

Oregon Wild analysis of Senator Wyden's "Oregon Forest Restoration and Old Growth Protection Act of 2009" (OFROGPA)

Narrative summary

Senator Wyden's new draft "Oregon Forest Restoration and Old Growth Protection Act of 2009" is out for public review until May 1. While some of the changes from the draft released last summer have increased protections for salmon and clean water, others have put mature and old-growth forests at greater risk. We believe that Senator Wyden has the right goals—to protect old-growth forests and restore other forests through conservation thinning and other restoration—but his bill does not strike the right balance. The proposal does not focus on wholistic restoration, but rather emphasizes continued active management and logging at the expense of the long-term health of forests and watersheds.

Mature and old-growth forests provide communities with clean drinking water, critical habitat for salmon and other wildlife, and are an important part of the quality of life and identity of Oregon and the entire Pacific Northwest. A growing body of research has also found that mature and old-growth forests can also play an important role in combating global warming. In Oregon alone, forest growth, primarily on federal land, sequesters nearly 50% of the state's annual greenhouse gas emissions.

In a nutshell, Wyden's proposal lays out forest management principles for all lands in Oregon managed by the US Forest Service and Bureau of Land Management - retaining and building off of the Northwest Forest Plan. Priorities for management include reducing the risk of unnaturally severe fire in dry forests and accelerating the development of complex structure in moist forests. To achieve these goals, the bill would protect all trees and forest stands older than 120 years in moist forests and 150 years in dry forests covered by the Northwest Forest Plan. It would protect trees larger than 21" in diameter in dry forests outside the NWFP. Areas protected for old-growth habitat in the Northwest Forest Plan (LSR) would continue to have these protections, while areas open for more extensive logging (matrix) under the Plan would continue to be more intensively managed. Streams and riparian areas would all have to meet an aquatic conservation strategy, but the extent of this strategy is unclear and to be developed. Clear-cutting would not be allowed, and all logging would have to retain 35% of the basal area. Once the bill is enacted, existing logging contracts would be modified to stop ongoing old-growth logging projects.

One of the key provisions of the bill mandates large scale collaborative restoration projects across the state. These projects can include thinning in plantations, prescribed fire, stream restoration, and reduction of road impacts. Mandated collaboration groups - with a less than ideal makeup and decision making process - are required to develop large landscape-level restoration proposals. This provision would carve out large exemptions from the National Environmental Policy Act (NEPA), which requires scientific analysis of the impacts of logging projects before they go forward. Under the Wyden plan, collaborative restoration and logging projects of up to 25,000 acres would be allowed to go forward under a Categorical Exclusion (CE), an exemption from normal scientific reviews. The public is squeezed out of commenting on restoration projects under this provision, given a short window to review a near-final proposal, and a short objection period with a very limited scope.

In addition, an amended appeal process for non-collaborative thinning and restoration projects is also proposed, reducing the timeframe for the public to comment on or challenge any proposed management.

Wyden's plan encourages and subsidizes removal and use of biomass from restoration projects. This provision opens up nearly all public lands to biomass extraction - removal of slash and small trees - to be burned for energy production. Such an authority - without additional sideboards - can lead to excessive extraction, without ecological benefit, and harm other public values. Wyden's proposal also encourages the use of Stewardship Contracting Authorities, which can help benefit local, rural communities and encourage non-commercial restoration activities. To further encourage restoration contracting, the bill also gives subsidies for equipment with low-impact on the environment. However, the bill also uses Stewardship to recouple forest management proceeds to county coffers - an idea

whose time has come and gone. The draft legislation, bearing a total cost of \$50 million, also includes a monitoring plan to see how the new provisions are working.

Among the most controversial provisions in the Wyden plan is language that would allow the continued logging of mature and old-growth forests on BLM land in Western Oregon. These lands, which were included in the original Northwest Forest Plan, were targeted for logging by the Bush administration under their "Western Oregon Plan Revisions" or WOPR. The WOPR would drastically increase old-growth logging on 2.5 million acres of western Oregon forests managed by the BLM. Wyden's plan would allow for the continued logging of mature and old-growth forests—trees up to 160 years old—under the WOPR. This exemption for BLM lands excludes protection for an additional 300,000 acres of older forests between 120 and 160 years old.

Improvements to Senator Wyden's bill should include providing clear protections for mature and old-growth trees - generally over 80 years old in moist forests in the NWFP area, and generally trees 21" + (or 120 years) in dry forests. The bill should recognize the important role mature and old-growth forests play in storing carbon. Management of federal forests should work to restore and enhance public values like water quality, carbon storage and climate change preparation, habitat for native wildlife species, soil conservation, and compatible scenic, recreational, and amenity values. Commodity extraction such as wood products should be provided only as secondary by-products of such management. Public involvement and right to challenge management decisions should be maintained. The best available science should be used to develop management principles and strategies, and to review restoration proposals.

In general, the bill...

- Have your cake and eat it too approach: has both economic and ecological objectives without regard for conflict.
- Geographic scope includes all lands in Oregon managed by the USFS or BLM.
- Forest Management Section (Sec. 4) lays out requirements for Forest Service and BLM, in moist and dry forest types.
 1. Prioritizes efforts to reduce the risk of unnaturally severe fire in dry forests and accelerate the development of complex structure in moist forests, and assist CWPPs
 2. Within moist forests covered by the NWFP, places a prohibition on harvesting old growth and older mature stands and trees (>120 y.o.), with exceptions
 3. Within dry forests covered by the NWFP, places a prohibition on harvesting old growth and older mature trees >150 y.o., with exceptions
 4. Within forests outside the NWFP, places a prohibition on harvesting old growth and older mature trees - defined as more than 21" DBH or that are Keen class 3 or 4 Prohibits use of certain restoration authorities in IRAs
 5. Requires some kind of aquatic conservation strategy
 6. Mandate to manage matrix and AMAs for economic objectives and regen harvest
 7. Treats LSRs consistent with the Northwest Forest Plan
 8. Establishes basal area targets by PAG based on historic conditions and climate change. Requires retention of 35% of "initial" basal area.
- Restoration Project Section (Sec. 5) defines a system for accomplishing landscape-scale collaborative management:
 1. Requires initiation of a large scale "pilot" restoration project on every agency unit within 2 years, using mandatory categorical exclusions.
 2. Covered projects can include: thinning for economic reasons in any previously managed stand with temporary roads, prescribed fire, stream restoration, culvert replacement, road removal/maintenance/repair
 3. Covered projects shall examine opportunities and seek to achieve net road reductions giving priority to non-essential roads
 4. Collaborative certification allows projects to be "categorically excluded" up to 25,000 acres at first. After initial projects are reviewed and found to meet "project criteria" and the purposes of the Act, then the next project can be 50% larger than the last project up to a maximum of 50,000 acres. If the collaboration group fails to certify a project then

the agencies can approve projects up to 10,000 acres using a CE.

5. An "observer program" looks at compliance with a narrow set of issues: logging old growth and roadless areas
 6. Sets up new comment and appeal processes for collaborative restoration projects: (i) comment within 30 days after a "proposed project decision," and (ii) 15 day objection period allowed but it can only address whether the project meets OFROGPA eligibility criteria.
- Lays out amended appeal process for non-collaborative thinning and restoration projects planned under section 4 (Sec. 6)
 - Exempts BLM O&C lands from 120 age limit, increases to 160, even in LSRs (Sec. 7)
 - Encourages and subsidizes removal and use of biomass from restoration projects on nearly all federal land (Sec. 8)
 - Establishes monitoring: 5-year review by scientists and "forest experts" to look at improvements to forest health, implementation of restoration projects, how landscape scale planning is working, if biomass is being utilized. (Sec. 9)
 - Encourages the use of stewardship contracting authorities, directs the agencies to give a % of timber receipts to counties, establishes 35% tax credit for purchase of certain low-impact logging, hauling, and milling equipment. (Sec. 10)
 - Authorizes \$50 million to implement

Key problems

- 120 year age limit (on moist NWFP) sacrifices young mature forests that are needed for old forest recruitment and won't benefit from logging.
- Unclear if prohibition on cutting older mature and old growth trees and old stands covers dry forests (Sec. 4, b1) (confusing language)
- Restoration projects (Sec. 5) require categorically excluding huge areas from significant environmental analysis.
- Collaborative process laid out for restoration projects (Sec. 5) shifts power from general public to collaborative bodies with problematic makeup and decision-making authority. Administrative appeals not allowed.
- "Expedited Administrative Review" (Sec. 6) changes current comment and appeal guidelines. Allows for "pre-decisional protest" (like HFRA objection) that means there is no opportunity to comment on complete EA. Reduces time for appeal from 45 to 30 days.
- On BLM O&C lands: allows harvest of trees and in stands dominated by trees up to 160 y.o. (Sec. 7)
- There is a recognition of the need to reduce carbon emissions from fire, but not from logging. Arguably carbon emissions from fire are part of the natural carbon cycle, whereas carbon emissions from logging are additional and unnecessary.
- "Aquatic Conservation Strategy" is poorly defined. It's "a" strategy, not "the" ACS. It includes adjusting the boundaries of riparian zones. Outside the NWFP, it only requires the future promulgation of some unspecified "aquatic protection objectives"
- Definitions of "dry" and "moist" forest types allows for potentially inappropriate treatments ["dry forest site" includes too many mixed severity forest types. "moist" forests defined as having fire return interval ≥ 100 years. This could be used to manage most mixed-severity forest types as "dry."]
- "thinning" includes removal of dominant trees
- Approach to forest management (Sec. 4) does not focus on wholistic restoration, rather emphasizes thinning and continued active management and wood products
- Matrix and AMAs managed as sacrifice areas with timber emphasis: Allows regen harvest and logging in stands "dominated by" trees under 120. [What does "dominated by" mean? Could end up with logging of 100 y.o. trees within stands with lots of (but not "dominated by") 300 y.o. trees.]
- Allows agency to develop protocol for identifying age of trees at breast height. Room for error/interpretation/abuse. They should use "age at the stump height" to facilitate accountability after logging.
- Opens up nearly all federal land to increased biomass extraction, and amends Clean Air Act to extend subsidies for this. (Sec. 8)
- Recouples timber receipts to counties (Sec. 10).

Key positives

- Act will "retain and build on the Northwest Forest Plan"
- Protects "older mature and old growth" trees and stands (as per their definition)
- Includes language encouraging variable density thinning in both moist and dry forests. (Sec. 4)
- Requirement to retain 35% basal area appears to apply to regen harvest allowed in matrix/AMAs (could be mix-up in language)
- Restoration projects (Sec. 5) does not allow new system roads; covers stream restoration, culvert replacement for fish, and road restoration; does not allow post-fire salvage; and seeks net road reduction.
- Despite changes in public process, judicial review is maintained.
- ACS still applies to O&C lands (it might even leave older mature trees protected in riparian reserves because it does not mention them)(Sec. 7)
- Encourages stewardship contracting, which can be good. (Section 10)
- Gives subsidies for low-impact equipment to encourage restoration contracting. (Sec. 10)
- Existing logging contracts would be modified after enactment to stop ongoing old growth logging projects. (Sec. 11)

Unanswered questions

- Do sections 4 and 6 replace all existing authorities?
- Does it assume no WOPR? (it uses matrix and LSR to describe O&C lands)
- Does 80 year age limit in LSRs still apply?
- How does this tie into Forest Plans?

Key recommended principles for a better proposal

- Protect mature and old-growth trees - generally over 80 years old in moist forests in the NWFP area, and generally trees 21"+ (or 120 years) in dry forests.
- The bill should recognize the important role mature and old-growth forests play in storing carbon.
- Management of federal forests should work to restore and enhance public values like water quality, carbon storage and climate change preparation, habitat for native wildlife species, soil conservation, and compatible scenic, recreational, and amenity values.
- Commodity extraction such as wood products should be provided only as secondary by-products of such management.
- The Aquatic Conservation Strategy (under the NWFP) should apply to all lands in the NWFP area, and riparian protection and management based on InFish/PacFish should apply to all lands outside of the NWFP area.
- Public involvement and right to challenge management decisions should be maintained.
- The best available science should be used to develop management principles and strategies, and to review restoration proposals. A panel of scientific experts would provide guidance for appropriate restoration activities, specific to forest types.
- The bill should focus on restoring natural processes for maintaining forest health, not on perpetual human management.