

*This blog post was co-authored with Dave Owen, at UC Law SF. The draft article this blog post series is based is [here](#).*

This is the third in a series of blog posts on our proposal to reform wildfire law in the United States. The first post is [here](#). The second post is [here](#).

Federally managed Forest Service lands comprise about 30% of all US forests, disproportionately in the western United States, where fire issues have been particularly severe. Federal land management is an essential component of addressing fire risks in the United States. It has also been a particularly contentious issue.

The core challenge is the need to ramp up management – whether by prescribed burns, mechanical thinning and removal of fuels, or both – on federal lands to address fire risks at a pace and scale adequate to the challenge. As we discuss in our paper, we believe there is substantial evidence that current legal systems – in particular litigation risks to federal land management projects based on statutes like NEPA – are an important factor in preventing agencies from achieving that scale. (In reaching that conclusion, we also emphasize the importance of funding for adequate management – something the current Administration has slashed.)

But we also do not believe in wholesale repeal of procedures and substantive standards guiding forest management on federal lands. In a polarized political landscape, the lack of any guardrails could produce wild swings in policy that could be counterproductive to effective long-term forest management, and could deeply undermine trust in management outcomes, provoking political and legal resistance that would in the long run be harmful to effective management. Moreover, guardrails can ensure that management is effective and tailored to the ecological context – important because of the variability in fire dynamics across ecosystems.

Our proposal has three core components. First, outside expert panels would develop best principles and management practices for projects to reduce fire risks on federal lands. The panels would be composed partly of experts from within the relevant federal agencies, but with a majority of outside experts from entities designated by Congress, such as state, tribal, and local governments and professional and scientific organizations. Panels would be developed for each major ecosystem type on Forest Service lands, allowing for tailoring the principles to particular contexts.

Second, the Forest Service would have the ability to develop binding standards and principles for management for specific national forests and ecosystems. The process would be a form of an amendment to existing land management plans for the Forest Service, including public comment, environmental review under NEPA, and consultation under the ESA. Those amendments would be required to be consistent with the best available science, which would include the expert panel reports.

Third, once adopted, the amendments would be the basis for site-specific management projects on Forest Service lands. Projects consistent with those amendments would be generally exempt from judicial review (except for claims they are inconsistent with the amendments).

This approach allows for scaling up decisionmaking – unlike categorical exclusions from NEPA that have currently been applied to fire risk management projects, there is no inherent acreage limit to these tools (though the guidelines might impose such limits on a ecosystem-specific basis). But it also provides a check on discretion by the agency – which allows for the building of trust, and for ensuring that decisionmaking is consistent with the relevant ecological context.