

Oregon Eastside Forests Restoration, Old-Growth Protection and Jobs Act of 2011
(S.220.IS, 112th Congress)

Administrative and Judicial Review

Sec. 8(c) of the revised language says:

(c) Review.—Each project carried out under this section may be subject to—
(1) the predecisional administrative review process established in part 218 of title 36, Code of Federal Regulations, except that the Secretary shall provide notice of, and distribute, a proposed decision before or with the environmental assessment or final environmental impact statement for any project subject to review under this paragraph; and
(2) subsections (b) and (c)(3) of section 106 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6516).

Administrative Review

The original version of Senator Wyden’s eastside forest bill would have prohibited administrative review for three years and then mandated a new administrative *objection* process in lieu of the traditional administrative *appeal*.

This final provision applies only to the new “ecological restoration project” (ERP) authorized by Sec. 8(a) or “experimental ecological restoration project” (EERP) authorized in Sec. 8(b). It does *not* apply to other timber sale projects or any Forest Service decision that is subject to administrative review. Currently, HFRA projects are subject to a pre-decisional administrative review (objection), while timber sales are subject to post-decisional administrative review (appeal). ERPs and EERPs will be subject to administrative review that is nearly the same as the objection process for HFRA projects. The language provides that a proposed decision must be distributed along with the final NEPA document.

Judicial Review

The reference in subsection (2) refers to these two provisions from HFRA:

(b) EXPEDITIOUS COMPLETION OF JUDICIAL REVIEW.—In the judicial review of an action challenging an authorized hazardous fuel reduction project under subsection (a), Congress encourages a court of competent jurisdiction to expedite, to the maximum extent practicable, the proceedings in the action with the goal of rendering a final determination on jurisdiction, and (if jurisdiction exists) a final determination on the merits, as soon as practicable after the date on which a complaint or appeal is filed to initiate the action.

(3) BALANCING OF SHORT- AND LONG-TERM EFFECTS.—As part of its weighing the equities while considering any request for an injunction that applies to an agency action under an authorized hazardous fuel reduction project, the court reviewing the project shall balance the impact to the ecosystem likely affected by the project of—

(A) the short- and long-term effects of undertaking the agency action; against
(B) the short- and long-term effects of not undertaking the agency action.

Trusted multiple legal counsel advised us that these provisions are merely restatements of existing judicial practice and therefore do not change judicial review. Conservationists accepted them because they were important to the timber industry and Senator Wyden.