



Hardwood Federation - June 2022 Newsletter

From the Executive Director:

The Biden Administration has sharpened its focus on putting their stamp on the “Endangered Species Act” (ESA) and the extent of its reach. We have already reported on the potential redesignation of the Northern Long Eared bat (NLEB) as “endangered” by the U.S. Fish and Wildlife Service (USFWS). Such an action could trigger a variety of land-use restrictions that would hinder the hardwood industry along with a number of other sectors. In response, some federal lawmakers have proposed legislation to maintain the flexibility offered by the currently existing 4(d) rule regarding harvesting protocols where the NLEB is found. In mid-June, industry allies, Reps. Bruce Westerman (R-AR) and Pete Stauber (R-MN) introduced the “Endangered Species Flexibility Act,” also known as the “Bat Bill.” The legislation would enshrine the NLEB 4(d) rule and common-sense guard rails around the scope of endangered species regulations. The bill is reflective of the Hardwood Federation’s advocacy and [comments](#) on the U.S. Fish & Wildlife Service’s proposed rule to re-designate the NLEB as “endangered.” The Hardwood Federation has signed on as a supporter of the bill.

USFWS is also taking another look at how critical habitat for endangered species is considered in the permitting process. On June 24, USFWS published a notice in the Federal Register formally rescinding a Trump-era regulation that defined habitat as acreage currently occupied by a protected species.

This is the latest iteration of a years' long legal back and forth between the courts and federal agencies on this issue. In 2018, for example, the Supreme Court noted that the ESA does not include a "baseline definition" of "habitat," thereby creating uncertainty with respect to the scope of ESA protections. In late 2020, the Trump Administration published their definition of "critical habitat" that confined the scope of ESA protections to areas where endangered plants and animals could currently be found. The 2020 rule change drew broad support from forest landowners who claimed that it promoted their conservation efforts. Environmental groups criticized it, however, and argued that the narrow definition undermined the intent of the ESA. In 2022, the pendulum appears to be swinging back to positions favored by critics of the current regulation. To read a statement from USFWS announcing the agency's critical habitat action, please click [here](#).

With the development of a divided Congress, regulatory changes has become the option of choice for Administrations, Democrat or Republican, to move their agenda forward... however, constantly changing rules create uncertainty and compliance complexity for those businesses impacted by the moves. The Hardwood Federation will continue to track these changes, assess their impact on the industry and support positions that benefit hardwood companies and employees.

Issues:

House Appropriators Move Biomass "Carbon Benefits" Measure

On June 21, the House Appropriations Committee's Interior Subcommittee approved its Fiscal Year 2023 Interior, Environment and Related Agencies appropriations bill. The measure includes a biomass energy provision that has long been a focus of the Hardwood Federation. The House bill, like last year's version, features somewhat problematic language that characterizes forest-based biomass energy as having "carbon benefits," but not defining it as carbon neutral. Since 2017, there has been statutory language reauthorized annually through the appropriations process that directs EPA, DOE and USDA to recognize

the carbon neutrality of biomass energy in any federal energy and environmental policymaking.

Working with our colleagues in the forestry and forest products industry last year, we were able to prevail in having this carbon neutrality directive reauthorized for 2022. The Hardwood Federation team reached out to staff in Senator Susan Collins's (R-ME) office this week to flag the deficient language in the House Bill. Senator Collins has been our champion in the upper chamber on reauthorizing the carbon neutrality rider, and she has pledged to lead on this issue once again for the 2023 appropriations cycle.

USDA Puts Industry Priorities into Writing

On June 22, U.S. Department of Agriculture (USDA) Secretary Tom Vilsack signed an Executive Memorandum entitled "Climate Resilience and Carbon Stewardship of America's National Forests and Grasslands." The Hardwood Federation met with USDA officials on June 21 to receive an early preview of the document. USDA specifically noted that they fully recognize the need to harvest federal forest lands to sustain forest health and prevent extreme wildfires, the importance of forest products to forest-based solutions to carbon in the atmosphere, and the need to employ science-based decision making in developing and implementing policies to promote climate resilience. The memo also confirms USDA's commitment to protecting old growth and mature forest lands (while acknowledging that the vast majority are already protected under current regulations and rules), fighting wildfires, and wildlife and watershed protection and conservation.

The Hardwood Federation applauds the recognition and value of forest products and science-based decision making. We also are heartened by the expressed commitment to move forward with forest management activities, including mechanical thinning, although we will continue to make the point to USDA and to Congress that needed management is not limited to small diameter trees and that established timber harvest goals must be met. The memo also makes frequent reference to "innovative" forest products which is positive, but we will continue to message that traditional markets are also vital to sustainable forestry practices and

must be considered as policies develop. The USDA announcement with links to the full text is available [here](#).

Port Contract Negotiations Pose More Challenges for Supply Chains

Even though President Biden signed the “Ocean Shipping Reform Act” into law on June 16, contract negotiations between dock workers and port operators on the west coast threaten to overshadow progress made on the legislative front. With union contracts on the west coast set to expire on July 1, the executive director of the Port of Long Beach predicts that negotiators will fail to reach an agreement by the approaching deadline. Failure to finalize a contract could exacerbate delays caused by already existing labor shortages. That said, during a conversation on June 23, Rep. Garamendi (D-CA), who championed the bill in the House, informed HF reps that he believes the negotiations will wrap in a timely manner and avoid new supply chain hurdles for exporters on the west coast. The Federation recently signed onto a coalition letter urging the Biden Administration to assure continuity of operations while the unions sort out the contract situation.

House Armed Services Committee Approves Mass Timber Pilot Program

On June 22, the House Armed Services Committee (HASC) adopted an amendment authorizing a mass timber pilot program while reviewing the Fiscal Year (FY) 2023 National Defense Authorization Act (NDAA). The pilot program directs the Secretary of each military department to carry out a program to evaluate the use of mass timber as the primary construction material in military construction projects and its effect on environmental sustainability, infrastructure resilience, cost effectiveness, and construction timeliness of similar projects. The amendment was proposed by Reps. Austin Scott (R-GA), Jared Golden (D-ME), Rick Larsen (D-WA) and Trent Kelly (R-MS).

While there was opposition from one member during markup, Readiness Subcommittee Chair John Garamendi (D-CA) expressed support for the pilot program, thus helping clear any final hurdles in markup. “This mass timber material is used in many different construction activities common throughout the United States and most states do allow it - it’s just not

common in the military,” Garamendi said. “But it is a very useful material, and it ought to be made available for military construction wherever it might be. The fact we must go through a pilot program to do what the commercial sector already does seems a bit foolish, but I suppose we must start somewhere.”

Additionally, the amendment directs the pilot program to be conducted at military installations in the US that are identified as vulnerable to extreme weather events. Such a pilot program has tremendous prospects for DOD to signal market opportunities for domestic mass timber manufacturing, both current and future. The full House will consider the measure sometime after the July Fourth recess.

USDA, Softwood Lumber Board Announce Mass Timber Competition Winners

On June 23, the U.S. Forest Service and Softwood Lumber Board unveiled six winners of the “Building to Net Zero Carbon” competition. Projects include diverse building projects, from hospitals to high rise apartments and schools and warehouses. The projects highlight mass timber’s diverse applications and demonstrate the role that mass timber buildings play in reducing atmospheric carbon emissions. To learn more about the projects, please click [here](#).

HAPPENING IN THE HARDWOOD WORLD

MIT researchers are studying tree forks and their load bearing structural performance characteristics to discover new insights into how builders can substitute wood for other construction materials, such as concrete and steel. The MIT engineers describe how they are running laboratory simulations to study forks in branches and how they distribute structural weight. To review the complete MIT study, please click [here](#).