

Testimony of Brent A. Rudolph, Ph.D., National Director of Conservation Policy
Ruffed Grouse Society and American Woodcock Society
To the Senate Committee on Environment and Public Works
Hearing on the Wildfire Prevention and Mitigation Act of 2017
Wednesday, October 25, 2017

Chairman Barrasso, Ranking Member Carper, and Members of the Committee,

Thank you for the opportunity to testify to the Committee on Environment and Public Works regarding the critical need to facilitate scientific management of our nation's forests. Preventing and mitigating impacts on human life, property, and the health of our environment and natural resources all stand to benefit from common-sense steps your committee can advance. The Ruffed Grouse Society and American Woodcock Society (RGS/AWS) greatly appreciate your attention to this issue.

The Ruffed Grouse Society was established in 1961. With the formation of our sister organization the American Woodcock Society in 2014, we have continued to grow the organization and broaden public awareness of the important conservation work in which we have engaged for over 50 years. We have a simple mission – commitment to sustaining healthy forests, abundant wildlife, and sporting traditions. We pursue this mission by working with private landowners and government agencies at all levels to utilize scientific management practices to develop critical forest habitat.

RGS/AWS express our deepest gratitude for the women and men that put their lives on the line – particularly to those who have made the ultimate sacrifice – protecting lives and property of other while working to contain the conflagrations so devastating to western states in recent years. It is understandable that your committee would wish to focus on efforts at forest management reform most likely to prevent future catastrophic wildfires and their tragic consequences. At the same time, these efforts can address the dramatic impacts on forest habitat and wildlife that have accumulated across the entire National Forest system. While attention is being given to the dire need to revise the system for funding catastrophic wildlife response, actions are needed to provide practical approaches for land managers to proactively restore forest health.

I. The Overdue Need for Action

Scientifically sound forest management does not happen without careful planning and execution, and does not happen overnight. Like any natural system, forests are dynamic, and successful management requires both planning and adaptation. The direct impacts of wildfire have been most pronounced in the western U.S., but the depletion of budgets through “fire borrowing” and a 39% decrease in staff positions that work to manage National Forest System lands in favor of fire personnel have had widespread impacts.¹ Costly and cumbersome processes and serial

litigation have further burdened the U.S. Forest Service (USFS) and stifled responsible, scientific forest management across the nation.

The inability to actively manage our National Forests has produced a loss of age diversity in forest regions far removed from the most dramatic and direct wildfire impacts. The National Forests in the Eastern and Southern Regions of the USFS have seen nearly a 50% decrease in young forest stands, and substantial increases in the oldest classes of greater than 80 years of age over approximately the past decade and a half. This aging of the forests has been counter to the forest plans that were developed across all eastern National Forests (USFS Regions 8 and 9) by resource management staff with substantial public input. Data indicate that the even age habitat treatments needed to regenerate these young forests have been accomplished on average over only 24% of the acreage needed to meet *minimum* goal treatment levels established in forest management plans.ⁱⁱ These impacts are felt in combination with the increased fragmentation, parcelization, and loss of active forest management on private lands. As a result, population declines since 1980 have been documented among 53% of the bird species that breed in shrub-dominated or young forest habitats across in the eastern United States and Canada.ⁱⁱⁱ Over the same regions and time period, declines have been documented among just 34% of those bird species that breed in mature forests.

In the face of the numerous interacting factors driving the increased occurrence of catastrophic wildfire seasons, reforms must continue to provide important environmental safeguards while proactively rejuvenating forest health and exerting what control we are able to have to curb future fires. Without action, this widespread decline of healthy forest habitats and associated wildlife species will also continue to occur. RGS/AWS strongly support the Discussion Draft of the Wildfire Prevention and Mitigation Act of 2017 that includes several important measures to address these dilemmas.

II. Facilitating More Efficient Management Dispute Resolution

It is critical to maintain the opportunity for citizens, communities, and organizations to hold USFS managers accountable to their obligation for responsibly carrying out their multiple-use mission on National Forest lands. For this reason, RGS/AWS support the steps the Wildfire Prevention and Mitigation Act would take to establish a pilot program to evaluate the effectiveness of arbitration as an alternative to litigation. In recent decades, USFS has faced an average of more than 56 lawsuits filed per year.^{iv} These lawsuits delay and disrupt active management even though (as litigants are well aware) USFS prevailed in nearly two of every three (64.0%) cases decided by judges. Over 40% of USFS lawsuits are brought to halt vegetative management, and the even-age forest management practices that are critical to provide habitat for ruffed grouse, American woodcock, golden-winged warblers, and many other declining game and nongame young forest species have been hardest hit. This serial litigation (and aversion to prompting even more) has allowed entities opposed to all forest treatments to effectively hijack management through legal manipulation rather than based on substantive resource management problems.

The arbitration process the Discussion Draft would establish eliminates the proposal included in a prior bill to require plaintiffs to post a bond. The process would also allow qualified arbitrators to decide in favor of a Secretary-approved restoration project, an alternative proposal submitted by the objector, or reject both proposals. This approach represents an important compromise to promote management accountability without allowing excessive litigation to continue to preoccupy management and the courts.

Depleted budgets and staff are further burdened by excessive and costly analysis requirements. More than 40% of the time of USFS employees at the National Forest level is spent conducting planning and analysis, slowing the pace at which they can accomplish actual restoration and management to benefit the resources for which they are responsible.^v The Wildfire Prevention and Mitigation Act would focus the conservation benefits of the Endangered Species Act (ESA) by ensuring consultation occurs on any listed endangered species during creation of forest management plans, and then allow those plans – which require a considerable level of effort and public engagement in addition to any consultation with the Fish and Wildlife Service – to continue to provide broad management guidance. Future consultation on any species listed or critical habitat designated at the time of plan completion or at any future date would still be required at the project level. This is appropriate, given these project decisions regarding on-the-ground actions are those with the potential “to jeopardize the continued existence”^{vi} of a listed species, unlike the broad guidance provided by management plans that do not directly authorize or commit to specific management actions. The Wildfire Prevention and Mitigation Act would eliminate one cause of growing frustration with the ESA and maintain ESA benefits for endangered species while preventing courts and litigation from forcing full plan-level ESA consultation that delays rather than benefits conservation.

III. Further Consideration of Categorical Exclusions and Stewardship Contracting Revisions

The creation of categorical exclusions for managing early seral or early successional forest, improvement of wildlife habitat, and for insect and disease infestation represents important consideration of the need to restore wildlife habitat and resilience of our National Forests. Several recent bills have explored similar approaches to facilitate larger projects to help achieve landscape-level restoration, and the acreage limits the Discussion Draft proposes for categorical exclusions are not the largest that have been proposed. Some critics of creating additional and/or larger categorical exclusions argue against further expansion given the existing USFS authority has not been used to the extent possible. The reasons for this limited use likely vary regionally, including that management in general has been stifled by the funding and other bureaucratic problems noted herein, public opposition to large projects in some regions, and that some areas require restoration work on an even larger scale such that existing categorical exclusion authority provides insufficient benefits. However justified the facilitation of these larger-scale projects may be, it is more important to find agreement and bipartisan support for moving forward with

facilitation of restoration than to pursue additional and larger categorical exclusions if sufficient support is lacking.

The Discussion Draft would also modify Stewardship End Result Contracting to require 25% of any gross receipts from a project be disbursed to the county in which the project is located. Stewardship Contracting projects are currently allowed to direct all such revenue back into additional local project expenditures without appropriation. This change would bring the Stewardship Contracting program in line with the 25% allocation made to counties for other timber harvesting activities on federal lands. This would address what in some areas has been a perception that federal and other public lands do not adequately support local schools and other services, and address the decline in timber revenue in counties where harvest overall has been lagging.

However, we caution against eroding capacity to implement Stewardship Agreements – a specific type of project also authorized under the Stewardship Contracting Authorities. Stewardship Agreements, unlike Stewardship Contracts, are awarded non-competitively, with partners required to contribute a minimum of 20% matching funds. By finding compatible, willing partnerships and leveraging matching funds, Stewardship Agreements can accomplish habitat management through projects where timber of limited value requires harvest, where there are no viable markets, or where USFS staff have limited capacity to administer contracts and projects. RGS/AWS have made use of Stewardship Agreements to facilitate non-commercial treatments to achieve land management goals for the national forests aligned with RGS/AWS priorities that also meet local and rural community needs. Local communities already stand to benefit from employment opportunities created and outcomes produced by such agreements, and thus a case can be made that it would be preferable to continue to allow (though certainly not require) reinvestment of gross receipts into furthering the impact of projects except in cases where direct sharing would be critical to gain local support.

IV. Conclusion

With catastrophic wildfires again producing dire impacts in the west, the public will look to their leaders for action. Active forest management represents the best short-term proactive approach to address some of the factors likely to continue to drive future dramatic conflagrations. Evidence shows that the lack of and opportunities to proactively engage in scientific forest management. The resulting widespread and lasting impacts on forest health and wildlife habitat present entirely different but also quite crucial considerations. The actions before you represent important steps to ensure resource managers and partners can appropriately apply tools for both fire prevention and conservation. Small compromises to achieve the necessary support for advancing these efforts would be well worth the time invested, and have positive impacts on our public trust resources for generations to come.

RGS/AWS will continue to work towards sustaining healthy forests, abundant wildlife, and sporting traditions, but your action can aid the efficiency and effectiveness of reaching these

goals. Thank you very much for your attention to this issue and for the opportunity to share our perspective. We will happily address any questions you have to aid in these important deliberations.

ⁱ USDA Forest Service. 2015. The Rising Cost of Fire Operations: Effects on the Forest Service's NonFire Work.

ⁱⁱ Petition for Rulemaking re: Implementation of Management Measures to Maintain the Viability of Early Successional Forest Habitats and Associated Wildlife on National Forests in Regions 8 and 9 - filed April 30, 2015, by the Ruffed Grouse Society Before the Secretary of the United States Department of Agriculture and the Chief of the United States Forest Service.

ⁱⁱⁱ Dessecker, D. R., et al. 2007. Ruffed Grouse Conservation Plan Executive Report.

^{iv} Miner, A. M. A., et al. 2014. Twenty Years of Forest Service Land Management Litigation. *Journal of Forestry* 112(1):32-40.

^v USDA Forest Service. 2002. The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management.

^{vi} 16 U.S.C. § 1536(a)(2)

Established in 1961, the Ruffed Grouse Society/American Woodcock Society is North America's foremost conservation organization dedicated to preserving our sporting traditions by creating healthy forest habitat for ruffed grouse, American woodcock and other wildlife. RGS/AWS works with landowners and government agencies to develop critical habitat utilizing scientific management practices.

RGS/AWS is designated as a Charity Navigator Four-Star charity, for recognition as a financially healthy, accountable, and transparent organization. Information on RGS/AWS, its mission, management projects and membership can be found on the web at:

www.RuffedGrouseSociety.org.