participate in the decision making process on federal public lands and come to understand projects that affect recreation infrastructure and landscapes that we care about. Shortcutting these planning processes through greatly-expanded CEs unnecessarily limits our and other stakeholders' ability to inform how fire-shed management projects address outdoor recreation and conservation concerns at the local level. We are concerned that, under Section 106, federal agencies will be pressured to move forward with projects that lack public support, ultimately leading to controversy and litigation around critical wildfire mitigation work. Moreover, while we are unaware of any map delineating the areas where the Section 106 provisions would apply, we assume based on Section 101 that these authorities could apply over vast areas of America's public lands, including a number of high-value recreation landscapes.⁴ Implementing projects under these very large CE's over such a broad area would almost certainly lead to significant environmental impacts in areas that recreationists value.

Finally, even if the CE expansions are removed from the bill, we remain concerned with the definition and list of objectives for fire-shed management projects listed in Section 106(a)(2). We recommend adding additional objectives around protecting recreation infrastructure, facilitating the use of beneficial fire, and enhancing ecological integrity in line with the Forest Service's 2012 Planning Rule.⁵ We also recommend deleting 106(a)(2)(E), which allows for fire-shed management projects focused on removing trees based primarily on basal area. Finally, we recommend removing Section 106(a)(3)(B)(ii)(II) and instead clarifying that fire-shed management projects must occur in accordance with an applicable land management plan.

⁴ Section 101, Designation of Fire-shed Management Areas, states that fire-shed management areas shall be designated in any of the high-risk fire-sheds identified in the Forest Service's Wildfire Crisis Strategy and in any fire-sheds identified in as being in the top 20% for wildfire exposure as identified by the Rocky Mountain Research Station of the Forest Service in 2019 based on wildfire exposure to communities, municipal watersheds and tribal water supplies, and risk of forest conversion due to wildfire.

⁵ 36 C.F.R. § 219.19 defines *Ecological Integrity* as the "quality or condition of an ecosystem when its dominant ecological characteristics (for example, composition, structure, function, connectivity, and species composition and diversity) occur within the natural range of variation and can withstand and recover from most perturbations imposed by natural environmental dynamics or human influence."



OUTDOOR ALLIANCE

Section 121. Commonsense Litigation Reform

Outdoor Alliance strongly opposes Section 121, which would severely limit stakeholders' ability to seek judicial relief for fire-shed management projects. The ability to challenge agency decisions that might cause adverse harm to a resource of concern—including impacts to recreation resources—is core to the public process afforded by NEPA and other environmental laws. Section 121 essentially allows agencies to ignore public input and proceed with projects that lack stakeholder support.

Specifically, this section would alter the existing standards for injunctive relief by establishing an extremely high bar for courts to enjoin forest management projects that propose unacceptable adverse impacts to important public lands resources like recreation sites, watersheds, or sensitive species. Instead, FOFA would direct a court to remand the issue to the relevant agency and direct the agency to address any wrongs done by the project within 180 days. Meanwhile, the agency may carry out portions of the project in question and cannot prepare a new environmental document. Finally, this section would bar claims seeking judicial review unless they are submitted within 120 days of a decision document being posted *and* the party seeking judicial review submitted a detailed public comment on the issue for which they are seeking redress (if a public comment period was held). Together, these provisions will reduce agencies' accountability to the American public and will lead to less collaboration on forest management projects.

Section 122. Consultation on Forest Plans.

Section 122, intended as a *Cottonwood* "fix" provides that USFS and BLM are not required to reinitiate consultation under Section 7 of the ESA when new information indicates that implementation of land management plans may be harming a listed species. On-the-ground conditions on public lands are changing rapidly due to climate change and related stressors like forest pathogens and high severity fire. ESA consultation is necessary to ensure that land management plans are adaptable in a way that protects listed species in light of these changes. Effects to ESA listed species are often a marker for overall problems with landscape health, and the opportunity to view wildlife is often a core and valued part of recreational experiences on public lands and waters. Section 122 would undermine the ESA and



OUTDOOR ALLIANCE

allow agencies to ignore relevant information while implementing land management plans.

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Thank you for considering our community's input. We look forward to working with you to pass a package of forward-looking wildfire, forestry, and public lands priorities in the 118th Congress.

Best regards,



Louis Geltman
Vice President for Policy and Government Relations
Outdoor Alliance

cc: Rep. Bruce Westerman, Chair, House Natural Resources Committee
Rep. Raúl Grijalva, Ranking Member, House Natural Resources Committee

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Ben Gabriel, Executive Director, American Alpine Club
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