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| **Hardwood Federation - December 2022 Newsletter** |

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| **From the Executive Director: *Industry Allies Poised to Take Charge of House Agriculture and Natural Resources Committees*** Even though the 118th Congress doesn’t convene until January 3, 2023, the Federation has begun to reach out to congressional partners who will assume strong leadership roles to move the industry’s agenda next year. As reported earlier, Rep. GT Thompson (R-PA) is set to assume the chair of the House Agriculture Committee while Rep. Bruce Westerman (R-AR) is slated to lead the Committee on Natural Resources.  Reps. Thompson and Westerman are also sailing into the new Congress with strong mandates from the voters, having won 70% and 71% of the popular vote, respectively. In late November, the Federation team proactively met with Ag Chair-Designate Thompson’s senior staff to discuss the industry’s key Farm Bill priority issues for 2023. These include recognition of the carbon storage benefits of carbon - along with the need for federal resources to educate consumers, architects and designers of these facts - funding for international trade promotion programs, and incentives for low-carbon construction materials such as wood products.  To leverage advocacy related to these priorities, the Federation is working with the Forests in the Farm Bill Coalition and the Wood Products Coalition to echo industry messages. Looking at the House Natural Resources Committee, another key panel that has jurisdiction over major industry issues, ex-forester and longtime ally Rep. Westerman will assume the chairmanship and guide the panel’s agenda. In January, Mr. Westerman is expected to place a high priority on active forest management techniques, especially as they relate to wildfire mitigation. The Chair-Designate will likely model much of his agenda on the House GOP’s [Energy, Environment and Conservation Policy Platform](https://www.republicanleader.gov/energy-climate-and-conservation-task-force-focuses-on-building-resilient-communities/), which underscores the need for tree thinning and controlled burning as pillars of responsible forest management. Mr. Westerman will replace Rep. Raul Grijalva (D-AZ), who will assume the role as the committee’s Ranking Member. **Issues:****Fish & Wildlife Service (FWS) Conducts Webinar on New NLEB Rule, Punts Details to Regional Offices** On December 2, the U.S. Fish and Wildlife Service (FWS) conducted a stakeholder webinar to review general requirements for the new Northern Long-Eared Bat (NLEP) “endangered” [classification](https://www.federalregister.gov/documents/2022/11/30/2022-25998/endangered-and-threatened-wildlife-and-plants-endangered-species-status-for-northern-long-eared-bat). Unfortunately, the hour-long session was short on specifics related to possible future red tape for forestry projects.  Within the context of the new rule, agency officials cited 14 examples of project types that are not likely to trigger additional ESA regulations. Staff emphasized that the list, intended to be illustrative, is not comprehensive: 1. Minimal tree removal and vegetation management activities that occur any time of the year outside of suitable forested/wooded habitat and more than 5 miles from known or potential hibernacula.
2. Insignificant amounts of suitable forested/wooded habitat removal provided it occurs during the hibernation period and the modification of habitat does not significantly impair an essential behavior pattern such that it is likely to result in the actual killing or injury of northern long-eared bats after hibernation, and ….
3. Prescribed fire activities that are restricted to the inactive (hibernation) season, provided they are more than 0.5 miles from a known hibernacula and do not result in changes to suitable forested/wooded habitat to the extent that the habitat becomes unsuitable for the northern long-eared bat.

The agency also outlined nine examples of project types that are likely to trigger new ESA restrictions, including: 1. Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kill or injure individuals by significantly impairing the species’ essential breeding, foraging, sheltering, commuting, or other essential life functions.
2. And unauthorized removal or destruction of trees and other natural and manmade structures being used as roosts by the northern long-eared bat that results in take of the species.

While acknowledging that the above project descriptions don’t shed light on every permitting scenario, FWS staff recommended that industry send questions about specific projects to regional managers with the [Ecological Services Program](https://u19539728.ct.sendgrid.net/ls/click?upn=-2B73de0dREQUDGWQfTM3mhk7wPOifcCxbfdpP768kogSNB0zv6dnY1GYFmYlDHcLd5nsDmghh-2Fe-2FeNv-2FXgEjr7YfEQkFytxhX7xp2zcr9D-2Bo-3DTKDA_DfShkWCAhoLGP-2FJNrdlPJdV-2FLULhdq7A2Mns4NO8kAbKoy2hBWCjup-2FdSJ4mtav3QZgwkC4yOhBCK4lj-2B12aQqfCMXRYhHOVlryNBfwAEqmlVy7LDuLHBtRkvQckCp44n0xPLAYbfvB-2BmmXTtDQTLvAS17g-2Fw2inUszLN71zYdaGM41yRwsIsPjmZOeLMHo0JOEArJRO-2BiH0gMoPHawARUarVWhC9gkzogNWlQH12tMd5dGoGiLNQ0HYCW-2BVdhmViwYbl9ALWLshu-2BGBih9AU97oNuKof7utAmVsi8M06XuiSQx2g8QGx493FRE3JuxqvCQXycl4BDDfikSQ3v-2FYhpuOfgzWPgvGZSTA4eQ8zmznjGHwudZdsU-2BiFNiVqoiA6wcNZxSgs4qSaHM7lMgF1Y-2BuC133wnTC68Vm2sPjtrR-2B8uLk4UzK5XhKgq9DrleauD5zNl2EJzlQz-2BUydzFVa9swzkfeZH2-2FxUd-2BvRtOo-2BhAQvK-2FYLO3d-2BBsbrU4JT0EfCBK7jTA1-2BhXQNzRGnDzkqAuzOlUVMaoI0wmva0NE1qYBTtMT4uSoRxApnETBlgcUgWmNCQe1dK6CNtX9W-2BOVsobUjtEE7mGIfcn6evk3iOp0NYHFnjKQBKw2PLHUsJFiKw7ziEpUUeL2-2FZdhVhblg-3D-3D). They also stated that the agency would be releasing more specific guidance in early 2023.  On the legislative front, Rep. Bruce Westerman (R-AR), an ex-forester and industry ally, was joined by Rep. Pete Stauber (R-MN) to introduce [“The ESA Flexibility Act”](https://www.jdsupra.com/legalnews/esa-flexibility-act-h-r-8136-9129506/) (H.R.8136), a bill pushing back on the up-listing of the NLEB, among other species whose designation would unduly curtail land-use. Click [here](https://u19539728.ct.sendgrid.net/ls/click?upn=-2B73de0dREQUDGWQfTM3mht9MZ0e4h1X1h-2FAGAlin1AKtlObSR5IVOkX6kkth8uYRJauAM17lrMQYR8nfhYyDPUO6J6Snajdjag6i9zg3KbrqxK6qJD8WM0oF28BR1zGlMI7f_DfShkWCAhoLGP-2FJNrdlPJdV-2FLULhdq7A2Mns4NO8kAbKoy2hBWCjup-2FdSJ4mtav3QZgwkC4yOhBCK4lj-2B12aQqfCMXRYhHOVlryNBfwAEqmlVy7LDuLHBtRkvQckCp44n0xPLAYbfvB-2BmmXTtDQTLvAS17g-2Fw2inUszLN71zYdaGM41yRwsIsPjmZOeLMHo0JOEArJRO-2BiH0gMoPHawARUarVWhC9gkzogNWlQH12tMd5dGoGiLNQ0HYCW-2BVdhmViwYbl9ALWLshu-2BGBih9AU97oNuKof7utAmVsi8M06XuiSQx2g8QGx493FRE3JuxqvCQXycl4BDDfikSQ3v-2FYhpuOfgzWPgvGZSTA4eQ8zmznjGHwudZdsU-2BiFNiVqoiA6wcNZxSgs4qSaHM7lMgF1Y-2BuC133wnTC68Vm2sPjtrR-2B8uLk4UzK5XhKgq9DrleauD5zNl2EJzlQz-2BUydzFVayVv7qrw3QqIioVrw2axKz9LrihDwY2EMsgH3b3wrpG0COfxRFW9XGD259zsEcc-2BE0fc0OPQbEuMHEm-2FRF1zEziCfzCKmfVx1gT6YtuD6WQykG0V6s5470tvlVnrrsClvKKKlud6HrZrMkB-2BvSYciavt3FgdHQIuGHzZkJY4RvESYFTQu53P1shpBr-2B83aOUpw-3D-3D) to see more information from FWS related to the NLEB.**EU Moves Forward with Anti-Deforestation Rules**On December 6, the three branches of the European Union (EU) all signed off, in a process known in EU-parlance as a “trilogue,” on a long-anticipated rule to ban imports of products, including U.S. hardwoods, originating from land linked to deforestation. It includes a geo-location requirement to zero in on a product’s precise location of harvest.  Since the rule was first proposed in 2021, the Hardwood Federation has worked closely with the American Hardwood Export Council (AHEC) to raise concerns and provide the U.S. Department of Agriculture (USDA) with recommended language to address this problematic requirement.  In late November, the Federation and AHEC joined a small group, invitation-only call with USDA for an update on their efforts to address this and other issues U.S. exporters have identified regarding the EU’s new rule. USDA assured industry that they share concerns related to the new rule and that they have sent proposed language to the USDA team in Europe to share with their E.U. counterparts.  To read a statement from the EU Commission, please [click here](https://u19539728.ct.sendgrid.net/ls/click?upn=-2B73de0dREQUDGWQfTM3mhmUhlXBuRq7Y69bluA5dda945zeNtPqGcj4RLjsZa-2BGz2gHlvNg97MQQYAL-2FwXWOYT0c6qCQ8xh9GmJUtGdipN0-3DLMrX_DfShkWCAhoLGP-2FJNrdlPJdV-2FLULhdq7A2Mns4NO8kAbKoy2hBWCjup-2FdSJ4mtav3QZgwkC4yOhBCK4lj-2B12aQqfCMXRYhHOVlryNBfwAEqmlVy7LDuLHBtRkvQckCp44n0xPLAYbfvB-2BmmXTtDQTLvAS17g-2Fw2inUszLN71zYdaGM41yRwsIsPjmZOeLMHo0JOEArJRO-2BiH0gMoPHawARUarVWhC9gkzogNWlQH12tMd5dGoGiLNQ0HYCW-2BVdhmViwYbl9ALWLshu-2BGBih9AU97oNuKof7utAmVsi8M06XuiSQx2g8QGx493FRE3JuxqvCQXycl4BDDfikSQ3v-2FYhpuOfgzWPgvGZSTA4eQ8zmznjGHwudZdsU-2BiFNiVqoiA6wcNZxSgs4qSaHM7lMgF1Y-2BuC133wnTC68Vm2sPjtrR-2B8uLk4UzK5XhKgq9DrleauD5zNl2EJzlQz-2BUydzFVa8Y09MaPk3Zs9Lhe-2BnQEKsZMEQ0Uo4AJw71WEBRHy4-2Fbz4k32OrUOKIT-2F6EYXE6vxkJXxhoRuYilezJd1GEllanDgKGev-2BFMAgWWtlgldxVHLKgc2E6EpKHFDSFba2hLFM1pL77nSdCBVEZ9rFY76tz-2BaG7LyHoO6AFB-2FJXOzfEuoNPuok7GNyRUyOJ8GMeZmw-3D-3D).**USDA Grows Ag Export Programs, Promotes U.S. Hardwoods**On December 16, USDA’s Foreign Agriculture Service (FAS) [announced](https://www.fas.usda.gov/newsroom/usda-invests-more-200-million-expand-agricultural-exports-through-market-development#:~:text=16%2C%202022%20%E2%80%94%20The%20U.S.%20Department,Market%20Development%2C%20or%20FMD%20Program.) that it would award more than $200 million in grants to expand international markets for U.S. farm and food products through the Market Access Program (MAP) and the Foreign Market Development (FMD). The Administration’s action bodes well for bipartisan support for robust funding for these important programs through the 2023 farm bill, which ranks as a high priority for the hardwood industry next year. Among the [FY 2023 recipients](https://www.fas.usda.gov/programs/foreign-market-development-program-fmd/fmd-funding-allocations-2023) for FMD funds, wood products top the list with the American Hardwood Export Council. APA – The Engineered Wood Association, Softwood Export Council and the Southern Forest Products Association sharing a $2.1 million allocation. According to USDA, the FAS is providing “$175.6 million in initial fiscal year 2023 funding to 67 nonprofits ... and cooperatives.” The intended use of the funds focuses on “marketing and promotion activities around the globe, including market research, technical assistance, and support for participation in trade fairs and exhibits.” Through the FMD, FAS will award “$27.1 million in initial fiscal year 2023 funding to 20 trade organizations that represent U.S. agricultural producers” and will focus on “generic promotion of U.S. commodities, rather than consumer–oriented promotion of branded products.” The agency will give “preference ... to organizations that represent an entire industry or are nationwide in membership and scope.” **Coalition Urges Congress to Allow Business Interest Deduction Flexibility****On December 9, the Federation joined more than 200 industry allies, including the National Association of Manufacturers, in a** [letter](https://namissvr.nam.org/minisites/SecureSignup/Letter.aspx?ID=236) **urging congressional leaders to allow businesses to take full advantage of a tax break, known as the** Earnings Before Interest, Taxes, Depreciation, and Amortization **(EBITDA) deduction, for interest incurred on business loans. Sawmills and other capital-intensive operations rely on tax breaks directed at financing costs to raise capital, hire new workers, and expand operations. In recent months, interest rate hikes have led to higher financing costs and are taking a bite out of revenues. Although the prospects for moving a tax package in December are slim, according to a senior Democrat on the Senate Finance Committee who recently spoke to HF staff, the next Congress could pick it up in 2023.** **Senate Leadership in 2023, No Changing of the Guard**Although the House has reshuffled its leadership based on the outcome of the November election, in the Senate, preservation of the status quo is a mere formality. Although Senate Democrats are conducting formal elections in January, Sen. Chuck Schumer (D-NY) will carry on as Majority Leader.  On the GOP side, Sen. Mitch McConnell (R-KY) successfully pushed back on a bid from Sen Rick Scott (R-FL) for the GOP’s top slot.  Dick Durbin (D-IL) is expected to stay on as Majority Whip while his GOP counterpart, Sen. John Thune (R-SD), retained his position as Minority Whip during a vote on November 16. With the victory of Sen. Warnock (D-GA) in the Georgia run-off on December 6, the Democrats gain 51-49 majority and stronger margins in the committees handling legislation that will impact the industry.  **Federal Policy Makers Narrowly Dodge Transportation Meltdown**On Friday, December 2, President Biden signed a bill pursuant to the Railway Labor Act to impose a labor settlement on railroads and unions, who have reached a stalemate in their months-long quest to finalize a contract. Without the legislation, railway workers could have begun walking off the job by December 9, the final day of a “cooling off period” for negotiations. The president’s action is consistent with advocacy from the business community, which has consistently rallied on a variety of fronts to finalize an agreement to avoid a strike. To that end, the Hardwood Federation joined the U.S. Chamber of Commerce in a [letter](https://docs.google.com/forms/d/e/1FAIpQLScGbytXZO2wN34b626gTXKw3qbx7zpgtimcQzNY-XTMMe3ebw/viewform) urging Congress to use all the tools at its disposal to prevent a major transportation shutdown. Complicating the prospects for continued transportation challenges, dock workers on the west coast have been working without a contract since May. Since that time, many exporters have implemented work-around strategies by rerouting goods through ports on the east coast.  These include major ports in New York and New Jersey, and southern points of entry including Houston, Charleston, SC and Savannah, GA. **Biomass Provision Moves with Fiscal Year (FY) 2023 Spending Package****TBD****DOL Reviews Status of “Independent Contractors,” Raising Concerns from Truckers** **Earlier this fall, the Department of Labor (DOL) published a** [Notice of Proposed Rule Making](https://www.dol.gov/agencies/whd/flsa/misclassification/rulemaking) **(NPRM) that would rescind a flexible, regulatory definition of “independent contractor” promulgated by the agency in 2021. The DOL states that it seeks to restore a cumbersome, multi-factor legal test, including the extent to which the work performed is “integral” to the employer’s business, to determine whether an individual should be treated as an employee or independent contractor under the Fair Labor Standards Act (FLSA). The trucking industry has weighed in with** [concerns](https://www.ttnews.com/articles/trucking-weighs-independent-contractor-proposal) **about the proposal, stating that the agency has barely allowed time to road test the 2021 rule, which it believes outlined a balanced approach to the FLSA. The industry is also concerned that a rescission of the 2021 rule would inhibit motor carriers’ ability to work with independent, owner, operated trucks, which carry 70% of the nation’s freight, including wood products, according to the trucking industry.** **Congress Moves Mass Timber Program with Defense Bill** **As the countdown to the close of the 117th Congress approaches, on December 15, lawmakers managed to adopt the Fiscal Year (FY) 2023** [National Defense Authorization Act (NDAA)](https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR7776EAS-RCP117-70-JES.pdf)**, which includes a mass timber program.  The “must pass” defense bill sailed through the House on December 8 and passed the Senate one week later by overwhelming, bipartisan votes. The bill authorizes a pilot program to evaluate the use of timber in military construction projects, taking into account the role of wood products as a low-carbon construction solution. Unfortunately for Sen. Manchin (D-WV), lawmakers rejected his energy permit streamlining amendment when it failed to pass by a 47 to 47 vote, a measure requiring 60 votes to pass.** **HAPPENING IN THE HARDWOOD WORLD**A recent [study](https://www.fs.usda.gov/rmrs/publications/mega-disturbances-cause-rapid-decline-mature-conifer-forest-habitat-california) conducted by researchers with the University of California (UC), Berkeley, UC Davis, the USFS Rocky Mountain Research Station and other organizations shows a link between regulations protecting spotted owl habitat and a dramatic loss of mature forests. According to the study, “protected activity centers” saw a 49 percent decline in canopy cover “due to forest lost from insects, drought, and fire.” By contrast, loss outside the protected areas was 14 percent lower. The researchers also found that between 2011 and 2020, “natural disturbance far outpaced declines attributable to mechanical activities.” Citing a specific case, researcher focusing on the Southern Sierra mountains concluded that drought and fire combined contributed to 45 percent of lost acreage, whereas mechanical activities accounted for a mere four percent loss. In addition to citing data, the researchers conclude that their “analysis shows that a hands-off approach” to forest management “is increasingly failing to preserve mature forests.” To view a copy of the complete study, please click [here](https://www.fs.usda.gov/rm/pubs_journals/2022/rmrs_2022_steel_z001.pdf).  |