

The permitting reform bill that has made the most progress through Congress is the Fix Our Forests Act, which I've written about [here](#), [here](#), and [here](#). And as I've written before, fixing fire management on federal lands should be a top priority for any reforms. I'm not sure that the model of Fix Our Forests is the best approach to reform – I hope that I'll have more details on what I think the better approach is soon – but as I've said, it's probably better than nothing. That doesn't mean it couldn't be substantially improved.

One important shortcoming of the bill is that, while it has lots of great ideas for improving fire management on federal lands in terms of coordination, research, and planning, there [isn't adequate funding for those great ideas](#), and implementing them in terms of on-the-ground projects. That's a real problem. And given this Administration, I'm skeptical funding would be a priority in terms of appropriations. I'd love to be proven wrong on this point, but it would be better if there were more guarantees for funding (such as through the current, but delayed, appropriations process).

In terms of specific language in the bill, I'm most troubled by the provisions that would allow land management agencies to declare "emergencies" for large swaths of the public lands, and then use those emergencies to short circuit NEPA, ESA and historical preservation reviews for fire management projects on those lands. I do generally agree that process reform is essential to improving what we're doing on federal lands for fire management. And the provisions here are an improvement on the House version: a narrower range of projects are eligible for the emergency processes, formal emergency determinations and public notice are required before projects proceed, and projects that seek to use these processes must advance restoration goals that reduce the potential for using these exemptions too broadly. (That being said, there is still a great deal of flexibility in what kinds of projects that might qualify, and that is a recipe for mischief with this Administration.)

In terms of process, the current emergency provisions are still too much of a blank check to the executive to follow whatever procedures it wishes. That's because the only real guardrails in terms of the procedures that I see in the provisions are (a) codification of the pre-existing NEPA, ESA, and historical preservation emergency regulations for the Interior Department and the Forest Service, and (b) a requirement of compliance with NEPA. But (a) is inadequate – the regulations that are codified are [extremely vague](#), and in important ways out of date (e.g., [the Forest Service regulation](#) cross-references CEQ regulations that this Administration has eliminated). And it is unclear if (b) actually applies to the use of emergency

authorities, as opposed to the use of categorical exemptions under NEPA. The procedural issues are particularly problematic because they apply to consultation for endangered and threatened species under the ESA, which means that they might result, in practice, in substantially less protection for those species. And given the actions of this Administration, I think anything like a blank check on eliminating environmental protections is a very, very bad idea. One can easily imagine this Administration pushing the envelope on not just the emergency practices, but also on the various constraints the legislation tries to use to limit what projects are eligible. So all the more reason to be careful and clear about what can be done here.

What I would suggest then is more clear delineation in the bill text as to what kinds of accelerated procedures are appropriate. In [this news article](#), there is discussion of what current Forest Service practice is in implementing emergency NEPA procedures, such as limited alternatives analysis, and short public comment periods. If those are the procedures that we might want to use (and the article makes clear that there is some controversy about that), then they should be specified in the bill. That would provide needed certainty – probably beneficial in the long-run for agencies and outside parties – as to what procedures would be adequate.

This shouldn't be too hard of a fix to do. The agency practices can be identified and codified. And it is a fix that would make this bill a lot better.