Society of American Foresters
Growing better all the time

July 31, 2008

The Honorable Ron Wyden
223 Dirksen Senate Office Building
Washington, DC 20510

RE: *Oregon Forest Restoration and Old Growth Protection Act*

Dear Senator Wyden:

On behalf of our more than 14,000 forestry professionals across the United States, with nearly 1000 located in the state of Oregon, we appreciate this opportunity to express our thoughts on your draft legislative concepts addressing federal forest management in Oregon. It is encouraging to see your attention to the myriad problems facing Oregon's federal forests and to the Oregon communities dependent on those forests. We likewise appreciate that you are clearly concerned with the wildfire and forest health issues that have become of increasing importance on our public lands. We do, however, believe that the proposed legislative language would benefit from the expertise and experience of our professional members, particularly those on-the-ground scientists and managers who regularly work in the very forests your bill addresses. For that reason, we respectfully offer the following specific comments:

• Rather than effectively illuminating and clarifying the goals for forest management in the context of the important and diverse legal mandates, this proposal emphasizes a detailed and highly prescriptive set of standards for land managers that are better suited to agency administrative rules or other local guidance. Moreover, the proposed standards may not be operationally feasible, scientifically credible, or suitable in the context of specific forest management settings. Consider these examples:

- exclusion of trees >120 years old on a tree-by-tree basis requires the agencies to know how old each individual tree is;
- maintaining 35% of initial basal area in stands (e.g. ponderosa pine) that would have natural openings and a basal area of zero.

• There are innumerable ambiguities within this language that will inevitably fuel litigation against the agencies, thus leaving the courts to identify an acceptable interpretation. Such an outcome does nothing to positively impact our public lands or the local communities dependent upon these lands. Legally mandating management based on ambiguity is fraught with problems. Some examples include:

-*Restoration* is an inherently ambiguous term. Restoration to what? To conditions just prior to the Tillamook Burn? To just prior, during, or after the Mt. St Helens eruption? To conditions at a particular point in time—1600? 1800? 1900?
-*Old-growth* and *blocks with late-successional characteristics* are used interchangeably, yet imply that there is a difference between the two terms;

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-*Landscape scale* is loosely defined to mean anything between 25,000 to 1 million acres;
-*Thinning,* particularly *restoration-based variable density thinning* may or may not imply that a regeneration harvest would be legal. Would a small clearcut prescribed to mimic a natural disturbance and promote biodiversity be allowed? The second to the last paragraph on page 6 beginning with "Within Matrix and Adaptive Management Areas" is a glaring example of the multiple interpretations that could be made;
-The term *appropriate* is used no less that a dozen times in this proposal, and would likely be subject to judicial interpretation.
-Section 8 of the proposal would require the "advice and consent" of the Senate Energy and Natural Resources Committee in appointing a scientific/expert review panel. It is not clear what would qualify someone as a "forest expert."

• Read together, the *Prioritization* language in Section 4(b), the *Goals of Silvicultural Activities* in Section 4(d)(1) and (2), and the *General Objectives of Silvicultural Activities* in Section 4(d)(2), it becomes clear that any concept of multiple-use is absent, including the compatible environmental and economic objectives that can be achieved through professional management. Instead, the language establishes a single goal premised on the establishment and maintenance of old trees. Nowhere in this language is there an acknowledgment that the production of wood fiber is also a concern—though this is clearly one of the stated purposes of the bill. This language provides no assurance that any commercial timber production would or could occur.

• The bill reflects overly simplistic notions of forest conditions as well as arbitrary choices that are better interpreted by professional forest managers and other resource specialists with substantial experience working in these forests. Examples include:
-The Moist and Dry Forest Sites and related plant association groups have neither finite boundaries nor totally consistent characteristics.
-Why choose 120 years to demarcate moist site old growth? Why not 100, 150, 200? What science prescribes that removing a 121 year-old tree will invariably cause problems?
-Why prohibit the sale of older trees for useful products if lawfully harvested under section 4(c)(2)?

• Why limit a policy solution to only Oregon? Why not include all of the states covered by the Northwest Forest Plan? The failings of that Plan have implications for public lands and stakeholders across the region.

• The language of the bill is premised on several assumptions—none of which are nearly so concrete or empirically based as the bill might suggest. Consider these examples:
-Thinning alone will not guarantee sustainable forest management and sustainable timber production, and can hamper management for biodiversity;
- Not all old growth stands are more fire resistant than other aged stands;
-More older forest is not necessarily desirable at the expense of other age classes and forest conditions;
-Roads are not inherently problematic and undesirable, particularly when designed in accordance with contemporary needs and standards;
-More intensive public collaboration will not necessarily lead to better on-the-ground results.

• Clearly the *Purposes* outlined in Section 2 and the *Policy* set forth in Section 4 highlight the role of the multiple-use concept on these lands, which is in keeping with the legal requirements of the Organic Act, the Multiple-Use Sustained-Yield Act, and the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands. However, the language of this bill also belies those affirmations by establishing restoration—and restoration of old trees particularly—as the dominant use for these lands. That is not only self-contradictory, but effectively violates the legal mandates that continue to govern the uses of these federal lands. It is not clear if this bill language is intended to replace current regulations or to overlay existing policies.

• Section 5 of the bill establishes a mandate for Restoration Projects. Under this section, land managers must prepare at least one project (and perhaps more) that are entitled to expedited relief from NEPA analysis and administrative appeals, provided, however, that a number of statutory criteria are met. There are several problems with this approach, including:

-The expedited NEPA review provides a categorical exclusion for either up to 10,000 or 25,000 acre projects depending on the results of the collaborative process. This suggests that a categorical exclusion is available for projects up to 25,000 acres under Section 5, but a project under Section 4 of even 50 acres might require a full Environmental Impact Statement. That is facially illogical, appears disconnected from the actual environmental impacts at stake, and most importantly, smacks of arbitrariness—a charge for which the Forest Service has been previously accused in its NEPA compliance;

-The collaborative and monitoring mechanisms outlined are extensive and will add additional layers of processes to the procedural and substantive requirements already established through the National Forest Management Act, the National Environmental Policy Act, the Federal Land Policy and Management Act, the Endangered Species Act, and the Administrative Procedures Act—all without any empirical evidence that more collaboration or monitoring results in "better" decision-making, fewer environmental impacts, or more sustainable forest management;

-Apart from the single required project, there is little incentive for agency personnel to embrace this approach. There are no less than six requirements for moist sites and eight requirements for dry sites—all of which contain contestable ambiguities—that an agency must comply with to take advantage of the categorical exclusion. Should a plaintiff convince a court that the agency failed to adequately meet all of these pre-conditions, the agency could not avail itself of the categorical exclusion and the project would necessarily be remanded back for full environmental review. We are also concerned that the proposed process for addressing stakeholder objections appears to be just as complex as the existing appeals process. Additionally, there is no relief provided from litigation, which data has shown to be increasing, and is a greater time and dollar cost to the agency than are administrative appeals.

• Because the bill is so narrowly focused on the restoration of old trees as they may have existed historically, it effectively ignores the growing need for forest managers to address such vital issues as global climate change, post-fire restoration, carbon sequestration, energy conservation, and resource self-sufficiency. This bill is not forward-looking and would interfere with the flexibility to manage for future needs, instead padlocking managers with vague and idealized conceptions of past conditions.

• Forestry professionals who manage federal lands routinely apply ecological science and prescribe practices that maintain or enhance important ecological functions at broad spatial and temporal scales. Thus the need to define "ecological forestry" seems unnecessary except as a way to legally restrict the focus of federal management and the discretion of agency professionals. The language of ecological forestry and forest heterogeneity also does not supplant the pervasive impression given of forests as static constructs, and that old growth can be created but that it never disappears. If we accept the premise that old growth historically moved around the landscape—displaying a forest heterogeneity that this bill largely precludes—we are forced to question the veracity and expected merits of ecological forestry as defined in this proposal. The bill fails to recognize the need for a mix of age-classes across the landscape and the ecological value of age classes less than 120 years, and inexplicably stops its "landscape" view at the Oregon and federal lands borders. Instead, there is an artificial and single-minded focus on old stands and trees.

In summary, it is clear from reading this legislative proposal, that it approaches public forest management challenges in Oregon from a particular ideological point of view that is not necessarily linked to professional practice, nor reflective of the contemporary approaches to managing these forests for diverse values as mandated by federal law. The SAF strongly agrees that old growth is a valuable ecological forest component, and is no doubt of high social value as well. Nonetheless, we would urge you to revisit the goals outlined in Section 2. The data from Oregon suggests that mortality far exceeds harvests, and that growth far exceeds both mortality and harvests on federal lands. The situation is variable and not all dire, and the goals of legislation can and should be crafted to optimize the forest benefits that can be provided for the wide array of public forest stakeholders. A core tenet of the SAF is to promote the art and science of forestry while serving the needs of society. As such, legislation that would substantially limit the available tools, future management options, or the discretion of experienced, local managers raises serious concerns for the forestry profession as it endeavors to serve society.

We appreciate your willingness to entertain our concerns, and we always remain willing to assist in addressing the forest health, wildfire, and sustainable community concerns prevalent in the Pacific Northwest.

Most respectfully,

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President, SAF

Marc G. Vomocil
Chair, Oregon SAF

cc: Senator Gordon Smith