



# HARDWOOD FEDERATION

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## Hardwood Federation March 2022 Newsletter

### From the Executive Director:

The ink on the obituary for the House-passed, \$1.7 trillion Build Back Better legislation is about dry. There is little, if any, discussion on Capitol Hill about that proposal currently, and we do not expect that to change. However, discussions are picking up on a modified proposal that would embody some of the climate change aspects of that legislation with some key differences. Senator Joe Manchin (D-WV) is once again at the center of negotiations, and he remains supportive of including the forestry and renewable energy tax credits that were part of the original bill. What Sen. Manchin would like to add is an “all of the above” energy title to the bill that would attempt to address rising fossil fuel prices in the U.S. brought on in part by the crisis in Ukraine. This approach would be a significant departure from where the Administration and the Democrat caucus have been on climate policy and it is unclear whether the needle could be threaded to include some fossil fuel supply provisions with traditional renewable energy-focused language that was in the BBB. The process of pulling a package together is in its nascent stages. We are told that work on defining this proposal will occur during the April and May work periods when Senators are in Washington.

On the positive side, the package will likely include a robust tax credit for purchases of wood and pellet stoves that burn residuals that we generate at our mills. The downside is that we do not yet know what specific revenue raisers or “pay fors” will be tagged to fund the package. The Hardwood Federation is close to the process, and we are keeping our eyes and ears open for tax proposals, particularly those that would impact our businesses.

### Issues:

#### Endangered Species Act

Last Wednesday, the U.S. Fish and Wildlife Service published a notice in the Federal Register proposing to list the Northern Long-eared Bat (NLEB) as “endangered” under the Endangered Species Act. This bat has suffered high morbidity over the last several years due to a fungus known as White Nose syndrome, which has devastated bat colonies. Typically, when a species receives the “endangered” tag, there are a number of measures that are enforced to ensure that its habitat is preserved.

This is the second time the Service has acted on the NLEB. Back in 2014, USFWS proposed listing the NLEB as “endangered” and unveiled a habitat conservation plan (HCP) that essentially would have curtailed timber harvesting on public and private lands in the bat’s 38 state range. The below is what FWS proposed to protect the NLEB:

- Restrictions on warm season timber harvesting from April to October
- Limits on activities within 5 mile radius of bat hibernacula
- In known or potential summer habitat, restrictions in force within a 1.5 mile radius of any known roost tree or 3 miles from any location where NLEB has been captured or acoustically detected.
- Example from interim guidance as a conservation measure for protecting the bat—“retain and avoid impacting **potential** roost trees, which includes live or dead trees and snags equal to or greater than 3 inches diameter at breast height (dbh) that have exfoliating bark, cracks, crevices or cavities.”

When experts from our industry drew circles around all of the forest land this would cover, they concluded that logging would essentially be off limits in the 38 states between April and October. News of that conclusion spread quickly. The forest products sector—from forest landowners to loggers to wood products and pulp and paper mills—waged an advocacy campaign to educate lawmakers and the FWS that the bat was perishing due to White Nose, syndrome and declines in numbers had nothing to do with forest management. In fact, studies and data showed that the bat actually prefers and thrives in forests that have been managed compared to those that are not.

Ultimately, USFWS acknowledged this point and revised its proposal to list the NLEB as “threatened”—a less stringent tag—and finalized a reasonable habitat conservation plan that was workable for the entire sector. Now the Service is proposing to revisit the NLEB status and has proposed an “endangered” listing. The comment period for this proposal expires on May 23. We understand that states and regions have been developing their own workable HCPs in anticipation of this action. However, we will be monitoring the issue closely and will report on developments.

**Biden Unveils \$5.8 Trillion Budget “Wish List”**

On Monday, the Biden Administration kicked off the week by rolling out a massive \$5.8 trillion federal budget proposal for fiscal year (FY) 2023, which begins October 1. Although the President's budget does not carry the force of legislation, it memorializes the Administration's policy priorities and can be used as a benchmark for lawmakers moving forward with FY 2023 appropriations.

The President's budget proposes \$31 billion for USDA, an 8.4 percent increase over FY 2022 levels. This includes \$4.9 billion for Forest Service Wildland Fire Management, emphasizing a need to boost firefighter pay as high demand for workers in almost all sectors of the economy continues to hinder recruitment and retention efforts.

The Biden Budget also proposes more than \$1.7 billion for new climate mitigation efforts, promoting climate-smart commodities within the context of the 2023 farm bill. Last fall the Federation submitted comments on USDA's "Request for Information" (RFI) advocating that any "climate smart commodity program" should account for carbon stored in finished wood products. To view USDA's statement on today's budget announcement, please click [here](#). For more details about the FY2023 budget, please click [here](#).

### **Rep. Westerman (R-AR) to Introduce Russia Timber Boycott Bill**

Rep. Bruce Westerman (R-AR), who serves as ranking member of the House Parks, Forestry and Public Lands Subcommittee, is planning to introduce the "No Timber from Tyrants Act" during the next few weeks. The bill would ban imports of wood products from Russia and Belarus in light of Russia's unprovoked war against Ukraine and direct the U.S. Forest Service and Department of the Interior to harvest more timber on our federal lands to compensate for the banned imports.

Rep. Westerman has asked industry to support the bill. The Federation has long supported increased harvesting on our national forests (at least increasing to meet USFS stated harvesting goals) and has also been a strong proponent of eliminating imports of illegally harvested timber. Although illegally harvested timber isn't a major policy rationale driving the Westerman bill, there are ongoing concerns about Russian timber practices as well as the moral concerns about the current conflict. Also, industry urges lawmakers to focus on more long-term challenges, such as ongoing worker shortages. HF will keep the membership posted on activities related to the bill.

### **FY 2022 Spending Package Delivers Biomass "Carbon Neutrality"**

In early March, Congress passed a \$1.5 trillion Fiscal Year 2022 omnibus spending measure (H.R. 2471) that will fund operations of the federal government through September 30. Notable for the Hardwood Federation, the package includes our long-supported policy directive on forest

biomass carbon neutrality. Specifically, the language in the measure directs the Environmental Protection Agency, the Department of Energy and the Department of Agriculture to recognize the carbon-neutral nature of forest biomass energy in any federal energy or environmental policymaking. This is a considerable win for the entire forest products value chain, as earlier iterations of the FY 2022 bills in both the House and Senate had changed language in the directive to "carbon benefits," which in our view was too nebulous.

As the Biden Administration continues to sharpen its focus on climate policy, particularly green house gas mitigation regulatory initiatives, we believe preserving our forest biomass carbon neutrality directive in statute is more important than ever.

### **Ocean Shipping Reform Cruising Through Congress**

On March 22, the Senate pushed its ocean shipping reform bill, the "Ocean Shipping Reform Act of 2022" (S. 3580) closer to the finish line when the commerce committee unanimously adopted the bill. Next steps include a vote on the Senate floor - where it is expected to pass at a time yet to be determined - and a negotiation with the House to harmonize the bill with the House-passed version.

In February, House lawmakers created another track to move ocean shipping reform by adopting the House-passed "Ocean Shipping Reform Act of 2021" as an amendment to the "America COMPETES Act" (H.R. 4521), also known as the "China bill." Because the Senate passed its own version of the "China bill," known as the "U.S. Innovation and Competition Act" (S. 1260) back in July, the two chambers are expected to convene a conference committee to hammer out a final bill, which may include the shipping reform measure.

On March 21, Sen. Maria Cantwell (D-WA), the chief sponsor of S. 1260, urged Congress to convene a House/Senate conference to move the bill toward passage. HF will keep you posted on the bill's progress, whether it passes as a stand-alone measure or within the context of a broader "China bill."

### **Supreme Court to Review Clean Water Act Jurisdiction**

In late January, the Supreme Court agreed to take up a case from an Idaho couple who faced an order from EPA banning a construction project on their property. Federal regulators claimed that the property included a wetland that constitutes a "navigable water" under the Clean Water Act (CWA), thereby triggering federal land-use restrictions. During the course of the couple's lawsuit, known as Sackett v. EPA, a federal appeals court applied a broad test, known as "the significant nexus" test, and ruled that CWA restrictions applied to their land.

Forest industry groups plan to file an amicus brief with the Supreme Court, supporting the Sacketts' argument for a more narrow and focused application of federal authority. Parties have

litigated the scope of the CWA for more than two decades, resulting in federal agency definitions of “Waters of the United States” (WOTUS) that have become predictably vulnerable to legal challenges. Ultimately Congress will have to step in and amend the CWA in a manner that will clarify EPA authority and remove this ever-changing issue from the courts. For more information on the Supreme Court’s review, please click [here](#).

### **Senate Passes Postal Reform Bill**

Earlier in March, the U.S. Senate passed comprehensive legislation overhauling the U.S. Postal service to put it on a more sound financial footing. This is an issue area in which the Hardwood Federation does not advocate, however we note this development as it is a rare example of both parties working together to produce a legislative product that can pass both evenly divided chambers. The bill, which is on President Biden’s desk, preserves 6 day delivery of the mail and eliminates some of the financial burdens on the USPS that that have been hamstringing the Service.

### **HAPPENING IN THE HARDWOOD WORLD**

The Portland International Airport is undergoing a facelift and will include design upgrades that reflect the importance of forestry to the northwestern U.S. The main terminal, which will feature a “walk through the forest,” is expected to reopen in 2025. To look at the latest renderings, please click [here](#).